



Oklahoma State Department of Education

PARENTS RIGHTS IN SPECIAL EDUCATION: NOTICE OF PROCEDURAL SAFEGUARDS

As the parent/guardian/surrogate parent of a child or youth who is receiving or may be eligible for special education services, you have certain rights according to State and Federal laws. If you have questions about these rights and procedural safeguards, please contact your local school/public agency, the area Regional Education Service Center, or Special Education Services (SES) of the Oklahoma State Department of Education. These rights and procedural safeguards are in accordance with Title 34 of the Code of Federal Regulations for implementation of the Individuals with Disabilities Education Act (IDEA) and the IDEA Amendments of 1997.

In general, a copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum: upon initial referral for evaluation; upon each notification of an individualized education program (IEP) meeting; upon reevaluation of the child; and upon registration of a due process complaint requesting an impartial hearing under IDEA.

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it is clearly not feasible to do so, and written in an easily understandable manner. If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice, and that there is written evidence that these requirements have been met.

PRIOR NOTICE TO PARENTS

The school or public agency must provide prior written notice to the parents of a child with disabilities each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

The notice must include:

- (1) a description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposes or refuses to take the action;
- (3) a description of any other options that the agency considered and the reasons why those options were rejected;
- (4) a description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal;
- (5) a description of any other factors which are relevant to the agency's proposal or refusal;
- (6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

- (7) sources for parents to contact to obtain assistance in understanding the provisions of this part.

PARENT CONSENT

"Consent" means that: (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time prior to carrying out the action.

The public agency must obtain parental consent before conducting an initial, preplacement evaluation or before initial placement of a child with disabilities in a program providing special education and related services. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services.

Except for preplacement evaluation and initial placement, the Federal regulations provide that consent may not be required as a condition of any benefit to the parent or child. Any changes in a child's special education program, after the initial placement, are not subject to parental consent under IDEA, Part B, but are subject to the prior notice and IEP requirements. Oklahoma procedures also require prior notice to parents and opportunity to participate in development or review of IEPs before conducting reevaluations.

Informed parental consent shall be obtained prior to conducting additional assessments for reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the local educational agency has taken reasonable measures to contact and inform the parents in order to obtain such consent and the child's parents have failed to respond.

The local school or public agency may use the mediation and hearing procedures under the IDEA, to resolve disputes over the parents' refusal to consent for evaluation and to determine if the child may be initially evaluated or reevaluated without parental consent, except where State law is inconsistent with Federal law and requires such consent. Mediation is an option to resolve disputes over parental refusal for initial placement.

If the hearing officer upholds the agency, the agency may evaluate the child without the parent's consent, subject to the parent's rights under provisions for administrative appeals, impartial reviews, civil actions, due process time lines, and status of the child during the proceedings under IDEA. The agency must notify the parent of its actions, and the parent has appeal rights, as well as safeguards and rights at the hearing itself.

EVALUATION

"Evaluation" means a variety of assessment tools, strategies, technically sound instruments, and procedures used in accordance with IDEA to determine whether a child qualifies as a child with a disability as defined by IDEA and the educational needs of the child. The term means procedures used selectively with an individual child and does not include basic tests administered to or procedures used with all children in a school, grade, or class. Upon completion of the determination of tests and other evaluation procedures, including information provided by the parent, the determination of whether the child is eligible as a child with a disability shall be made by a team of qualified professionals and the parent. A copy of the evaluation report and the documentation of determination of eligibility will be given to the parent.

INDIVIDUALIZED EDUCATION PROGRAM (IEP)

An IEP must be written in a team meeting before a child is placed in a program for special education and related services. Parents have the right for the local school/public agency to provide prior notice and give them the opportunity to participate in IEP development and all IEP reviews for the child. If a purpose of the IEP meeting will be consideration of the student's transition service needs and/or needed transition services, the public agency must invite the student to attend the meeting. The local school/public agency shall give the parents a copy of the IEP.

LEAST RESTRICTIVE ENVIRONMENT (LRE);

Placements: Educational placement for each child or youth with a disability shall be:

- determined at least annually;
- based on the child's IEP;
- as close as possible to the child's home, unless the IEP requires some other arrangement;
- with nondisabled children to the maximum extent appropriate; and
- in the regular education environment unless the nature or severity of the disability is such that education in regular education classes with the use of supplementary aids and services cannot be achieved.

Each public agency shall ensure that a continuum of alternative placements is available to meet the needs of children and youth with disabilities for special education and related services.

In selecting the least restrictive environment, consideration should be given to any potential harmful effect on the child or on the quality of services which he or she needs. Children with disabilities shall have the opportunity to participate in nonacademic and extracurricular services and activities with children and youth who do not have disabilities to the maximum extent appropriate to the needs of the child.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency shall ensure that a child with a disability is not removed from education in age-appropriate settings or regular classrooms solely because of needed modifications in the general curriculum.

PERSONALLY IDENTIFIABLE INFORMATION

Personally identifiable information includes: the name of the child, the child's parent, or other family members; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

ACCESS TO RECORDS

Each public agency shall permit parents to inspect and review all education records relating to their child with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child, which are collected, maintained, or used by the agency under this part. The agency shall comply with a request without unnecessary delay and before any meeting regarding an individualized education program (IEP) or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 45 days after the request has been made.

The right to inspect and review education records under this section includes:

- the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- the right to have a representative of the parent inspect and review the records; and
- the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

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

Each agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

A participating agency may not charge a fee to search for or to retrieve information under this part. An agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

RECORD OF ACCESS

Each public agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (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.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

A parent who believes that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child, may request the participating agency which maintains the information to amend the information.

The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of this request. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing as set forth under IDEA and the Family Education Rights and Privacy Act.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or stating any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the child under this section must be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; if the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

INDEPENDENT EDUCATIONAL EVALUATION

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the local school/public agency responsible for the education of the child in question.

"Independent educational evaluation at public expense" means that the public agency either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to the parent.

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency may initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation must be considered by the public agency in any decision made with respect to the provision of a free appropriate public education to the child, and may be presented as evidence at a due process hearing regarding the child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense. Each public agency shall provide to parents, on request, information about where an independent

educational evaluation may be obtained.

Whenever an independent evaluation 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 which the public agency uses when it initiates an evaluation.

The local school or public agency may require prior notice by the parents prior to obtaining an independent educational evaluation at public expense. However, the public agency may not fail to pay for an independent educational evaluation if a parent does not notify the public agency that an independent educational evaluation is being sought.

SURROGATE PARENTS

Each local school or public agency shall ensure that an individual is assigned to act as a surrogate for the parents of a child whenever the parents of the child are not known and no parent can be identified; the public agency, after reasonable efforts, cannot locate the whereabouts of a parent; or the child is a ward of the State under the laws of the State. The agency must have a method for determining whether a child needs a surrogate parent and a method for assigning a surrogate parent to the child.

The local school or public agency may select a surrogate parent in any way permitted under State law, but must ensure that a person selected as a surrogate is not an employee of the State education agency, the local educational agency, or any other agency which is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. (An individual is not disqualified as an agency employee from appointment as a surrogate solely because he or she is paid by the agency to serve as a surrogate parent.)

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 a free appropriate public education to the child.

OPPORTUNITY TO PRESENT COMPLAINTS FOR A DUE PROCESS HEARING

A request for a due process hearing must be in writing, signed, and addressed to the local school administrator, and include: child's name; date of birth; the address of the residence of the child and of the parents, the name of the school the child is attending, current grade or class placement; established or