

PROCEDURAL SAFEGUARDS NOTICE

BUREAU OF SPECIAL EDUCATION'S CONSULTLINE, A PARENT HELPLINE 800-879-2301

ConsultLine personnel are available to parents and advocates of children with disabilities or child thought to be disabled to explain federal and state laws relating to special education; describe the options that are available to parents; inform the parents of procedural safeguards; identify other agencies and support services; and describe available remedies and how the parents can proceed.

Additional Resources appear at the end of this notice.

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires the Local Education Agency (LEA) to provide parents of a child with a disability with this notice containing a full explanation of the procedural safeguards available under the IDEA and the U.S. Department of Education regulations. A copy of this notice must be given to parents only once a school year, or:

(1) upon initial referral or parent request for evaluation; (2) upon filing by parents of their first State complaint under 34 CFR §§300.151 through 300.153 and upon filing by parents of their first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request. [34 CFR §300.504(a)]

This procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148 (unilateral placement at private school at public expense), §§300.151 through 300.153 (State complaint procedures), §300.300 (consent), §§300.502 through 300.503, §§300.505 through 300.518, and §§300.530 through 300.536 (procedural safeguards in Subpart E of the Part B regulations), and §§300.610 through 300.625 (confidentiality of information provisions in Subpart F). This model form provides a format that LEAs may choose to use to provide information about procedural safeguards to parents.

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I. GENERAL INFORMATION

A. Who Is A Parent? (34 CFR §300.30)

THIS SECTION DESCRIBES WHO IS ABLE TO ACT AS A PARENT FOR PURPOSES OF SPECIAL EDUCATION DECISION MAKING.

A parent is a biological or adoptive parents of a child; a foster parent; a guardian generally authorized to act as the child's parent, or authorized to make educational decision for the child; an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or a surrogate parent.

A surrogate parent must be appointed when no parent can be identified; the public agency, after reasonable efforts, cannot locate a parents; the child is a ward of the State under the laws of Pennsylvania, or the child in an unaccompanied homeless youth as defined by the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Sec. 11434a(6). Public agencies must ensure that a person selected as a surrogate parent is not an employee of the SEA, the LEA or any other agency that is involved in the education or care of the child; has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and has knowledge and skills that ensure adequate representation of the child. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. The public agency must make reasonable efforts to ensure the assignment of surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

B. What is Prior Written Notice? (34 CFR §300.503)

THIS SECTION EXPLAINS WHAT, HOW, AND WHEN AN LEA MUST TELL YOU ABOUT ACTIONS IT PROPOSES OR REFUSES TO TAKE.

1. When Notice Is Required

Your local education agency (LEA) – the entity responsible for providing a free appropriate public education to your child – must notify you in writing whenever it:

- a. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or**
- b. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.
- c. Change of placement for disciplinary reasons.
- d. Due process hearing, or an expedited due process hearing, initiated by LEA.
- e. Refusal of LEA to agree to an independent educational evaluation (IEE) at public expense.
- f. Parents' revocation of consent for special education and related services.

In Pennsylvania, prior written notice is provided by means of a LEA Prior Written Notice Form/Notice of Recommended Educational Placement. You should be given reasonable notice of this proposal or refusal so that if you do not agree with the LEA you may take appropriate action. Reasonable Notice means ten days.

2. Content of notice

The prior written notice must:

1. Describe the action that your LEA proposes or refuses to take;
2. Describe the parents' action for the revocation of special education and related services;
3. Explain why your LEA is proposing or refusing to take the action;
4. Describe each evaluation procedure, assessment, record, or report your LEA used in deciding to propose or refuse the action;
5. Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
6. Tell how you can obtain a description of the procedural safeguards if the action that your LEA is proposing or refusing is not an initial referral for evaluation;
7. Include resources for you to contact for help in understanding Part B of the IDEA;
8. Describe any other choices that your child's IEP Team considered and the reasons why those choices were rejected; **and**
9. Provide a description of other reasons why your LEA proposed or refused the action.

3. Notice in understandable language

a. The notice must be:

- 1) Written in language understandable to the general public; **and**
- 2) Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.
- 3) If your native language or other mode of communication is not a written language, your LEA must ensure that:
 - a) The notice is translated for you orally or by other means in your native language or other mode of communication;
 - b) You understand the content of the notice; **and**
 - c) There is written evidence that 1 and 2 have been met.

C. What is Native Language? (34 CFR §300.29)

1. Native language, when used with an individual who has limited English proficiency, means the following:
 - a. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
 - b. In all direct contact with a child (including evaluation of a child), the language normally used by the child in the home or learning environment.
For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

D. Notice by Electronic Mail (34 CFR §300.505)

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

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

E. What is Parental Consent? (34 CFR §300.9)

THIS SECTION EXPLAINS WHAT INFORMED PARENTAL CONSENT IS AND WHEN YOU NEED TO PROVIDE IT, SO AN LEA MAY PROCEED AS PROPOSED IN THE NOTICE.

1. What is Parental Consent?

Consent means:

- a. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which consent is sought;
- b. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
- c. You understand that the consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

2. Can the Parent Revoke Consent?

- a. Yes. You must submit written documentation to the LEA staff revoking consent for special education and related services;
- b. When you revoke consent for special education and related services, the LEA must provide you with Prior Written Notice;
- c. Special education and related services cannot cease until the LEA provides you with Prior Written Notice;
- d. Prior notice is defined as ten calendar days;
- e. LEA staff cannot use mediation or due process to override your revocation of consent;
- f. The LEA will not be considered in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services;
- g. The LEA is not required to amend the child's educational records to remove any references to the child's receipt of special education and related services because of the revocation of consent.
- h. The LEA is not required to convene an IEP team meeting or develop an IEP for the child for further provision of special education and related services.

F. When is Parental Consent Needed?

1. Initial Evaluations (34 CFR §300.300)

- a. **General Rule: Consent for initial evaluation**
Your LEA cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the 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 LEA 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 LEA 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, your LEA may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the Act's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your LEA 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.

b. Special rules for initial evaluation of Wards of the State

Under Pennsylvania law, if a child is designated a ward of the state, the whereabouts of the parent are not known or the rights of the parent have been terminated in accordance with State law. Therefore, someone other than the parent has been designated to make educational decisions for the child. Consent for an initial evaluation should, therefore, be obtained from the individual so designated.

Ward of the State, as used in the IDEA, encompasses two other categories, so as to include a child who is:

1. A foster child who does not have a foster parent;
2. Considered a ward of the State under State law; **or**
3. In the custody of a public child welfare agency.

2. Consent for Initial Placement in Special Education (34 CFR §300.300)

Parental consent for services

Your LEA must obtain your informed consent before providing special education and related services to your child for the first time. The LEA 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 LEA may not use the procedural safeguards (i.e. mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services as recommended by your child's IEP Team may be provided to your child without your consent.

If you refuse to give your consent for your child to start receiving special education and related services, or if you do not respond to a request to provide such consent and the LEA does not provide your child with the special education and related services for which it sought your consent, your LEA:

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

3. Consent for Reevaluations (34 CFR §300.300)

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

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

4. What is Documentation of Reasonable Efforts to Obtain Parental Consent? (34 CFR §300.300)

Your LEA must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for the first time, to reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the LEA's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; **and**
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

5. When is Consent Not Required Related to Evaluation?

Your consent is not required before your LEA may:

1. Review existing data as part of your child's evaluation or a reevaluation; **or**
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

6. What If I Refuse to Consent to a Reevaluation?

If you refuse to consent to your child's reevaluation, the LEA may, but is not required to, pursue your child's reevaluation by using the 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 LEA does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

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

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the LEA may not use its consent override procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

7. What If I Disagree With An Evaluation?

a. Independent Educational Evaluations (34 CFR §300.502)

1) General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your LEA. If you request an IEE, the LEA must provide you with information about where you may obtain an IEE and about the LEA's criteria that apply to IEEs.

2) Definitions

- a) **Independent educational evaluation** means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of your child.
- b) **Public expense** means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of the IDEA, which allow each State to use whatever State, local, Federal and private sources of support are available in the State to meet the requirements of Part B of the Act.

3) Parent right to evaluation at public expense

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

- a) If you request an IEE of your child at public expense, your LEA must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an IEE at public expense, unless the LEA demonstrates in a hearing that the evaluation of your child that you obtained did not meet the LEA's criteria.

- b) If your LEA requests a hearing and the final decision is that your LEA's evaluation of your child is appropriate, you still have the right to an IEE, but not at public expense.
- c) If you request an IEE of your child, the LEA may ask why you object to the evaluation of your child obtained by your LEA. However, your LEA may not require an explanation and may not unreasonably delay either providing the IEE of your child at public expense or filing a due process complaint to request a due process hearing to defend the LEA's evaluation of your child.
- d) You are entitled to only one IEE of your child at public expense each time your LEA conducts an evaluation of your child with which you disagree.
- e) LEA criteria
 - If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the LEA uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE).
 - Except for the criteria described above, a LEA may not impose conditions or timelines related to obtaining an IEE at public expense.

b. Parent-initiated evaluations

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

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

c. Requests for evaluations by hearing officers

If a hearing officer requests an IEE of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

G. Consent For Disclosure of Personally Identifiable Information (34 CFR §300.622)

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

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

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

II. CONFIDENTIALITY INFORMATION

Who Has Access To Confidential Information Related To My Child? (34 CFR §300.611)

A. Definitions

1. Related to the confidentiality of information, the following definitions apply:
 - a. **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
 - b. **Education records** means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
 - c. **Participating agency** means any LEA, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

B. Personally identifiable (34 CFR §300.32) means information that has:

- 1) Your child’s name, your name as the parent, or the name of another family member;
- 2) Your child’s address;
- 3) A personal identifier, such as your child’s social security number or student number; **or**
- 4) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

C. Access Rights (34 CFR §300.613)

a. Parent Access

The LEA must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your LEA under Part B of the IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay or 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.

- 1) Your right to inspect and review education records includes:
- 2) Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
- 3) Your right to 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**
- 4) Your right to have your representative inspect and review the records.
 - a) 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.
 - b) 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.
 - c) 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.

b. Other Authorized Access (34 CFR §300.614)

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the 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.

D. Fees

Each participating agency may charge a fee or copies of records (34 CFR §300.617) that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

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

E. Amendment of Records at Parent's Request (34 CFR §300.618)

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the 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 in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose.

F. Opportunity for a Records Hearing (34 CFR §300.619)

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

a. Hearing Procedures (34 CFR §300.621)

A hearing to challenge information in education records must be conducted according to the following procedures for such hearings under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. Section 1233g (FERPA):

- 1) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.
- 2) The educational agency or institution shall give the parent or eligible student notice of the date, time, and place, reasonable in advance of the hearing.
- 3) The hearing may be conducted by any individual, including an official of the educational agency or institution who does not have a direct interest in the outcome of the hearing.
- 4) The educational agency or institution shall give the parent or eligible student a full and fair opportunity to present evidence to challenge the content of the student's education records on the grounds that the information contained in the education records is inaccurate, misleading, or in violation of the privacy rights of the student. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

- 5) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.
- 6) 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.

b. Result of Hearing (34 CFR §300.620)

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

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

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

c. Safeguards (34 CFR §300.623)

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

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

All persons collecting or using personally identifiable information must receive training or instruction regarding your State's policies and procedures regarding confidentiality under Part B of the IDEA and FERPA.

Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally identifiable information.

d. Destruction of Information (34 CFR §300.624)

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

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

III. STATE COMPLAINT PROCEDURES (34 CFR §§300.151-153)

A. Difference Between Due Process Hearing Complaint And State Complaint Procedures

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 LEA, the State Educational Agency, or any other public agency. Only you or a LEA 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. While staff of the State Educational Agency 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 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 at your request or the LEA's request. The state complaint or due process complaint, resolution and hearing procedures are described more fully below.

B. How Can I File A State Complaint? (34 CFR §300.153)

An organization or individual may file a signed written State complaint.

The State complaint must include:

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

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading **Adoption of State Complaint Procedures**.

The party filing the State complaint must forward a copy of the complaint to the LEA or other public agency serving the child at the same time the party files the complaint with the State Educational Agency.

Complaints should be sent to:

Chief, Division of Compliance, Monitoring and Planning
Bureau of Special Education
Pennsylvania Department of Education
333 Market Street, 7th Floor
Harrisburg, PA 17126-0333

a. Procedures

1) Time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the State Educational Agency determines that the investigation is necessary;

2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the LEA or other public agency with the opportunity to respond to the complaint, including, at a **minimum**: (a) at the option of the agency, a proposal to resolve the complaint; and (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation
4. Review all relevant information and make an independent determination as to whether the LEA or other public agency is violating a requirement of Part B of the IDEA; and
5. Issue a written decision to the complainant that address each allegation in the complaint and contains: (a) findings of fact and conclusions; and (b) the reasons for the State Educational Agency's final decision.

2) Time extension; final decision; implementation

- a) An extension of the 60 calendar day timeline may be granted only if: (a) exceptional circumstances exist with respect to a particular State complaint; or (b) the parent and the LEA or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in the State.
- b) The State Educational Agency's final decision shall contain effective implementation procedures, if needed, including: (a) technical assistance activities; (b) negotiations; and (c) corrective actions to achieve compliance.

3) Remedies for denial of appropriate services

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

- a) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and
- b) Appropriate future provision of services for all children with disabilities.

4) State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described below under the hearing **Filing a Due Process Complaint**, or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside the State complaint, or any part of the State complaint that is being address in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above. If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the LEA), then the due process hearing decision is binding on that issue and the State Educational Agency must inform the complainant that the decision is binding.

A complaint alleging a LEA's or other public agency's failure to implement a due process hearing decision must be resolved by the State Educational Agency according to the above described procedures.

IV. DUE PROCESS COMPLAINT PROCEDURE

A. How Can I Request A Due Process Hearing?

1. Filing a Due Process Complaint (34 CFR §300.507)

General

You or the LEA 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 occurred not more than two years before the date you or the LEA 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 LEA specifically misrepresented that it had resolved the issues identified in the complaint; or
2. The LEA withheld information from you that was required to be provided to you under Part B of the IDEA.

Information for parents

The LEA must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, **or** if you or the LEA file a due process complaint.

B. Contents Of Due Process Complaint (34 CFR §300.508)

1. General

In order to request a hearing, you or the LEA (or your attorney or the LEA's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential. At the same time you or the LEA – whichever filed the complaint – provides the due process complaint to the other party, a copy must be filed with the Office for Dispute Resolution (ODR).

2. Content of the complaint

The due process complaint must include:

- a. The name of the child;
- b. The address of the child's residence;
- c. The name of the child's school;
- d. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
- e. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
- f. A proposed resolution of the problem to the extent known and available to you or the LEA at the time.

3. Notice required before a hearing on a due process complaint

You or the LEA may not have a due process hearing until you or the LEA (or your attorney or the LEA's attorney), files a due process complaint that includes the information listed above.

4. Sufficiency of complaint

In order to proceed to a due process hearing, the complaint must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the LEA) notifies the hearing officer and the other party in writing, within 15

calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the LEA) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the LEA in writing immediately.

5. Complaint amendment

You or the LEA may make changes to the complaint only if:

- a. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; **or**
- b. At any time, but no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

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

6. LEA response to a due process complaint

If the LEA has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the LEA must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

- a. An explanation of why the LEA proposed or refused to take the action raised in the due process complaint;
- b. A description of other options that your child's IEP Team considered and the reasons why those options were rejected;
- c. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; **and**
- d. A description of other factors that are relevant to the LEA's proposed or refused action.

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

7. Other party response to a due process complaint

Except as stated under the sub-heading immediately above, **LEA response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

C. Resolution Process (34 CFR §300.510)

1. Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the LEA must convene a meeting with you and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

- a. Must include a representative of the LEA who has decision-making authority on behalf of the LEA; **and**
- b. May not include an attorney of the LEA unless you are accompanied by an attorney. You and the LEA determine the relevant members of the IEP Team to attend the meeting. The

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

c. The resolution meeting is not necessary if:

- 1) You and the LEA agree in writing to waive the meeting; **or**
- 2) You and the LEA agree to use the mediation process, as described under the heading **Mediation**.

2. Resolution period

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

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

Except where you and the LEA have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting. If after making reasonable efforts and documenting such efforts, the LEA is not able to obtain your participation in the resolution meeting, the LEA may, at the end of the 30-calendar day resolution period, request that a hearing officer dismiss your due process complaint.

Documentation of such efforts must include a record of the LEA's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

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

3. Adjustments to the 30-calendar day resolution period

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

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

If you and the LEA agree to use the mediation process, at the end of the 30-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 LEA withdraws from the mediation process, then the 45-calendar day timeline for the due process hearing starts the next day.

4. Written settlement agreement

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

- a. Signed by you and a representative of the LEA who has the authority to bind the LEA; and
- b. Agreement review period – If you and the LEA enter into an agreement as a result of a resolution meeting, either party (you or the LEA) may void the agreement within 3 business days of the time that both you and the LEA signed the agreement.

V. HEARINGS ON DUE PROCESS COMPLAINTS

A. Impartial Due Process Hearing (34 CFR §300.511)

1. General

Whenever a due process complaint is filed, you or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, as described in the **Due Process Complaint** and **Resolution Process** sections. In Pennsylvania, the due process system is administered by the Office for Dispute Resolution (ODR). (listed under **Resources**)

2. Impartial hearing officer

At a minimum, a hearing officer:

- a. Must not be an employee of the State Educational Agency or the LEA that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
- b. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
- c. Must be knowledgeable and understand the provisions of the IDEA, and Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; **and**
- d. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

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

3. Subject matter of due process hearing

The party (you or the LEA) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

4. Timeline for requesting a hearing

a. Time Limitations

You or the LEA must request an impartial hearing on a due process complaint within two years of the date you or the LEA knew or should have known about the issue addressed in the complaint. The due process complaint must allege a violation that occurred not more than two years before the date you or the LEA knew and should have known about the alleged action that forms the basis of the due process complaint.

Exceptions to the timeline

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

1. The LEA specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; **or**
2. The LEA withheld information from you that it was required to provide to you under Part B of the IDEA.

B. Hearing Rights (34 CFR §300.512)

1. General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) or an appeal, as described under the sub-heading Appeal of decisions; impartial review has the right to:

- a. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
- b. Present evidence and confront, cross-examine, and require the attendance of witnesses;
- c. Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five business days before the hearing;
- d. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
- e. Obtain written, or, at your option, electronic findings of fact and decisions.

2. Additional disclosure of information

At least 5 business days prior to a due process hearing, you and the LEA must disclose to all other parties all evaluations completed by that date and recommendations based on those evaluations that you or the LEA intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

3. Parental rights at hearings

You must be given the right to:

- a. Have the child who is the subject of the hearing present;
- b. Open the hearing to the public; **and**
- c. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

C. Hearing Decisions (34 CFR §300.513)

1. Decision of hearing officer

- a. A hearing officer's decision on whether your child received FAPE must be based on substantive grounds.
- b. In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural inadequacies:
 - 1) Interfered with your child's right to FAPE;
 - 2) Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; **or**
 - 3) Caused a deprivation of an educational benefit.
- c. Construction clause
None of the provisions described above can be interpreted to prevent a hearing officer from ordering a LEA to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536). None of the provisions under the headings: **Filing a Due Process Complaint; Due Process Complaint; Model Forms; Resolution Process; Impartial Due Process Hearing; Hearing Rights; and Hearing Decisions** (34 CFR §§300.507 through 300.513), can affect your right to file an appeal of the due process hearing decisions with a court of competent jurisdiction.

2. Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

3. Findings and decision to advisory panel and general public

The SEA after deleting any personally identifiable information, must:

- a. Provide the findings and decisions in the due process hearing or appeal to the State Special Education Advisor Panel (SEAP); **and**

- b. Make those findings and decisions available to the public.

D. Finality Of Decision; Appeal; Impartial Review (34 CFR §300.514)

Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the LEA) may appeal the decision to a court of competent jurisdiction.

E. Timelines And Convenience Of Hearings (34 CFR §300.515)

1. Timelines

The SEA must ensure that not later than 45 calendar days after the expiration of the 30-calendar day period for resolution meetings **or**, as described under the sub-heading **Adjustments to the 30-calendar day resolution period**,

- a. A final decision is reached in the hearing; **and**
- b. A copy of the decision is mailed to you and the LEA.

2. Extensions of Time

A hearing or reviewing officer may grant specific extensions of time beyond the periods described above (45 calendar days for a hearing decision and 30 calendar days for a review decision) if you or the LEA make a request for a specific extension of the timeline. Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to you or your child.

F. Civil Actions, Including The Time Period In Which To File Those Actions (34 CFR §300.516)

1. General

Any party (you or the LEA) who does not agree with the findings and decision in the SEA's decision has the right to bring a civil action with respect to the matter that was the subject of the due process hearing (including a hearing relating to disciplinary procedures). The action may be brought in a district court of the United States without regard to the amount in dispute or in a State court of competent jurisdiction (a State court that has authority to hear this type of case). In Pennsylvania, the court of competent jurisdiction is the Commonwealth Court.

2. Time limitation

The party (you or the LEA) bringing the action in a district court of the United States shall have 90 calendar days from the date of the decision of the SEA to file a civil action. The party bringing the action in the Commonwealth Court shall have 30 calendar days from the date of the decision of the SEA to file a civil action.

3. Additional procedures

In any civil action, the court:

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

4. Rule of construction

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above

must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first exhaust the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going into court unless some specific judicial exception is available which renders exhaustion of administrative remedies futile.

G. Attorney's Fees (34 CFR §300.517)

1. General

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

- a. To you if you are considered the prevailing party.
- b. To a prevailing State Educational Agency or LEA, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**
- c. To a prevailing State Educational Agency or LEA, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

2. Reasonable Fees

A court awards reasonable attorneys' fees consistent with the following:

- a. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
- b. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:
 - 1) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
 - 2) The offer is not accepted within 10 calendar days; **and**
 - 3) The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.
 - 4) Notwithstanding these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.
- c. Fees may NOT be awarded relating to any meeting of the IEP Team unless the meeting is held as a result of an administrative proceeding or court action. A resolution meeting, as described under the heading **Resolution meeting**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.
- d. Fees also may not be awarded for a mediation as described under the heading Mediation.

3. Reduction in Fees

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

- a. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;

- b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
- c. The time spent and legal services furnished were excessive considered the nature of the action or proceeding; **or**
- d. The attorney representing you did not provide to the LEA the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

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

H. Model Forms (34 CFR §300.509)

While the State Educational Agency (SEA) has developed model forms to help you file a due process complaint and a State complaint. The SEA or the LEA may not require you to use these model forms. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint or a State complaint.

VI. MEDIATION (34 CFR §300.506)

A. General

The SEA must make mediation available to allow you and the LEA to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not you or the LEA have filed a due process complaint to request a due process hearing as described under the heading **Filing a Due Process Complaint**.

B. Procedural Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the LEA's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of the IDEA; **and**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
4. The SEA must maintain a list of people you are qualified mediators and are knowledgeable in the laws and regulations relating to the provision of special education and related services. The SEA must select mediators on a random, rotational, or other impartial basis.
5. The State is responsible for the cost of the mediation process, including the costs of meetings.
6. Each session in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the LEA.
7. **If you and the LEA resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:**
 - a. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**

- b. Is signed by both you and a representative of the LEA who has the authority to bind the LEA.
- 8. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.
- 9. Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State Court of a State receiving assistance under Part B of IDEA.

C. Impartiality Of Mediator

The mediator:

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

A person who otherwise qualifies as a mediator is not an employee of a LEA or SEA solely because he or she is paid by the agency to serve as a mediator.

VII. THE CHILD'S PLACEMENT PENDING MEDIATION AND DUE PROCESS (34 CFR §300.518)

A. General

The Child's Placement Pending Mediation And Due Process (34 CFR §300.518)

Except as provided below under the heading **Procedures When Disciplining Children With Disabilities**, once a due process complaint is sent to the other party, during the resolution process time period, during mediation, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or LEA agree otherwise, your child must remain in his or her current educational placement.

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

If the due process complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the LEA may be required to provide the Part C services that the child has been receiving. Children are entitled to pendency – that is, the continuation of the services set forth in their IFSP – when a dispute arises when they are transitioning into the preschool Early Intervention program at age three (3) and the family requests a formal hearing to resolve the dispute. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the LEA must provide those special education and related services that are not in dispute (those which you and the LEA both agree upon).

VIII. WHAT IF MY CHILD IS EXCLUDED FROM SCHOOL BECAUSE OF DISCIPLINE ISSUES?

THIS SECTION OUTLINES PROCEDURES FOR DISCIPLINARY EXCLUSION OF CHILDREN WITH DISABILITIES.

There are special rules in Pennsylvania for excluding children with disabilities served by LEAs for disciplinary reasons. Unless indicated otherwise, children in charter schools follow the same procedures:

A. Authority Of School Personnel (34 CFR §300.530)

1. Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

2. General

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 consecutive school days**, remove a child with a disability (other than a child with an intellectual disability) who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **10 consecutive school days** in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see **Change of Placement Because of Disciplinary Removals** for the definition, below) or exceed 15 cumulative school days in a school year. Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the LEA must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**.

3. 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 disciplinary change of placement would exceed **10 consecutive school days**, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services**. The child's IEP Team determines the interim alternative educational setting for such services. Under PA special education regulations (22 Pa. Code Sec. 14.143), a disciplinary exclusion of a student with a disability for more than 15 cumulative school days in a school year will be considered a pattern so as to be deemed a change in educational placement (explained under Change of Placement Because of Disciplinary Removals). The LEA is required to issue a NOREP/Prior Written Notice to parents prior to a removal that constitutes a change in placement (removal for more than 10 consecutive days or 15 cumulative days).

4. Services

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided to an interim alternative educational setting. A LEA is only required to provide services to a child with a disability who has been removed from his or her current placement for **10 school days or less** in that school year, if it provides services to a child without disabilities who has been similarly removed. Students may have the responsibility to make up exams and work missed while being disciplined by suspension and may be permitted to complete these assignments within guidelines established by their LEA.

A child with a disability who is removed from the child's current placement for **more than 10 consecutive school days** must:

- a. Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; **and**
- b. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** during one school year, or **if** current removal is for **10 consecutive school days** or less, **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

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

5. 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 does not constitute a change in educational placement i.e., is for 10 consecutive school days or less and not a change of placement), the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

- a. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; **or**
- b. If the conduct in question was the direct result of the LEA's failure to implement the child's IEP.

If the LEA, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

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

6. Determination that behavior was a manifestation of the child's disability

If the LEA, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

- a. Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; **or**
- b. 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 LEA must return the child to the placement from which the child was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan.

7. Special circumstances

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the child:

- a. Carries a weapon (see the **Definitions** below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the LEA;
- b. Knowingly has or uses illegal drugs (see the **Definitions** below), or sells or solicits the sale of a controlled substance, (see the **Definitions** below), while at school, on school premises, or at a school function under the jurisdiction of the LEA; **or**
- c. Has inflicted serious bodily injury (see the **Definitions** below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a LEA.

8. Definitions

- a. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202 (c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- b. Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- c. Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
- d. Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

9. Notification

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

B. Change Of Placement Because Of Disciplinary Removals (34 CFR §300.536)

A removal of a child with a disability from the child's current educational placement is a **change of placement** requiring a NOREP/prior written notice if:

1. The removal is for more than 10 consecutive school days; **or**
2. The removal is for 15 cumulative school days total in any one school year;
3. The child has been subjected to a series of removals that constitute a pattern because:
 - a. The series of removals total more than 10 school days in a school year;
 - b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in a series of removals;
 - 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; **and**

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

C. Determination Of Setting (34 CFR §300.531)

The IEP must determine the interim alternative educational setting for removals that are **changes of placement**, and removals under the headings **Additional authority** and **Special circumstances**, above.

D. Appeal (34 CFR §300.532)

1. General

The parent of a child with a disability may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

- a. Any decision regarding placement made under these discipline provisions; **or**
- b. The manifestation determination described above.

The LEA may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

2. Authority of hearing officer

A hearing officer that meets the requirements described under the sub-heading **Impartial Hearing Officer** must conduct the due process hearing and make a decision.

The hearing officer may:

- a. Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading Authority of School Personnel, or that the child's behavior was a manifestation of the child's disability; or
- b. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a LEA files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings **Due Process Complaint Procedures, Hearings on Due Process Complaints**, except as follows:

1. The SEA must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is filed and must resulting a determination within **10** school days after the hearing.
2. Unless the parents and the LEA agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **7** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see **Appeals**, above).

E. Placement During Appeals (34 CFR §300.533)

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

Special Rules for Students with an Intellectual Disability

The disciplinary removal of a child with an intellectual disability attending either a LEA or a charter and cyber charter school for any amount of time is considered a change in placement under 22

Pa. Code Sec. 14.143 and requires NOREP/prior written notice (if the disciplinary event does not involve drugs, weapons and/or serious bodily injury). A removal from school is not a change in placement for a child who is identified with an intellectual disability when the disciplinary event involves weapons, drugs, and/or serious bodily injury.

According to certain assurances the Commonwealth entered into related to the PARC consent decree, an LEA may suspend on a limited basis a student with an intellectual disability who presents a danger to himself or others upon application and approval by the Bureau of Special Education and only to the extent that a student with a disability other than an intellectual disability could be suspended.

F. Protections For Children Not Yet Eligible For Special Education And Related Services (34 CFR §300.534)

1. General

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

2. Basis of knowledge for disciplinary matters

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

- a. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of appropriate educational agency, or a teacher of the child;
- b. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; **or**
- c. The child's teacher, or other LEA personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the LEA's director of special education or to other supervisory personnel of the LEA.

3. Exception

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

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

4. Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against the child, a LEA 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 LEA, and information provided by the parents, the LEA must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

G. Referral To And Action By Law Enforcement And Judicial Authorities (34 CFR §300.535)

1. The state and federal regulations do not:

- a. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; **or**
- b. 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.

Subsequent to a referral to law enforcement, an updated functional behavior assessment and positive behavior support plan are required.

2. Transmittal of records

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

- a. 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**
- b. May transmit copies of the child's special education and disciplinary records only to the extent permitted by FERPA.

IX. WHAT SPECIAL EDUCATION SERVICES ARE AVAILABLE FOR MY CHILD, IF PARENTALLY PLACED IN A PRIVATE SCHOOL?

This Section Addresses The Special Education Services Available To Children Placed By Their Parents In Private School.

A. General Rule (34 CFR §300.148)

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

B. Exceptions

1. Reimbursement for private school placement

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

may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the State Educational Agency and LEAs.

2. Limitation on reimbursement

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

- a. If: (a) At the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the LEA to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the LEA of that information;
- b. If, prior to your removal of your child from the public school, the LEA provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
- c. Upon a court's finding that your actions were unreasonable.

3. Exceptions to Limitation on Reimbursement

The cost of reimbursement:

- a. 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**
- b. May, in the discretion of the court or a hearing officer, not be reduced or denied for the parents' failure to provide the required notice if: (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.

C. Equitable Participation (34 CFR §300.138)

It is Pennsylvania Department of Education policy that the Intermediate Unit (IU) must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located within IU service area.

In circumstances when parents place their children in private schools, when FAPE is not an issue, the IUs must make provision, to the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private schools, located in IU service area, for the participation of those children in the program assisted or carried out under the IU plan, by providing them with special education and related services, including direct services determined in accordance with regard to equitable participation (EP) agreement between private schools and IUs. A service plan must be developed and implemented for each private school child with a disability who has been designated by the IU in which the private school is located to receive special education and related services as determined by EP agreement.

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Due Process and State Complaints are not applicable, except for a suspected failure by the IU to meet child find requirements.

APPENDIX A - RESOURCES

THE ARC OF PENNSYLVANIA

301 Chestnut Street, Suite 403
Harrisburg, PA 17101
1-877-337-1970

www.thearcpa.org

CONSULTLINE, A PARENT HELPLINE

800-879-2301

ConsultLine personnel are available to parents and advocates of children with disabilities or children thought to be disabled to explain federal and state laws relating to special education; describe the options that are available to parents; inform the parents of procedural safeguards; identify other agencies and support services; and describe available remedies and how the parents can proceed.

DISABILITY RIGHTS PENNSYLVANIA

301 Chestnut Street
Suite 300
Harrisburg, PA 17101
800-692-7443 (Toll-Free Voice)
877-375-7139 (TDD)
717-236-8110 (Voice)
717-346-0293 (TDD)
717-236-0192 (Fax)
www.disabilityrightspa.org

HISPANOS UNIDOS PARA NIÑOS EXCEPCIONALES (PHILADELPHIA HUNE, INC.)

2215 North American Street
Philadelphia, PA 19133
215-425-6203
215-425-6204 (Fax)
huneinc@aol.com
www.huneinc.org

MISSION EMPOWER

1611 Peach Street, Suite 120
Erie, PA 16501
814-825-0788
advocate@missionempower.org
www.missionempower.org

OFFICE FOR DISPUTE RESOLUTION

6340 Flank Drive
Harrisburg, PA 17112-2764
717-901-2145 (Phone)
800-222-3353 (Toll free in PA only)
TTY Users: PA Relay 711
717-657-5983 (Fax)

www.odr-pa.org

The Office for Dispute Resolution administers the mediation and due process systems statewide, and provides training and services regarding alternative dispute resolution methods.

PARENT EDUCATION AND ADVOCACY LEADERSHIP CENTER (PEAL)

2325 E Carson St. #100a
Pittsburgh, PA 15203
412-281-4404
412-281-4408 (Fax)
520 N Christopher Columbus Blvd., Suite 602
Philadelphia, PA 19123
215-567-6143
866-950-1040 (Toll Free)
www.pealcenter.org

PUBLIC INTEREST LAW CENTER OF PHILADELPHIA

United Way Building
1709 Benjamin Franklin Parkway, Second
Floor
Philadelphia, PA 19103
215-627-7100
215-627-3183 (Fax)
www.pilcop.org

PENNSYLVANIA BAR ASSOCIATION

100 South Street
Harrisburg, PA 17101
800-932-0311
www.pabar.org

THE PENNSYLVANIA TRAINING AND TECHNICAL ASSISTANCE NETWORK (PaTTAN)

Harrisburg 800-360-7282
King of Prussia 800-441-3215
Pittsburgh 800-446-5607
www.pattan.net

STATE TASK FORCE ON THE RIGHT TO EDUCATION

3190 William Pitt Way
Pittsburgh, PA 15238
1-800-446-5607 ext. 6828

APPENDIX B



OFFICE FOR DISPUTE
RESOLUTION

Request Form

Mediation

IEP/IFSP/GIEP Facilitation

Service Information

| | | |
|---|--|--------|
| Today's Date: | Requested by: <input type="checkbox"/> Parent/Guardian <input type="checkbox"/> LEA (school district; charter; or IU) <input type="checkbox"/> Infant/Toddler/Early Intervention | |
| Name/Email of Person Completing this Form: | Relationship to Student: | Phone: |
| Please Check the type of service requested: <input type="checkbox"/> Mediation <input type="checkbox"/> IEP Facilitation <input type="checkbox"/> GIEP Facilitation <input type="checkbox"/> IFSP Facilitation (Early Intervention) | | |

Student Information

| | |
|-------------------------|-----------------|
| Last Name: | First Name: |
| Date of Birth: | Exceptionality: |
| Name of School/Program: | |

Parent/Guardian Information

| | |
|------------------------|--|
| Parent/Guardian Names: | Second Parent or Parent not residing with the Student: |
| Address: | Address |
| Home Phone: | Home Phone: |
| Work Phone: | Work Phone: |
| Cell Phone: | Cell Phone: |
| Email: | Email: |

LOCAL EDUCATION AGENCY (LEA) INFORMATION

School District/Charter School/Agency Name:

Address:

Contact Name:

Position Title:

Phone:

Fax:

Email:

Please provide a brief description of the issue(s) in dispute, and any proposed solutions to the problem.

Please complete this section if you are requesting any type of facilitation service.

An IEP/IFSP/GIEP meeting is currently scheduled for:

(date, time and location)

An IEP/IFSP/GIEP meeting has not yet been scheduled.

For all requests, if there is additional information you would like to provide, please enter it here.

- Parents with questions about these services or other dispute resolution options may contact the Special Education ConsultLine at 800-879-2301 or 717-901-2146.
- Any birth-3 questions should be referred to OCDEL at 717-346-9320.
- On occasion, an ODR staff person may ask to attend any of these meeting for purposes of evaluation the service. Parties will be notified ahead of time, and any questions will be addressed at that time.
- Please save a copy of this form and MAIL, FAX or EMAIL a completed form to the Office for Dispute Resolution at:

6340 Flank Drive, Harrisburg, PA 17112-2764
717-901-2145 • Toll Free 800-222-3353 (PA only)
Fax 717-657-5983 • TTY Users: PA Relay 711
Email: odr@odr-pa.org



Due Process Complaint

*indicates a required field

| Basic Information | | | |
|---|--|---|--------------------------------------|
| <input type="checkbox"/> IDEA | <input type="checkbox"/> IDEA & Gifted Education | <input type="checkbox"/> Gifted Education | <input type="checkbox"/> Section 504 |
| *Today's Date: | | *Requested by: <input type="checkbox"/> Parent <input type="checkbox"/> LEA | |
| *Name/Email of Person Completing this Request: | *Relationship to Student: | *Phone: | |
| Please send a copy of the completed Due Process Complaint to the opposing party at the same time it is filed with the Office for Dispute Resolution. | | | |
| If you require special accommodations to participate in the due process hearing, you must notify the LEA. | | | |

| Student Information | | | |
|--|--------------|-----------------------------------|--|
| *Last Name: | *First Name: | Date of Birth: | Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female |
| Exceptionality: | | Exceptionality: | |
| *LEA (Local Education Agency) – if known | | *School Building Student Attends: | |

| Parent(s) Residing with Student | | | |
|--|--------------|---|------------------------------------|
| *Last Name: | *First Name: | *Relationship: <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Guardian | |
| *Home Phone: | Cell Phone: | Work Phone: | Email: |
| Preferred method of written correspondence: | | <input type="checkbox"/> Email | <input type="checkbox"/> U.S. Mail |
| Last Name: | First Name: | Relationship: <input type="checkbox"/> Mother <input type="checkbox"/> Father <input type="checkbox"/> Guardian | |
| Home Phone: | Cell Phone: | Work Phone: | Email: |
| Preferred Method of written correspondence: | | <input type="checkbox"/> Email | <input type="checkbox"/> U.S. Mail |
| *Parent(s)/Student Address: | | | |
| Parent Attorney (if represented): | | Attorney Phone: | |
| Attorney Address: | | Attorney Email: | |

Parent(s) Not Residing with Student

| | | | | | |
|--|-------------|-------------|--------|--|------------------------------------|
| Last Name: | | First Name: | | Relationship: <input type="checkbox"/> Mother <input type="checkbox"/> Father | |
| Home Phone: | Cell Phone: | Work Phone: | Email: | | |
| Preferred method of written correspondence: | | | | <input type="checkbox"/> Email | <input type="checkbox"/> U.S. Mail |
| Parent Address: | | | | | |
| Parent Attorney (if represented): | | | | Attorney Phone: | |
| Attorney Address: | | | | Attorney Email: | |

Local Education Agency (LEA) Information

| | | |
|--|-------------|-----------------|
| I. LEA Contact Person Information | | |
| Last Name: | First Name: | Position Title: |
| Cell Phone: | Work Phone: | Email: |
| Address: | | |
| II. Superintendent/CEO | | |
| Last Name: | First Name: | Position Title: |
| Address: | | Phone: |
| III. LEA Attorney | | |
| Attorney Phone: | | Attorney Email: |
| Attorney Address: | | |
| IV. The due process hearing will be held at the following address: <i>(Building Name, Address and Room Number/Name – to be completed by the LEA)</i> | | |
| Note: The hearing will be held at a time and place reasonably convenient to parents and child involved. For gifted education cases, the hearing will be held in the school district at a place reasonably convenient to the parents and, at the request of the parents, may be held in the evening. | | |

Information About the Due Process Complaint (IDEA Cases only)

| | |
|--|--|
| A. Does your issue pertain to a hearing officer decision which has not been implemented? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>(If yes, the Bureau of Special Education will be notified, and will investigate the matter. Due process is not available when the issue pertains to non-implementation of a hearing officer's decision.)</i> | |
| B. Is this a request for a hearing based on a disagreement about: <input type="checkbox"/> Discipline <input type="checkbox"/> ESY (Extended School Year) | |
| <input type="checkbox"/> Check here if student is in the ESY target group | |

Information About Due Process Complaint (All Cases)

You may use this form to explain the nature of your dispute, or you may attach a separate piece of paper containing this information.

*What is the dispute about? Please include facts in your description.

*How would you like to see this resolved? What are you seeking?

If you know the other side's position about this problem, please describe it here.

Resolution Meeting (IDEA Cases only)

Prior to a due process hearing taking place, if the parent filed the process complaint, the law (34 CFR §300.510) requires the parties to participate in a resolution meeting, unless both sides agree in writing to waive this requirement. Please completed the following information:

| | |
|--|--------|
| 1. A resolution meeting to discuss these issues is scheduled for: | (Date) |
| 2. A resolution meeting was held on: | (Date) |
| 3. Participation in the resolution meeting was waived by both parties and the LEA in writing on: | |
| 4. In lieu of a resolution meeting, I am requesting mediation. <input type="checkbox"/> | (Date) |
| If #4 is checked, an ODR mediation case manager will be in contact with the parties. | |

An ODR staff member will confirm receipt of complaint and provide case manager and hearing officer information.

Additional information about due process is available on the ODR website, www.odr-pa.org, or by calling the Special Education ConsultLine (800-879-2301).

程序保障通知

特殊教育局的咨询专线，家长帮助热线800-879-2301

咨询专线人员可向残疾儿童或被认为有残疾的儿童的家长和支持者解释与特殊教育有关的联邦和州法律；描述家长可选择的方案；告知家长程序保障措施；确定其他机构和支持服务；并描述可用的补救措施以及家长的办理流程。

其他资源参见本通知末尾。

《残疾人教育法》（IDEA）是一项有关残疾学生教育的联邦法律，它要求地方教育机构（LEA）向残疾儿童的家长提供本通知，通知中包括对依据IDEA和美国教育部规定享有的程序保障的全面解释。本通知必须每学年只向家长提供一次，或者：

（1）首次评估转介或家长申请评估时；（2）如果在一个学年内，家长依据34 CFR §§ 300.151至300.153提交首次州申诉，或依据§ 300.507提交首次正当程序申诉；（3）当做出纪律惩处决定，构成就学变更时；以及（4）经家长申请时。[34 CFR § 300.504(a)]

程序保障通知必须包含对以下条款提供的所有程序保障的全面解释：§ 300.148（使用公费在私立学校单方面就读）、

§ § 300.151至300.153（州申诉程序）、§ 300.300（同意）、§ § 300.502至300.503、

§ § 300.505至300.518、§ § 300.530至300.536（B部分条例E子部分的程序保障）、

§ § 300.610至300.625（F子部分的信息保密规定）。本表格模板提供了一种格式，LEA可选择用来向家长提供有关程序保障的信息。

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调解申请表

正常程序申诉通知

I. 一般信息

A. 谁是家长？（34 CFR § 300.30）

本节描述了谁能够作为家长，做出有关特殊教育的决定。

家长是指儿童的亲生父母或收养父母；养父母；一般被授权作为儿童父母的监护人，或被授权为儿童做出教育决定的监护人；代替亲生父母或收养父母（包括祖父母、继父母或其他亲属），并与儿童生活的个人，或对儿童的福利负有法律责任的个人；或代理家长。

以下情况中，必须指定代理家长：无法确定家长时；公共机构在合理努力后，无法找到家长；儿童是宾夕法尼亚州法律规定的受监护人，或儿童是《McKinney-Vento无家可归者援助法案》（42 U.S.C. Sec. 11434a(6)）所定义的无人陪伴、无家可归的青少年。公共机构必须确保被选为代理家长的人不是SEA、LEA或任何其他参与儿童教育或照顾的机构的雇员；没有与代理家长所代表的儿童的利益相冲突的个人或专业利益；并且拥有确保足够作为儿童代表的知识和技能。代理家长可代表儿童处理与儿童的鉴定、评估和就学以及向儿童提供FAPE有关的所有事项。公共机构必须作出合理的努力，确保在公共机构确定孩子需要代理家长后不超过30天内指派代理家长。

B. 什么是事先书面通知？（34 CFR § 300.503）

本节解释了LEA必须告诉您的它提议或拒绝采取的行动的内容、方式和时间。

1. 什么时候需要通知

您的地方教育机构（LEA）——负责向您的孩子提供免费适当的公共教育的实体，必须在以下情况中书面通知您：

- a. 其拟议启动或更改对您子女的鉴定、评估或就学安置，或您子女获得的免费适当的公共教育（FAPE）；**或**
- b. 其拒绝启动或更改对您孩子的鉴定、评估或就学安置，或您子女获得的免费适当的公共教育。
- c. 因惩处导致的就学变更。
- d. 正当程序听证，或加急的正当程序听证，由LEA启动。
- e. LEA拒绝以公费进行独立教育评估（IEE）。
- f. 家长撤销对特殊教育和相关服务的同意。

在宾夕法尼亚州，事先书面通知以LEA事先书面通知表/就学建议通知的形式提供。您应得到有关这一建议或拒绝的合理通知，这样的话，如果您不同意LEA的做法，可以采取适当的行动。合理通知表示提前十天通知。

2. 通知内容

事先书面通知必须:

1. 描述LEA拟议或拒绝采取的行动;
2. 描述家长撤销特殊教育和相关服务的行动;
3. 解释LEA为何拟议或拒绝采取行动;
4. 描述每个评估流程、鉴定、记录, 或您的LEA在决定拟议或拒绝行动时使用的报告;
5. 包括一份声明, 说明您根据IDEA的B部分程序保障条款有保护措施;
6. 如果您的LEA拟议或拒绝的行动不是初次评估转介, 则告诉您如何获得有关程序保障的说明;
7. 包括您可以联系的资源, 以帮助您理解IDEA的B部分;
8. 说明您孩子的IEP团队考虑过的其他选择以及这些选择被否决的原因; **和**
9. 说明您的LEA拟议或拒绝该行动的其他原因。

3. 以可理解的语言发送通知

a. 通知必须:

- 1) 以一般大众可理解的语言书写; **和**
- 2) 以您所使用的母语或其他沟通方式提供, 除非这样做明显不可行。
- 3) 如果您的母语或其他沟通方式不是书面语言, 那么LEA必须确保:
 - a) 使用您的母语或其他沟通方式, 以口头形式或其他方式为您翻译通知;
 - b) 您理解通知内容; **和**
 - c) 有书面证据表明这两项要求已得到满足。

C. 什么是母语? (34 CFR § 300.29)

1. 母语在由英语水平有限的个人使用时, 表明下列内容:

- a. 此人通常使用的语言, 或当此人为儿童时, 该儿童的家长通常使用的语言;
- b. 在与此儿童的所有直接接触中(包括对儿童的评估), 该儿童在家中或学习环境中通常使用的语言。

对于失聪或失明人士, 或不会书面语言的人士来说, 沟通方式指的是此人通常使用的沟通方法(例如手语、盲文或口头沟通)。

D. 电子邮件通知 (34 CFR § 300.505)

如果LEA为家长提供以电子邮件形式接收文件的选择, 您可以选择通过电子邮件接收下列内容:

1. 事先书面通知;
2. 程序保障通知; **和**
3. 与正当程序申诉相关的通知。

E. 什么是家长同意？（34 CFR § 300.9）

本节解释了什么是家长的知情同意，以及您需要在什么时候提供这种同意，以便LEA可以按照通知中的拟议方案进行。

1. 什么是家长同意？

同意指的是：

- a. 您已通过您的母语或其他沟通方式（例如手语、盲文或口头沟通），获悉关于需要您同意的行动的全部信息；
- b. 您了解并以书面形式同意该行动，并且同意书描述了行动，且列出了将要发布的记录（如有）和发布对象；**和**
- c. 您了解：同意并不否定（撤销）在您同意后和撤回同意前已经发生的行为。

2. 家长可以撤销同意吗？

- a. 可以。您必须向LEA人员提交书面文件，撤销对特殊教育和相关服务的同意；
- b. 当您撤销对特殊教育和相关服务的同意时，LEA必须向您发送事先书面通知；
- c. 在LEA向您发送事先书面通知之前，不得停止特殊教育和相关服务；
- d. 事先通知定义为提前十个日历日通知；
- e. LEA工作人员不得利用调解或正当程序来推翻您对同意的撤销；
- f. LEA未向孩子提供其他特殊教育和相关服务的，不会被因此视为违反向孩子提供FAPE的要求；
- g. LEA无需修改孩子的教育记录，来删除您在撤销同意后孩子获得特殊教育及相关服务的任何关联内容。
- h. LEA无需召开IEP团队会议，亦无需就进一步提供特殊教育和相关服务，制定孩子的IEP。

F. 什么时候需要家长同意？

1. 初始评估（34 CFR § 300.300）

- a. 一般规则：对初始评估的同意

若未向您事先书面通知拟议的行动，并如“**家长同意**”标题下的内容所述，**获取您的同意，LEA不得对您的孩子进行初始评估，来确定其是否符合IDEA B部分下接受特殊教育及相关服务的条件。**

LEA必须付诸合理的努力，获取您对初始评估的知情同意，以便确定您的孩子是否有残疾。您同意初始评估，并不表示也同意LEA开始为您的孩子提供特殊教育及相关服务。如果您的孩子已被录入公立学校，或您试图让您的孩子就读公立学校，并且您已拒绝提供同意或未能回应要求您提供初始评估同意的请求，则LEA可以，但无义务通过IDEA调解或正当程序申诉、解决会议和公正的正当程序听证程序，对您的孩子进行初始评估。如果在此类情况下LEA未能实施对您孩子的评估，则LEA不会违反其义务去寻找、确定和评估您的孩子。

b. 对州内受监护人接受初始评估的特别规定

根据宾夕法尼亚州法律，如果孩子被指定为州内受监护人，表示其父母下落不明，或者其父母的权利已经根据州法律被终止。因此，除父母外的某人被指定作出有关该儿童的教育决定。因此，应从被指定人员处获得初始评估同意。

州内受监护人在IDEA中使用时，包括另外两个类别，因此包括属于以下情况的儿童：

1. 没有一方养父母的领养儿童；
2. 依据州法律视为州内受监护人；**或**
3. 在公共儿童福利机构监护下的儿童。

2. 对初次安排特殊教育的同意（34 CFR § 300.300）家长对服务的同意

在首次向您的孩子提供特殊教育和相关服务之前，LEA必须获得您的知情同意。在首次向您的孩子提供特殊教育和相关服务之前，LEA必须采取合理努力，获得您的知情同意。

对于征求您同意让孩子首次获得特殊教育及相关服务的请求，如果您不回复该请求或者如果您拒绝给予同意，那么LEA不得使用程序保障（即，调解、正当程序申诉、解决会议，或公正的正当程序听证）来获取该同意或裁定：可以无需您同意，向您的孩子提供由孩子的IEP团队推荐的特殊教育及相关服务。

如果您不同意您的孩子首次接受特殊教育及相关服务；或您不回应要求您提供此类同意的请求，则LEA不会为您的孩子提供需要经过您同意的特殊教育及相关服务，您的LEA：

1. 不会因其未能向您的孩子提供此类服务，而违违反向您的孩子提供FAPE的要求；**和**
2. 无需针对要求获得您同意的特殊教育及相关服务，为您的孩子召开IEP会议或制定IEP。

3. 对重新评估的同意（34 CFR § 300.300）

您的LEA必须在重新评估您的孩子前获取您的知情同意，除非LEA可以证明：

1. 其已采取合理的步骤来获取您对孩子重新评估的同意；**和**
2. 您没有回应。

4. 什么是获得家长同意的合理努力的文件？（34 CFR § 300.300）

LEA必须保留为实现下列目的而付出合理努力的文件资料：获得家长对初始评估的同意、首次提供特殊教育及相关服务、重新评估，以及寻找州内受监护人的父母以实施初始评估。文件必须包含有关LEA在以下方面尝试的记录，例如：

1. 所进行或尝试进行的通话的详细记录，以及这些通话的结果；
2. 发送给家长的通信以及收到的任何回复的复印件；**和**
3. 对您家或工作地点所进行的任何探访及这些探访结果的详细记录。

5. 什么时候不需要与评估有关的同意？在LEA可以采取下列行动前无需获得您的同意：

1. 作为对您孩子的评估或重新评估工作的一部分，审查现有数据；或
2. 为您的孩子提供已提供给所有孩子的测试或其他评估，除非在该测试或评估前，要求获得所有孩子父母的同意。

6. 如果我拒绝同意进行重新评估会如何？

如果您不同意对孩子的孩子进行重新评估，则LEA可以，但无义务通过利用IDEA调解、正当程序申诉、解决会议和公正的正当程序听证程序，尝试对上述的不同意进行否决，从而寻求对孩子的孩子进行重新评估。与初始评估一样，LEA若拒绝以此种方式进行重新评估，并不违反其在IDEA B部分下的义务。

LEA不得因您拒绝同意一项服务或活动，而拒绝您或您孩子接受任何其他服务、权益或活动。

如果您已自费让孩子就读于私立学校，或者如果您在家为孩子提供教育，并且您未针对孩子的初始评估或重新评估表示同意，或您未能回应要求您提供同意的请求，则LEA不得使用同意推翻程序（即，调解、正当程序申诉、解决会议，或公正的正当程序听证），并且无需将您的孩子视为有条件接受公平的服务（即向父母择校的私立学校残疾学生提供的服务）。

7. 如果我不同意进行评估会如何？

a. 独立教育评估（34 CFR § 300.502）

1) 概述

如下所述，如果您不同意LEA对孩子的孩子所做的评估，您有权获得独立教育评估（IEE）。如果您申请IEE，那么LEA必须为您提供您可以从何处获得IEE及适用于IEE的LEA标准的信息。

2) 定义

- a) **独立教育评估**是指由具备相关资格的评估员开展的评估，该评估员并不受雇于负责您孩子教育的LEA。
- b) **公费**指的是LEA支付评估的全部费用，或确保以其他方式向您免费提供评估，本条款符合IDEA B部分的规定，此规定允许各州使用州内可用的任何州、地方、联邦和私人支持来源，满足该法案B部分的要求。

3) 以公费进行评估的家长权利

依据下列条件，如果您不同意LEA获得关于您孩子的评估，您有权要求以公费实施对您孩子的IEE：

- a) 如果您申请对孩子的孩子实施公费的IEE，那么LEA必须在无任何不必要耽搁的前提下，采取下列任一行动：（a）提交正当程序申诉，请求进行听证，以证明其对您的孩子的评估是适当的；或者（b）以公费提供IEE，除非LEA在听证中证明您孩子得到的评估不符合LEA的标准。

- b) 如果您的LEA申请听证，并且听证的最终决定是LEA对您孩子的评估是适当的，您仍有权获得IEE，但无法以公费执行。
- c) 如果您请求对您孩子实施IEE，LEA可以询问您拒绝LEA获得孩子评估的原因。然而，LEA不得要求您解释，并且不得无理地延迟以公费为您的孩子提供IEE或提交正当程序申诉来请求正当程序听证，从而为LEA对孩子的评估作抗辩。
- d) 每次LEA未经您同意对您孩子进行评估时，您都有权获得一次对孩子的公费IEE。
- e) LEA标准
如果以公费实施IEE，那么获取评估的标准，包括评估地点和审查者的资格要求，必须与LEA发起评估时所采用的标准相同（在这些标准与您获得IEE的权利保持一致的程度范围内）。
除上述标准外，LEA不得提出与公费获得IEE相关的条件或时间期限。

b. 家长发起的评估

如果您获得对您子女的公费IEE，或者您与LEA分享您自费获得的对孩子的评估，那么：

- 1) 如果该评估满足LEA的IEE标准，那么LEA必须在其关于为孩子提供FAPE的任何决定中，考虑孩子的评估结果；**并且**
- 2) 您或LEA可以在关于您孩子的正当程序听证中，将评估作为证据提交。

c. 听证官的评估要求

如果听证官要求对您孩子进行IEE，作为正当程序听证的组成部分，那么评估费用必须由公费支付。

G. 个人身份信息披露同意（34 CFR § 300.622）

除非信息包含于教育记录中，并且披露行为的授权未依据FERPA得到家长同意，那么在将个人身份信息披露给除参与机构官员之外的各方之前，必须获得您的同意。除下列情况外，为满足IDEA B部分下的要求，在将个人身份信息披露给参与机构的官员前，无需获取您的同意。

在将个人身份信息披露给提供过渡服务或支付其费用的参与机构的官员前，必须获得您的同意，或者依据州法律，孩子已达到法定成年人年龄的，应得到符合条件的孩子的同意。

如果您的孩子正就读于或打算就读于与您居住地所在的LEA不同的私立学校，那么在将关于您孩子的任何个人身份信息在私立学校所在的LEA的官员和您的居住地所在LEA的官员间披露前，必须获得您的同意。

II. 机密信息

谁可以访问有关我孩子的机密信息？（34 CFR § 300.611）

A. 定义

1. 关于信息的保密，以下定义适用：

- a. **销毁**指有形破坏，或从信息中删除个人识别号，这样便不可再对信息进行个人识别。
- b. **教育记录**指34 CFR Part 99（执行1974年《家庭教育权利和隐私权法案》（20 U.S.C. 1232g）（FERPA）的法规）中“教育记录”定义下涵盖的记录种类。
- c. **参与机构**指根据IDEA B部分，收集、保留或使用个人身份信息或向其获取信息的任何LEA、机构或院校。

B. 个人信息（34 CFR § 300.32）指以下信息：

- 1) 您子女的姓名、作为家长的您的姓名或其他家庭成员的姓名；
- 2) 您子女的地址；
- 3) 个人身份识别号，例如您孩子的社会保险号码或学生号码；**或**
- 4) 个人特征或其他可合理确定您子女身份信息的列表。

C. 访问权（34 CFR § 300.613）

a. 家长访问

LEA必须允许您检查并审查由LEA根据IDEA B部分，收集、保留或使用的关于您孩子的任何教育记录。参与机构必须满足您检查并审查关于您孩子的任何教育记录的请求，不得有任何不必要的耽搁，并且应在任何关于IEP的会议或任何公正的正当程序听证（包括解决会议或关于纪律惩戒的听证）前完成，并且在任何情况下都不得超出您提出申请后的45个日历日。

- 1) 您检查或审查教育记录的权利包括：
- 2) 您有权得到参与机构对您合理请求说明及解释记录的回应；
- 3) 您有权请求参与机构提供记录的复印件，前提是您无法有效检查并审查该记录，除非得到这些复印件；**和**
- 4) 您有权让您的代表检查并审查记录。
 - a) 参与机构可以假设您拥有检查并审查关于您孩子的记录的权限，除非其获悉依据管辖监护、分居和/或离婚等问题的适用的州法律的规定，您没有此类权限。
 - b) 如果任何教育记录中包含一个以上孩子的信息，则这些孩子的父母只有权检查并查阅关于自己子女的记录，或被告知该信息。
 - c) 如果您提出请求，则每个参与机构必须为您提供由该机构收集、维护或使用的**教育记录的种类及地点的清单**。

b. 其他授权访问（34 CFR § 300.614）

关于依据IDEA B部分收集、保留或使用的教育记录，每个参与机构必须保留访问该等记录的各方的记录（家长或参与机构得到授权的员工访问的除外），包括各方的名称、给予访问权限的日期，以及该方获得授权使用记录的目的。

D. 费用

根据IDEA B部分的规定，每个参与机构可以向您收取为您提供记录复印件的费用，前提是该费用没有在实质上阻止您行使检查和审查此类记录的权利。

根据IDEA B部分的规定，参与机构不得收取搜索或检索信息的费用。

E. 经家长要求修改记录（34 CFR § 300.618）

关于根据IDEA B部分收集、维护或使用的有关您子女的教育记录，若您认为其中的信息不准确、令人误解，或者违反了您子女的隐私权或其他权利，您可以要求保留信息的参与机构更改信息。

参与机构必须在收到您的请求后，在合理期限内决定是否根据您的请求修改信息。

如果参与机构拒绝根据您的请求修改信息，那么它必须将其拒绝的决定通知您，并且告知您拥有相关听证权利。

F. 记录听证的机会（34 CFR § 300.619）

参与机构必须根据要求为您提供听证机会，以遍您质疑教育记录中有关您孩子的信息，从而确保信息是准确的、没有误导性，并且不会以任何形式侵犯您孩子的隐私或其他权利。

a. 听证流程（34 CFR § 300.621）

质疑教育记录信息的听证必须依据1974年《家庭教育权利和隐私法案》（20 U.S.C. Section 1233g（FERPA））中关于此类听证的程序进行：

- 1) 在收到家长或符合条件的学生的听证请求后，教育机构或院校应在合理时间内举行听证。
- 2) 教育机构或院校应在听证之前，合理提前地向家长或符合条件的学生通知日期、时间和地点。
- 3) 听证可以由任何个人主持，包括与听证结果没有直接利益关系的教育机构或院校的官员。
- 4) 教育机构或院校应对家长或有资格的学生给予充分和公平的机会，让其以教育记录中的信息不准确、有误导性或侵犯学生的隐私权为由，提出证据质疑学生教育记录的内容。家长或符合条件的学生可以自费得到其自己选择的一人或多人协助或代表，包括律师。

- 5) 教育机构或院校应在听证后的合理时间内以书面形式作出决定。
- 6) 该决定必须完全基于在听证会上提出的证据，并且必须包括证据摘要和决定理由。

b. 听证结果 (34 CFR § 300.620)

假如基于听证会的结果，参与机构裁定该信息不正确、具有误导性、或是侵犯孩子的隐私权，则必须相应地更改信息，并书面通知您。假如基于听证会的结果，参与机构裁定该信息并非不正确、没有误导性、或是没有侵犯您孩子的隐私权，则您可在参与机构保留的关于您孩子的记录中，留下一份声明，描述有关您对于该信息的意见或提供任何您不同意参与机构决定的理由。

您孩子记录中的此类说明必须：

- 1. 作为您孩子记录的一部分由参与机构保留，前提是记录或被质疑的部分由参与机构所保留；并且
- 2. 如果参与机构将您孩子的记录或受质疑的信息披露给任何一方，那么此说明也必须披露给该方。

c. 保障 (34 CFR § 300.623)

每个参与机构在收集、存储、披露和销毁各阶段，都必须确保个人身份信息的保密性。

每个参与机构的每名官员都必须为确保个人身份信息的保密性承担责任。

收集或利用个人身份信息的所有人都必须接受IDEA B部分和FERPA下关于保密性的州政策和程序的培训或指导。

每个参与机构都必须保留对个人身份信息拥有访问权限的机构员工姓名和职位的最新名单，以用于公众审查。

d. 信息销毁 (34 CFR § 300.624)

当收集、保留或使用的个人身份信息不再需要用于向您的孩子提供教育服务时，LEA必须告知您，并且信息必须依据您的申请销毁。

然而，包含您孩子的姓名、地址、电话号码、年级、考勤记录、上课班级、已完成的年级水平，以及结业年份的永久记录可能会被没有时限地保留。

III. 州申诉程序 (34 CFR § § 300.151-153)

A. 正当程序听证申诉与州申诉程序之间的差异

IDEA B部分为州申诉和正当程序申诉与听证规定了不同的程序。如下所述，任何个人或机构都可以提交州申诉，指称LEA、州教育局或任何其他公共机构违反IDEA B部分的任何要求。针对与提议（或拒绝）发起或更改残疾儿童的鉴定、评估或就学相关事宜，或是与为儿童提供FAPE相关的任何问题，只有您或LEA才能提起正当程序申诉。州教育局的员工通常必须在60个日历日的期限内解决州申诉，除非此期限被适当延长；而公正的正当听证程序的听证官必须听取正当程序申诉（如果没有通过解决会议或调解来解决），并在解决期限结束后45个日历日内，发送书面决定，参见本文件中标题“解决过程”下的内容所述，除非听证官员经您或LEA的申请，允许延长一段时间。州申诉和正当程序申诉、解决和听证程序的更详细描述参见下文。

B. 如何提交州申诉？（34 CFR § 300.153）

组织或个人可以提交签名的书面州申诉。州申诉必须包括：

1. LEA或其他公共机构违反IDEA B部分或其实施条例要求的声明；
2. 声明所依据的事实；
3. 提交申诉一方的签名和联络信息；以及
4. 如果指称的违规与具体的孩子有关，那么申诉还必须包括孩子的姓名和居住地址；
5. 孩子就读学校的名称；
6. 对于无家可归的孩子或青年来说，孩子的可用联络信息和就读学校的名称；
7. 孩子的问题性质描述，包括与问题相关的事实；
以及
8. 提交申诉之时，在提交申诉一方已知和可用程度范围内提议的问题解决方案。

申诉所指称的违规行为的发生时间不得早于收到申诉之日一年前，如“采用州申诉程序”标题下的内容所述。

提交州申诉的一方必须在向州教育局提交申诉的同时，将申诉复印件转发给LEA或为孩子服务的其他公共机构。

申诉应发送至：

Chief, Division of Compliance, Monitoring and Planning
Bureau of Special Education
Pennsylvania Department of
Education 333 Market Street, 7th
Floor Harrisburg, PA 17126-0333

a. 程序

1) 申诉提交后的60个日历日时限内：

1. 执行独立的现场调查，前提是州教育局确定调查是必要的；

2. 为申诉方提供以口头或书面形式，提交关于申诉控诉事宜的额外信息的机会；
 3. 为LEA或其他公共机构提供回应申诉的机会，包括**至少**：（a）由机构选择的解决申诉的提议；以及（b）提交申诉的家长 and 机构自愿同意参加调解的机会；
 4. 审查所有相关信息，并就LEA或其他公共机构是否违反IDEA B部分的要求做出独立决定；以及
 5. 向申诉方发布一份解决申诉中所有控诉问题的书面决定，并且其中包含（a）事实认定和结论，以及（b）州教育局做出最终决定的原因。
- 2) 时间延长；最终决定；实施**
- a) 仅在以下情况下，可允许延长60个日历日的时限：（a）特定的州申诉存在例外情况；或（b）家长和LEA或参与的其他公共机构自愿同意延长时间，通过调解或解决争议的替代方式（如果在本州内适用）来解决问题。
 - b) 必要时，州教育局的最终决定应包含有效的实施程序，包括：（a）技术援助活动；（b）协商；（c）为实现合规的纠正措施。
- 3) 拒绝提供适当服务的补救措施**
- 在解决州教育局发现未能提供适当服务的州申诉时，州教育局必须解决：
- a) 未能提供适当服务的问题，包括为满足孩子的需要而适当地采取纠正措施；以及
 - b) 未来适当地向所有残疾儿童提供服务。

4) 州申诉与正当程序听证

若收到书面州申诉，且该申诉也是“**提交正当程序申诉**”标题下所述正当程序听证的主体，或州申诉包含多个问题，其中一个或多个问题属于该听证的一部分，那么本州必须将正当程序听证中正在解决的州申诉或其任一部分搁置，直至听证结束。不属于正当程序听证一部分的州申诉中的任何问题都必须依据上述时限和程序解决。如果州申诉中提出的问题之前已在涉及相同各方（您和LEA）的正当程序听证中得到解决，那么正当程序听证的决定对此问题具有约束力，并且州教育局必须将此决定具有约束力一事告知申诉方。

指称LEA或其他公共机构未能实施正当程序听证决定的申诉，必须由州教育局根据上述流程解决。

IV. 正当程序申诉的程序

A. 如何申请正当程序听证？

1. 提交正当程序申诉（34 CFR § 300.507）概述

针对与提议（或拒绝）发起或更改残疾儿童的鉴定、评估或就学相关事宜，或是与为儿童提供FAPE相关的任何问题，您或LEA可提交正当程序申诉。

正当程序申诉所指称的违规必须发生在您或LEA得知且应当得知受控诉行动（构成正当程序申诉的依据）之日前两年内。

如果您因下列原因而无法在规定时间内提交正当程序申诉，那么上述时限对您不适用：

1. LEA明确不实地宣称它已解决申诉中指出的问题；或者
2. LEA阻止您获得其依据IDEA B部分必须向您提供的信息。

家长信息

如果您请求获得信息，**或者**如果您或LEA提交正当程序申诉，那么LEA必须将区域内可用的任何免费或低价的法律和其他相关服务告知您。

B. 正当程序申诉内容（34 CFR § 300.508）

1. 概述

若要申请进行听证，您或LEA（或您的律师或LEA的律师）必须向另一方提交正当程序申诉。该申诉必须包含下列所有内容并且必须保密。您或ELA——申诉提出方——向对方提交正当程序申诉的同时，必须将复印件提交给争议解决办公室（ODR）。

2. 申诉内容

正当程序申诉必须包括：

- a. 孩子的姓名；
- b. 孩子的居住地址；
- c. 孩子就读学校的名称；
- d. 如果孩子是无家可归的儿童或青年，则包括孩子的联络信息和孩子就读的学校名称；
- e. 与提议的或被拒绝的行动相关的孩子问题性质的描述，包括与问题相关的事实；
和
- f. 您或LEA当时已知和可用程度范围内提议的问题解决方案。

3. 正当程序申诉的听证前需要的通知

在您或LEA（或您的律师或LEA的律师）提交包含上述信息的正当程序申诉前，您或LEA不得进行正当程序听证。

4. 申诉的充分性

为了进行正当程序听证，申诉必须被视为具有充分性。除非收到正当程序申诉的一方（您或LEA）在收到申诉后的15个日历日内，以书面形式告知听证官及另一方其认为正当程序申诉未能满足上述要求，

否则正当程序申诉将被认为是充分的（已满足上述内容要求）。

在收到接收方（您或LEA）认为正当程序申诉不充分的通知后的五个日历日内，听证官必须判定正当程序申诉是否满足上述要求，并且立即以书面形式通知您和LEA。

5. 申诉的修改

仅在以下情况下，您或LEA可修改申诉：

a. 另一方以书面形式同意更改，并且有机会通过解决会议来解决正当程序申诉，如下所述；**或**

b. 在不迟于正当程序听证开始的五个日历日前，听证官准许更改。

如果申诉方（您或LEA）更改正当程序申诉，那么解决会议的时限（在收到申诉后的15个日历日内）和解决方案的时限（在收到申诉后的30个日历日内）自更改后的申诉提交之日起重新开始计算。

6. LEA对正当程序申诉的回复

如果LEA未向您发送事先书面通知，如“**事先书面通知**”标题下的内容所述，那么针对您正当程序申诉内所含的问题，LEA必须在收到正当程序申诉后的10个日历日内，向您发送包含下列内容的回复：

a. 解释LEA为何提议或拒绝采取正当程序申诉中提出的行动；

b. 描述您孩子的IEP团队考虑的其他方案以及这些方案被否决的理由；

c. 描述每个评估流程、鉴定、记录，或LEA使用的作为提议或拒绝行动的依据的报告；
和

d. 描述与LEA提议或拒绝的行动有关的其他因素。

提供上述1-4项的信息，并不妨碍LEA宣称您的正当程序申诉不充分。

7. 其他方对正当程序申诉的回复

除上文“**LEA对正当程序申诉的回复**”标题下所述的规定外，收到正当程序申诉的一方必须在收到申诉后的10个日历日，内向另一方发送专门解决申诉问题的回复。

C. 解决过程（34 CFR § 300.510）

1. 解决会议

在收到正当程序申诉通知15个日历日内，且在正当程序听证开始之前，LEA必须与您、IEP团队了解您的正当程序申诉中所述事实的相关成员召开会议。会议：

a. 须有LEA代表参加，该人拥有代表LEA的决策权；**和**

b. 不可有LEA的律师，除非您由律师陪伴出席。您和LEA确定参加会议的IEP团队的相关成员。
对

您来说，会议的目的是讨论您的正当程序申诉，以及构成申诉依据的事实，以便LEA有机会解决争议。

- c. 以下情况下，没有必要举行解决会议：
 - 1) 您和LEA书面同意放弃会议；或
 - 2) 您和LEA同意使用“调解”标题下描述的调解过程。

2. 解决期限

若在收到正当程序申诉30个日历日内，LEA未让您满意地解决正当程序申诉（在解决过程的期限内），那么可进行正当程序听证。

30个日历日的解决期限到期后，有45个日历日的时间来发送最终决定，但对如下所述的30个日历日解决期限所作的调整有例外情况。

除非您和LEA一致同意放弃解决过程或使用调解，否则如果您未能参加解决会议，将导致解决过程和正当程序听证延迟，直至您同意参加会议。如果在付出合理努力并记录这些努力活动后，LEA无法让您参与解决会议，那么LEA可以在30个日历日的解决期限结束后，请求听证官拒绝考虑您的正当程序申诉。

这类合理努力的文件记录必须包含有关LEA尝试安排双方同意的时间和地点的记录，例如：

- 1. 所进行或尝试进行的通话的详细记录，以及这些通话的结果；
- 2. 发送给您的通信以及收到的任何回复的复印件；和
- 3. 对您家或工作地点进行的任何探访及这些探访结果的详细记录。

如果在收到您的正当程序申诉15个日历日内，LEA未能召开解决会议，或未能参加解决会议，您可请求听证官下令开始计算正当程序听证的45个日历日的时限。

3. 对30个日历日解决期限的调整

如果您和LEA以书面形式同意放弃解决会议，那么正当程序听证的45个日历日的时限从第二天开始。

在调解或解决会议开始后，且在30个日历日的解决期限结束前，如果您和LEA以书面形式同意无法达成协议，那么正当程序听证的45个日历日的时限从第二天开始。

如果您和LEA同意使用调解程序，那么在30个日历日的解决期限结束时，双方可达成书面约定，继续调解，直至达成协议为止。然而，如果您或LEA退出调解程序，那么正当程序听证的45个日历日的时限从第二天开始。

4. 书面解决协议

如果在解决会议上达成了争议解决方案，那么您和LEA必须签署具有法律约束力的协议，该协议：

- a. 由您和有权限约束LEA的LEA代表共同签署；和
- b. 协议审查期——如果您和LEA由于解决会议而达成协议，那么任一方（您或LEA）都可以在您和LEA签署协议后的3个工作日内取消协议。

V. 对正当程序申诉的听证

A. 公正的正当程序听证（34 CFR § 300.511）

1. 概述

无论何时提交正当程序申诉，您或争议中涉及的LEA都必须有机会获得公正的正当程序听证，如“正当程序申诉”和“解决过程”部分所述。在宾夕法尼亚州，正当程序体系由争议解决办公室（ODR）管理。（列于“资源”下）

2. 公正的听证官

听证官至少：

- a. 不能是州教育局或涉及孩子教育或照护的LEA的员工。然而，听证官不是该等机构员工的唯一原因是他/她由机构付费担任听证官；
- b. 不能拥有与听证官在听证中的客观性相冲突的个人或职业利益；
- c. 必须知识渊博，并且了解IDEA、联邦和州法规中关于IDEA的条款，以及联邦和州法院对IDEA的法律解释；**和**
- d. 必须有知识和能力去执行听证，并且作出与适当的标准法律实践一致的决定。

每家SEA必须保留担任听证官之人的名单，其中包括每名听证官的资格说明。

3. 正当程序听证的主体

提出正当程序听证的一方（您或LEA）不得在正当程序听证中提出未在正当程序申诉中涉及的问题，除非得到另一方同意。

4. 请求听证的时限

a. 时限

您或LEA必须在得知或应该已经得知申诉所涉及问题之日起两年内，请求对正当程序申诉举行公正听证。正当程序申诉所指称的违规必须发生在您或LEA得知且应当得知受控诉行动（构成正当程序申诉的依据）之日前两年内。

时限的例外情况

如果您因下列原因而无法提交正当程序申诉，那么上述时限对您不适用：

1. LEA明确不实地宣称它已解决您在申诉中提出的问题或事项；**或**
2. LEA阻止您获得其依据IDEA B部分需要向您提供的信息。

B. 听证权利（34 CFR § 300.512）

1. 概述

正当程序听证（包括与惩处程序相关的听证）或上诉（参见“决定的上诉；公正审查”标题下的描述）中的任何一方都有权：

- a. 由一名律师和/或拥有残疾儿童问题方面的特殊知识或得到相关培训的人士的陪伴，并由其提供建议；
- b. 出示证据、对质、盘问和要求证人出庭；
- c. 禁止在听证中提出任何未在听证之日至少五个工作日前向另一方披露的证据；
- d. 根据您的选择，获取书面或电子形式的逐字听证记录；**和**
- e. 根据您的选择，获取书面或电子形式的事实认定和决定。

2. 其他信息披露

在正当程序听证的至少5个工作日前，您和LEA必须向所有其他方披露在此日期之前完成的所有评估，以及根据您或LEA打算在听证中使用的评估给出的建议。

听政官可以阻止未能遵守此要求的任何一方在听证中提出相关的评估或建议，而无需对方的同意。

3. 听证中的家长权利

您必须拥有以下权利：

- a. 让作为听证对象的孩子出席；
- b. 向公众开放听证；**和**
- c. 免费获得听证、事实认定和决定的记录。

C. 听证决定（34 CFR § 300.513）

1. 听证官的决定

- a. 听证官对您孩子是否获得FAPE所做的决定必须以实质性理由为依据。
- b. 在指称程序违规的事项中，听政官只有在程序违规符合下列情况的时候，可能认为您的孩子没有获得FAPE：
 - 1) 妨碍您孩子获得FAPE的权利；
 - 2) 严重妨碍您参与有关为您孩子提供 FAPE的决策过程的机会；**或**
 - 3) 导致孩子被剥夺教育利益。
- c. 解释条款

上述条款不得解释为阻止听证官命令LEA遵循IDEA B部分下联邦法规程序保障部分中的要求（34 CFR §§ 300.500至300.536）。“提交正当程序申诉”、“正当程序申诉”、“表格模板”、“解决过程”、“公正的正当程序听证”、“听证权利”、“听证决定”等标题下的规定（34 CFR §§ 300.507至300.513）不会影响您就正当程序听证的决定，向具有司法管辖权的法院提出上诉的权利。

2. 单独的正当程序听证请求

不得将IDEA B部分下联邦法规中的任何程序保障部分（34 CFR §§ 300.500至300.536）解读为阻止您就某一问题，单独提起与已经提起的正当程序申诉不同的正当程序申诉。

3. 向顾问小组和公众提供的调查结果和决定

SEA删除任何个人身份信息后，必须：

- a. 向州特殊教育顾问小组（SEAP）提供正当程序听证或上诉中的调查结果和决定；**和**

b. 将这些调查结果和决定公之于众。

D. 决定的最终性；上诉；公正审查（34 CFR § 300.514）听证决定的最

终性

正当程序听证（包括与惩处程序相关的听证）中所做的决定是最终决定，但参与听证的任何一方（您或LEA）可以就该决定，向具有司法管辖权的法院提起上诉。

E. 听证时间线和便利（34 CFR § 300.515）

1. 时间线

SEA必须确保在30个日历日的解决会议期限到期后不迟于45个日历日，或如“对30个日历日解决期限的调整”标题下所述，

- a. 在听证中达成最终决定；和
- b. 决定复印件将邮寄给您和LEA。

2. 延时

如果您或LEA提出具体的延时要求，听证会或审查官可以批准超出上述期限的具体延长时间（听证决定为45个日历日，审查决定为30个日历日）。每次涉及口头辩论的听证必须在对您或您的孩子来说合理方便的时间和地点举行。

F. 民事诉讼，包括提出此类诉讼的时限（34 CFR § 300.516）

1. 概述

不同意SEA决定中调查结果和决定的任何一方（您或LEA），都有权针对作为正当程序听证（包括与惩处程序相关的听证）主题的事项，提起民事诉讼。无论争议的数额是多少，诉讼都可以向美国地区法院提起，或向具有司法管辖权的州法院（即有权对此类案件进行听证的州法院）提起。在宾夕法尼亚州，具有司法管辖权的法院是州法院。

2. 时限

自SEA作出决定之日起，向美国地区法院提起诉讼的一方（您或LEA）应有90个日历日的时间去提起民事诉讼。自SEA作出决定之日起，向州法院提起诉讼的一方应有30个日历日的时间去提起民事诉讼。

3. 其他程序

在任何民事诉讼中，法院都会：

1. 收到行政程序的记录；
2. 经您或LEA的申请，听取其他证据；和
3. 根据证据优势做出决定，并授予法院认为合适的救济。

4. 解释规则

IDEA B部分的任何内容均未约束或限制美国宪法、1990年《美国残疾人法案》、1973年《康复法案》第五章（第504节），或保护残疾儿童权利的其他联邦法律下可用的权利、程序和救济，但是，在根据这些法律提起民事诉讼，以便获得通过IDEA B部分也能获取的救济之前，

必须如同该方根据IDEA B部分的规定提起诉讼一样，充分执行上述正当程序。这意味着：您可能获得其他法律提供的救济，这些救济与IDEA提供的救济重叠，但总体来说，要想获得其他法律规定的救济，您在直接诉诸法院之前，必须首先充分使用IDEA下可用的行政救济（即，正当程序申诉、解决会议、公正的正当程序听证流程），除非存在一些特定的司法例外，导致充分用尽行政救济变得无效。

G. 律师费（34 CFR § 300.517）

1. 概述

在任何根据IDEA B部分提起的诉讼或程序中，法院可自行判决将合理的律师费作为费用的一部分：

- a. 赔偿给您，前提是您是胜诉方。
- b. 赔偿给胜诉的州教育局或LEA，由您的律师支付，前提是您的律师：（a）提起经法院认定为毫无价值、无理或没有依据的申诉或法院案件；**或**（b）在诉讼明显变得毫无价值、无理或没有依据后，继续提起诉讼；**或**
- c. 授予胜诉的州教育局或LEA，由您的律师支付，前提是您出于任何不正当的目的（例如骚扰、造成不必要的延迟，或不必要地增加诉讼或程序的成本）而申请正当程序听证或稍后的诉讼案件。

2. 合理的费用

法庭根据以下规定判决合理的律师费用：

- a. 费用的确定必须依据发生此类型诉讼或听证的社区通行的费率以及所完成的服务质量。在计算判决的费用时，不得使用任何附加额或乘数。
- b. 如果存在以下情况，那么关于在向您发送书面和解提议后履行的服务，不会在依据IDEA B部分的任何诉讼或程序中判决任何费用及补偿任何相关的费用：
 - 1) 提议的完成时间在《联邦民事诉讼规则》第68条规则规定的时间内，或如果是正当程序听证或州级别的审查，则于程序开始的10个日历日之前；
 - 2) 提议未在10个日历日内被接受；**和**
 - 3) 法院或行政听证官判定您最终获得的救济不如和解提议对您有利。
 - 4) 尽管存在这些限制条件，如果您胜诉并且在拒绝和解提议方面的理由充分，那么律师费及相关费用可能被判定赔偿给您。
- c. 费用的判决不得与任何IEP团队会议相关，除非该会议因为行政程序或法院诉讼而举行。如标题“**解决过程**”下所述，解决会议不会被视为因行政听证或法院诉讼而举行的会议，并且同样不会被视作针对此类费用规定的行政听证或法院诉讼。
- d. 也不能因“**调解**”标题下所述的调解，而判决费用。

3. 费用的减少

如果法院认定以下情况，则会视情况减少依据IDEA B部分判决的律师费：

- a. 您或您的律师在诉讼或程序过程中，无理由地延迟争议的最终解决；

- b. 经许可判决的律师费金额不合理地超出了由具备类似技能、声誉和经验的律师提供类似服务，在社会中的一般小时费率；
- c. 考虑到诉讼或程序的性质，花费的时间和提供的法律服务过多；或
- d. 代表您的律师没有向LEA提供如“正当程序申诉”标题下所述正当程序申请通知中的相关信息。

然而，如果法院判定本州或LEA不合理地延迟诉讼或程序的最终决议，或是判定违反IDEA B部分的程序保障条款，则法院可能不会减少费用。

H. 表格模板 (34 CFR § 300.509)

州教育局 (SEA) 已制定表格模板，帮助您提交正当程序申诉和州申诉。然而，SEA或LEA均不可要求您使用此类表格模板。实际上，您可以使用此类表格或其他适当的表格模板，只要表格中含有提交正当程序申诉或州申诉所需的信息即可。

VI. 调解 (34 CFR § 300.506)

A. 概述

SEA必须提供调解，以便让您和LEA解决涉及IDEA B部分下任何问题的意见分歧，包括提交正当程序申诉前发生的问题。因此，调解可以解决IDEA B部分下的争议，无论您或LEA是否按照“提交正当程序申诉”标题下的规定，已提交正当程序申诉来申请正当程序听证。

B. 程序要求

程序必须确保调解过程：

1. 对于您和LEA是自愿的；
2. 不得用于拒绝或延迟您对正当程序听证的权利，或是拒绝IDEA B部分下您享有的任何其他权利；和
3. 由一名合格且公正的调解员实施，且该调解员经过有效调解技巧培训。
4. SEA必须保留一份人员名单，列出符合条件的调解员，以及了解与特殊教育及相关服务有关的法律法规的人士。SEA必须在随机、轮流或其他公正基础上选择调解员。
5. 本州负责调解过程产生的费用，包括会议费用。
6. 调解过程中的每次会议都应及时安排，并在对您和LEA都方便的地点举行。
7. 如果您和LEA通过调解过程解决争议，那么双方都必须签署具有法律约束力的协议，该协议阐明解决方案，并且：
 - a. 说明调解过程中发生的所有讨论都将得到保密，并且不得在任何随后的正当程序听证或民事诉讼程序中用作证据；以及

- b. 由您和有权限约束LEA的LEA代表共同签署。
- 8. 签署的书面调解协议在拥有司法管辖权的任何州法院（依据州法律有权限听取此类案件的法院）或美国地区法院内均可执行。
- 9. 在调解过程中发生的讨论必须保密，不得在任何未来的正当程序听证中，或任何联邦法院或依据IDEA B部分接受援助的州的州法院民事诉讼中用作证据。

C. 调解员的公正性

调解员：

- 1. 不能是SEA或涉及孩子教育或照护的LEA的员工；**和**
 - 2. 不得拥有与调解员的客观性相冲突的个人或职业利益。
- 符合调解员资格的人不能是LEA或SEA员工的唯一原因是此人是机构付薪雇用的调解员。

VII. 调解和正当程序前的儿童就学（34 CFR § 300.518）

A. 概述

调解和正当程序前的儿童就学（34 CFR § 300.518）

除下文“**惩处残疾儿童时的程序**”标题下的规定之外，一旦向另一方发出正当程序申诉，在解决过程的时限内，在调解期间，以及在等待任何公正的正当程序听证或法庭诉讼的裁决期间，除非您和本州或LEA另有协议，否则您的孩子必须继续目前的就学。

如果正当程序申诉涉及公立学校初次入学的申请，那么在得到您同意后，您的孩子必须就读正常的公立学校课程，直到所有此类程序结束。

对于正在从IDEA C部分服务过渡到IDEA B部分服务的儿童，且该儿童已满三岁，不再有资格获得C部分服务，如果正当程序申诉涉及该儿童申请IDEA B部分的初始服务，LEA可能被要求提供该儿童一直在接受的C部分服务。当儿童在三（3）岁过渡到学前早期干预计划时出现争议，且家庭要求举行正式听证以解决争议时，儿童有权享受暂缓服务——即继续享受其IFSP中规定的服务。如果孩子被认定符合IDEA B部分的资格，并且您同意孩子首次接受特殊教育和相关服务，那么，在诉讼结果出来之前，LEA必须提供那些没有争议的特殊教育和相关服务（即您和LEA都同意的服务）。

VIII. 孩子因为惩处问题而无法就学该怎么办？

本节概述了对残疾儿童进行惩戒性停课的程序。

对残疾儿童因惩处原因，排除其由LEA服务的，宾夕法尼亚州有特殊规定。除非另有说明，否则特许学校的学生遵循相同程序：

A. 校方人员的权限（34 CFR § 300.530）

1. 逐案确定

根据下列与惩处有关的要求，在决定对违反学校学生行为准则的残疾学生的就学变更是否合适时，校方人员可以根据具体情况考虑任何特定环境。

2. 概述

按照对待健全学生的行为标准，如果残疾学生（有智力残疾的学生除外）违反学生行为守则，校方人员可以让其从当前安置中停课，转移到适当的临时替代教育环境、其他环境，或暂时停课，时间不超过**连续10个教学日**。如果同一学年再次发生不当行为事件，校方人员还可以再次安排转移，时间不超过**连续10个教学日**；前提是该等转移不会构成就学变更（参见下文中“**因惩处转移引起的就学变更**”中的定义），并且一个学年中不超过连续15个教学日。一旦残疾学生在同一学年内，当前就学安排转移的时间总计达到**10个教学日**，LEA则必须在该学年中随后的转移时间内，提供下文“**服务**”副标题中要求的服务。

3. 其他权限

如果违反学生行为准则的行为不被认为是孩子残疾的表现（参见下文“**表现的确定**”），并且因惩处而引起的就学变更将超过**连续10个教学日**，校方人员可以按照对待健全学生的相同方式和期限标准，对该生实施惩处程序，但学校必须按照下文“**服务**”的描述为该生提供服务。孩子的IEP团队将确定提供这类服务的临时替代教育环境。根据宾夕法尼亚州特殊教育条例（22 Pa. Code Sec. 14.143），残疾学生在一个学年内惩戒性停课累计超过15个教学日的，将被视为一种模式，从而被视为就读变更（参见“**因惩处转移引起的就读变更**”中的解释）。LEA必须在构成就学变更（连续10天以上或累计15天以上的转移）的转移之前，向家长发出NOREP/事先书面通知。

4. 服务

当残疾学生从当前就读学校停课，可以由临时替代教育环境提供必需的服务。只有残疾学生在一个学年内，暂停当前就学的时间为**10个教学日或更少**时，如果LEA向类似停学的健全学生提供服务，则也应向残疾学生提供服务。学生在受到停学处分时，可能有责任补考和补课，并可被允许在LEA规定的准则内完成这些作业。

残疾学生停学**超过连续10个教学日**的，必须：

- a. 继续接受教育服务，以便继续参加通识教育课程（即便是在另一种环境下），并朝着实现该生IEP中设定的目标前进；**和**
- b. 视情况而定，接受功能性行为评估以及行为干预服务和矫正，旨在解决行为违规问题，避免再次发生。

残疾学生在一个学年内从当前就读学校的转移时间达到**10个教学日**之后，或者**如果**当前转移时长为**连续10个教学日**或更少，**并且**若转移并非就读变更（参见下文定义），**那么**校方人员在与该生至少一位老师商讨后，决定所需服务的范畴，以便让该生继续参加通识教育课程（即便在另一种环境中），并朝着实现该生IEP中设定的目标前进。

如果转移构成就学变更（参见下文定义），该生的IEP团队决定相应的服务，以便让该生继续参加通识教育课程（即便在另一种环境中），并朝着实现该生IEP中设定的目标前进。

5. 表现的决定

因为违反学生行为守则，决定更改残疾学生就读安排的，在此决定的10个教学日内（不构成就读变更的转移除外，即连续10个教学日或更少且并非就学变更），LEA、家长和IEP团队的相关成员（由家长和LEA决定）必须审查

该生文档（包括该生IEP）中的所有相关信息、任何其他教师观察，以及家长提供的任何相关信息，以便确定：

- a. 相关行为是否由该生残疾导致，或与残疾存在直接且重大的关系；**或**
- b. 相关行为是否因LEA未执行该生的IEP直接导致。

若LEA、家长和孩子IEP团队的相关成员认为满足这些条件之一，则必须确定该行为是该生残疾的表现。

若LEA、家长和IEP团队的相关成员认为相关行为是因为LEA未执行IEP直接导致，则LEA必须立即采取行动，弥补不足。

6. 有关行为是儿童残疾表现的决定

若LEA、家长和IEP团队的相关成员认为该行为是儿童残疾的表现，那么IEP团队须：

- a. 进行功能性行为评估，除非LEA已在导致就学变更的行为发生前执行功能性行为评估，并且为孩子实施行为干预计划；**或**
- b. 如果行为干预计划已制定，则审查该计划并根据必要作出修改，以解决有问题的行为。

除了“**特殊情况**”标题中说明的内容外，LEA必须让学生返回给予其停课处分的学校，除非家长 and 该学区在修订行为干预计划时同意就学变更。

7. 特殊情况

在下列情况下，不管学生的行为是否被确定为学生残疾的表现，校方人员可以将学生转入临时替代教育环境中（由学生的IEP团队决定），时间不超过45个教学日：

- a. 携带武器（参见下文**定义**）到学校，或者在学校、校园场地或LEA管辖的学校职能部门持有武器；
- b. 在学校、校园场地或LEA管辖的学校职能部门内故意持有或使用非法药物（参见下文**定义**），或是销售或教唆销售管制物品（参见下文**定义**）；**或**
- c. 在学校、校园场地或州教育局或LEA管辖的学校职能部门，对他人造成严重的人身伤害（参见下文**定义**）。

8. 定义

- a. 管制物品指的是《管制物品法》第 202 (c) 节 (21 U.S.C. 812(c)) 附表一、二、三、四或五确定的药品或其他物品。
- b. 非法药物指的是管制物质；但并不包括在持照医疗保健专家的监督下合法持有或使用的管制物品，或依据该法或联邦法律的任何其他条款，任何其他部门许可合法持有或使用的管制物品。
- c. 严重人身伤害具有《美国法典》第18篇第1365节 (h) 小节第 (3) 段下的术语“严重人身伤害”给出的含义。
- d. 武器具有《美国法典》第18篇第930节第一小节 (g) 第 (2) 段下的术语“危险武器”给出的含义。

9. 通知

在因孩子违反学生行为准则而对其做出就学变更的转移决定之日，LEA必须将该决定通知家长，并向家长提供程序保障通知。

B. 因惩处转移引起的就学变更 (34 CFR § 300.536)

如果发生以下情况，让残疾儿童离开当前就读的学校属于要求NOREP/事先书面通知的**就学变更**：

1. 转移超过连续10个教学日；**或**
2. 在任一学年中，转移累计达15个教学日；
3. 因为以下原因，该生已遭受一系列的转移，构成一种模式：
 - a. 一个学年中，这一系列转移总计超过10个教学日；
 - b. 该生的行为与之前导致一系列转移的事件中的行为实质类似；
 - c. 因为每次转移时间、转移的总时间、转移相互之间的接近度等其他因素；**和**转移模式是否构成就学变更，由LEA依据具体情况决定，并且决定受到质疑的，通过正当程序和司法程序复审。

C. 安置决定 (34 CFR § 300.531)

IEP必须确定属于**就读变更**的转移的临时替代教育环境，以及上文“**其他权限**”和“**特殊情况**”标题下的转移。

D. 上诉 (34 CFR § 300.532)

1. 概述

如果残疾儿童家长不同意如下情况，可提交正当程序申诉（参见上文），请求进行正当程序听证：

- a. 根据这些惩处规定，做出的就学决定；或
- b. 上文所述的表现决定。

如果LEA认为保持学生当前的就学很有可能会导致该生或他人受伤，可提出正当程序申诉（参见上文），请求进行正当程序听证。

2. 听证官的权限

满足“公正的听证官”标题下所述要求的听证官可举行正当程序听证并做出决定。

听证官：

- a. 若认为转移违反了“校方人员权限”标题下所述的要求，或该生的行为是其残疾的表现，可让学生返回给予其停课处分的学校；或
- b. 若确定维持当前的就读安排很可能导致学生或其他人受伤，则命令将残疾学生的就学变更为恰当的临时替代教育环境，时间不超过45个教学日。

若LEA认为该生返回原就读学校很可能导致该生或其他人受伤，可重复听证程序。

家长或LEA无论何时提交正当程序申诉，请求进行听证，必须进行听证，满足“正当程序申诉的程序”、“对正当程序申诉的听证”标题下的要求，但以下情况除外：

1. SEA必须安排加急的正当程序听证，该听证须在提交听证申请之日后20个教学日内举行，并且必须在听证后的10个教学日内生成决定。
2. 除非家长 and LEA书面同意放弃会议，或同意进行调解，否则必须在收到正当程序申诉通知的7个日历日内举行解决会议。除非在收到正当程序申诉的15个日历日内，令双方满意地解决了问题，否则听证可以继续。

一方可以采用与针对其他正当程序听证中的决定相同的方式，在加急的正当程序听证中对决定提起上诉（参见上文“上诉”）。

E. 上诉期间的就学 (34 CFR § 300.533)

当如上所述，家长或LEA提起与惩处事项相关的正当程序申诉时，在听证官做出决定前，或直到“校方人员的权限”标题中规定和描述的转移期限到期（以时间较早者为准），学生必须留在临时替代的教育环境中（除非家长和州教育局或LEA另有协议）。

对智力障碍学生的特别规定

存在智力障碍的学生在LEA或特许学校和网络特许学校就读过一段时间的，其惩处转移依据22

Pa. Code Sec. 14.143视为就学变更，并要求发送NOREP/事先书面通知（前提是纪律惩处并不涉及药物、武器和/或严重人身伤害）。当纪律惩处事件涉及武器、药物和/或严重人身伤害时，智力障碍学生的停学并非就读变更。

根据本州达成的与PARC同意令有关的某些保证，LEA可以在有限的基础上，让对自己或他人构成危险的智障学生暂时停学，但要经过特殊教育局的审批，而且只限于让智力障碍以外的其他残疾学生停学。

F. 对尚无资格获得特殊教育及相关服务的儿童的保护（34 CFR § 300.534）

1. 概述

若学生未被确定符合特殊教育及相关服务的资格，并且违反了学生行为准则，但LEA在引发惩处措施的行为发生前已经知晓（经如下确定）该生是残疾儿童，那么该生可以主张本通知中描述的任何保护措施。

2. 惩处事项的了解依据

如果在引发惩处措施的行为发生前，出现以下情况，则LEA须视为已知晓孩子是残疾儿童：

- a.** 家长以书面形式，向相应教育机构的监督或行政人员或向孩子的教师表达孩子需要特殊教育及相关服务的顾虑；
- b.** 家长已申请与IDEA B部分下的特殊教育及相关服务的资格相关的评估；或
- c.** 该生的教师或其他LEA员工直接向LEA特殊教育主管或LEA的其他监督人员表达出对孩子展现出的行为模式的具体顾虑。

3. 例外情况

如果发生以下情况，则LEA视为不知情：

- a.** 孩子家长未允许对孩子进行评估，或拒绝了特殊教育服务；或
- b.** 孩子经过评估，确定不是IDEA B部分下的残疾儿童。

4. 没有知晓依据情况下适用的条件

若在对孩子采取惩处措施之前，LEA不知道该生是残疾儿童，如“惩处事项的了解依据”和“例外情况”标题下所述，那么该生可能会经受其他健全儿童在参与类似行为后被施加的惩处措施。

然而，若在孩子接受惩处措施期间，提出对孩子执行评估的申请，那么此评估必须加快进行。

在完成评估之前，该生继续学校主管部门确定的就学安排，可包括停学或不提供教育服务。

若学生被认定为残疾儿童，考虑到来自LEA所进行评估的信息，以及家长提供的信息，LEA必须依据IDEA B部分（包括上述惩处要求）提供特殊教育和相关服务。

G. 移交给执法部门和司法机构并由其采取行动（34 CFR § 300.535）

1. 州和联邦法规不会：

- a. 禁止机构向相应管理部门报告残疾儿童所犯的罪行；或**
- b. 阻止州执法和司法机构行使其关于对残疾儿童犯下的罪行应用联邦和州法律的职责。**

移交给执法部门后，需要更新功能性行为评估和积极行为支持计划。

2. 记录传输

若LEA报告残疾儿童犯下的罪行，LEA：

- a. 必须确保学生特殊教育和惩处记录的复印件传输给机构报告罪行的管理部门，供其考虑；和**
- b. 仅在FERPA许可范围内，传输学生特殊教育和惩处记录的复印件。**

IX. 如果孩子被父母安置在私立学校，能得到哪些特殊教育服务？

本节论述了被家长安置在私立学校的儿童能得到的特殊教育服务。

A. 一般规则（34 CFR § 300.148）

如果LEA向您的孩子提供FAPE，并且您选择让孩子就读私立学校或机构，IDEA B部分并不要求LEA支付在私立学校或机构上学的残疾儿童的教育费用，包括特殊教育和相关服务。然而，关于依据34 CFR § § 300.131至300.144，已由家长安置在私立学校内的儿童，私立学校所在的IU必须将您的孩子包括在需求已根据B部分的规定得到解决的群体内。

B. 例外情况

1. 对在私立学校就读的补偿

若您的孩子之前在LEA的许可下，接受特殊教育和相关服务，并且您选择让孩子在私立学前班、小学或中学就读而未得到LEA的同意或转介，那么如果法院或听证官认定机构未在您孩子就读前及时向您的孩子提供FAPE，并且私立学校就读是适当的，法院或听证官可要求该机构补偿您的就学费用。听证官或法院

可认定您孩子的就读是适当的，即便就读没有满足适用于州教育局和LEA提供教育的州标准。

2. 补偿限制

若发生以下情况，上述补偿费用可能会减少或被否决：

- a. (a) 在您让孩子离开公立学校前您参加的最近的IEP会议上，您并未告知IEP团队您拒绝LEA提出的向孩子提供FAPE的就学安排，包括说明您的顾虑和您打算以公费让孩子就读私立学校的意图；或 (b) 在您让孩子离开公立学校至少10个工作日前（包括工作日发生的任何假期），您未将该信息书面通知LEA。
- b. 如果在您让孩子离开公立学校之前，LEA事先书面通知您其打算对您的孩子进行评估（包括评估目的是适当且合理的声明），但您并未让孩子接受此评估；或
- c. 法院认定您的行为不合理时。

3. 补偿限制的例外情况

补偿费用：

- a. 在下列情况下，不得因未能提供通知而被减少或否决：(a) 学校阻止您提供通知；(b) 您没有收到如上所述的提供通知的责任通知；或 (c) 遵循上述要求可能导致孩子遭受身体伤害；和
- b. 在以下情况下，法院或听证官可酌情决定不因家长未提供所需的通知而减少或被否决：(a) 父母不识字或不能用英语书写；或 (b) 遵循上述要求可能会对孩子造成严重的情感伤害。

C. 公平参与（34 CFR § 300.138）

宾夕法尼亚州教育部的政策规定：中间单位（IU）必须找到、识别并评估所有由父母安排在IU服务范围内的私立（包括宗教）中小学就读的残疾儿童。

父母安排孩子在私立学校就读的，当FAPE不是问题时，IU必须在与父母安排在IU服务区的私立学校就读的残疾儿童的数量和地点相一致的范围内，通过为这些儿童提供特殊教育和相关服务，包括根据私立学校和IU之间的公平参与（EP）协议确定的直接服务，让他们参与依据IU计划协助或执行的项目。必须为每个被私立学校所在的IU指定的私立学校残疾儿童制定并实施服务计划，以便接受EP协议确定的特殊教育和相关服务。

由家长安排的私立学校残疾儿童没有权利接受若在公立学校就读，本将获得的部分或全部特殊教育和相关服务。正当程序申诉和州申诉不适用，除非怀疑IU未满足“寻找儿童”的要求。

附录A——资源

THE ARC OF PENNSYLVANIA

301 Chestnut Street, Suite 403
Harrisburg, PA 17101
1-877-337-1970

www.thearcpa.org

咨询专线，家长帮助热线

800-879-2301

咨询专线人员可向残疾儿童或被认为有残疾的儿童的家
长和支持者解释与特殊教育有关的联邦和州法律；描述
家长可选择的方案；告知家长程序保障措施；确定其他
机构和支持服务；并描述可用的补救措施以及家长的办
理流程。

宾夕法尼亚州残疾权利

301 Chestnut Street
Suite 300

Harrisburg, PA 17101

800-692-7443 (免费语音)

877-375-7139 (听障人士专线)

717-236-8110 (语音)

717-346-0293 (听障人士专线)

717-236-0192 (传真)

www.disabilityrightspa.org

HISPANOS UNIDOS PARA NIÑOS EXCEPCIONALES (PHILADELPHIA HUNE, INC.)

2215 North American

Street Philadelphia, PA

19133

215-425-6203

215-425-6204 (传真)

huneinc@aol.com

www.huneinc.org

MISSION EMPOWER

1611 Peach Street, Suite 120

Erie, PA 16501

814-825-0788

advocate@missionempower.org

www.missionempower.org

争议解决办公室

6340 Flank Drive

Harrisburg, PA 17112-2764

717-901-2145 (电话)

800-222-3353 (仅宾州内免费) 文

本电话用户：PA转接711

717-657-5983 (传真)

www.odr-pa.org

争议解决办公室负责管理全州的调解和正当程序体系，提供关于替代性争议解决方法的培训及服务。

家长教育与宣传领导中心 (PEAL)

2325 E Carson St.

#100a Pittsburgh, PA

15203

412-281-4404

412-281-4408 (传真)

520 N Christopher Columbus Blvd., Suite 602

Philadelphia, PA 19123

215-567-6143

866-950-1040 (免费)

www.pealcenter.org

宾夕法尼亚州公众权益法律中心

United Way Building

1709 Benjamin Franklin Parkway,

Second Floor

Philadelphia, PA 19103

215-627-7100

215-627-3183 (传真)

www.pilcop.org

宾夕法尼亚州律师协会

100 South Street

Harrisburg, PA 17101

800-932-0311

www.pabar.org

宾夕法尼亚州培训和技术援助网络 (PaTTAN)

哈里斯堡 800-360-7282 普鲁

士国王 800-441-3215 匹兹堡

800-446-5607

www.pattan.net

州教育权利工作组

3190 William Pitt

Way Pittsburgh, PA

15238

1-800-446-5607 转6828

附录B



OFFICE FOR DISPUTE
RESOLUTION

调解申请

IEP/IFSP/GIEP援助

服务信息

| | | |
|--|--------------------------------|--|
| 日期: | 申请方: | <input type="checkbox"/> 家长/监护人 |
| | | <input type="checkbox"/> LEA (学区; 特许; 或IU) |
| | | 婴儿/幼儿/早期干预 |
| 表格填写人的姓名/电子邮箱: | 与学生的关系: | 电话: |
| 请勾选所需服务的类型: | | |
| <input type="checkbox"/> 调解 | <input type="checkbox"/> IEP援助 | <input type="checkbox"/> GIEP援助 |
| <input type="checkbox"/> IFSP援助 (早期干预) | | |

学生信息

| | |
|----------|-------|
| 姓: | 名: |
| 出生日期: | 特殊情况: |
| 学校/计划名称: | |

家长/监护人信息

| | |
|-----------|-----------------|
| 家长/监护人姓名: | 第二家长或不与学生同住的家长: |
| 地址: | 地址 |
| 家庭电话: | 家庭电话: |
| 工作电话: | 工作电话: |
| 手机: | 手机: |
| 电子邮箱: | 电子邮箱: |

地方教育机构（LEA）信息

学区/特许学校/机构名称：

地址：

联系人姓名：

职务：

电话：

传真：

电子邮箱：

请简要说明存在争议的问题以及拟议的解决方案。

如果您申请任何类型的援助服务，请完成本部分。

目前为下列内容安排IEP/IFSP/GIEP会议：

（日期、时间和地点）

尚未安排IEP/IFSP/GIEP会议。

关于所有申请，若您想提供其他信息，请在此填写。

- 家长对这些服务或其他争议解决方案有疑问的，可联系特殊教育咨询专线，电话800-879-2301或717-901-2146。
- 任何出生至3岁的问题应询问OCDEL，电话717-346-9320。
- 有时，ODR工作人员可能会要求参加这些会议，以评估服务。双方将得到事先通知，有任何疑问将届时解决。
- 请保存本表的复印件，并将填妥的表格通过邮寄、传真或电邮，发送至争议解决办公室，地址：

6340 Flank Drive, Harrisburg, PA 17112-2764
717-901-2145 免费 800-222-3353（仅限宾州）
传真 717-657-5983 文本电话用户：PA转接
711 电子邮箱：odr@odr-pa.org



OFFICE FOR DISPUTE
RESOLUTION

正当程序申诉

*表示必填项

| 基本信息 | | | |
|---------------------------------------|--------------------------------------|--|--------------------------------|
| <input type="checkbox"/> IDEA | <input type="checkbox"/> IDEA与资优学生教育 | <input type="checkbox"/> 资优学生教育 | <input type="checkbox"/> 第504节 |
| *日期: | | *申请方: <input type="checkbox"/> 家长 <input type="checkbox"/> LEA | |
| *申请填写人的姓名/电子邮箱: | | *与学生的关系: | *电话: |
| 请在将已完成的正当程序申诉提交给争议解决办公室之时，将复印件发送给另一方。 | | | |
| 若您需要对参加正当程序听证的特别通融，必须通知LEA。 | | | |

| 学生信息 | | | |
|---------------------|-----|------------|--|
| *姓: | *名: | 出生日期: | 性别: <input type="checkbox"/> 男 <input type="checkbox"/> 女 |
| 特殊情况: | | 特殊情况: | |
| *LEA (地方教育机构) ——若知晓 | | *学生就学的教学楼: | |

| 与学生同住的家长 | | | |
|--------------|-----|--|-------------------------------|
| *姓: | *名: | *关系: <input type="checkbox"/> 母亲 <input type="checkbox"/> 父亲 <input type="checkbox"/> 监护人 | |
| *家庭电话: | 手机: | 工作电话: | 电子邮箱: |
| 首选的书面通信方式: | | <input type="checkbox"/> 电子邮箱 | <input type="checkbox"/> 美国邮政 |
| 姓: | 名: | 关系: <input type="checkbox"/> 母亲 <input type="checkbox"/> 父亲 <input type="checkbox"/> 监护人 | |
| 家庭电话: | 手机: | 工作电话: | 电子邮箱: |
| 首选的书面通信方式: | | <input type="checkbox"/> 电子邮箱 | <input type="checkbox"/> 美国邮政 |
| *家长/学生地址: | | | |
| 家长代理律师 (若有): | | 律师电话: | |
| 律师地址: | | 律师电子邮箱: | |

不与学生同住的家长

| | | | |
|-------------------|-----|--|-------------------------------|
| 姓： | 名： | 关系： <input type="checkbox"/> 母亲 <input type="checkbox"/> 父亲 | |
| 家庭电话： | 手机： | 工作电话： | 电子邮箱： |
| 首选的书面通信方式： | | <input type="checkbox"/> 电子邮箱 | <input type="checkbox"/> 美国邮政 |
| 家长地址： | | | |
| 家长代理律师（若有）： | | 律师电话： | |
| 律师地址： | | 律师电子邮箱： | |

地方教育机构（LEA）信息**一、 LEA联系人信息**

| | | |
|-----|-------|-------|
| 姓： | 名： | 职务： |
| 手机： | 工作电话： | 电子邮箱： |
| 地址： | | |

二、 校监/CEO

| | | |
|-----|----|-----|
| 姓： | 名： | 职务： |
| 地址： | | 电话： |

三、 LEA律师

| | |
|-------|---------|
| 律师电话： | 律师电子邮箱： |
| 律师地址： | |

四、 正当程序听证将在如下地址举行：

（楼名、地址和房间号/姓名——此栏由LEA填写）

注：听证将在对相关家长和儿童合理方便的时间和地点举行。至于资优学生教育案例，听证将在学区中对家长合理方便的地点举行，且可按照家长的要求，在夜晚举行。

关于正当程序申诉的信息（仅限于IDEA案例）

| | |
|---|---|
| A. 您的问题是否与尚未执行的听证官决定有关？ | <input type="checkbox"/> 是 <input type="checkbox"/> 否 |
| <i>（若是，将通知特殊教育局，并对此事进行调查。问题涉及不执行听证官的决定时，就不能使用正当程序）。</i> | |
| B. 听证申请是否基于对如下的不同意见： | |
| <input type="checkbox"/> 惩处 | <input type="checkbox"/> ESY（延长学年） |
| <input type="checkbox"/> 如果该生属于ESY目标群体，请勾选此项 | |

关于正当程序申诉的信息（所有情况）

您可使用本表解释争议的性质，或者可以附上包含这些信息的单独一张纸。

*争议涉及的内容是什么？请描述事实。

*您想如何解决争议？您寻求实现的目的？

如果您知道对方关于这个问题的立场，请在此处说明。

解决会议（仅限IDEA案例）

在进行正当程序听证之前，若家长提出了程序申诉，那么法律（34 CFR § 300.510）要求双方参加解决会议，除非双方书面同意放弃这一要求。请填写以下信息：

1. 为下列内容安排讨论这些问题的解决会议： (日期)

2. 解决会议的召开时间： (日期)

3. 双方和LEA以书面形式放弃参加解决会议，时间：

4. 本人要求进行调解，取代解决会议。 (日期)

若选择第4项，将有一位ODR调解案件管理人联系各方。

ODR工作人员将确定收到申诉，并提供案件管理人和听证官的信息。

关于正当程序的其他信息，可参考ODR网站www.odr-pa.org，或联系特殊教育咨询专线（800-879-2301）。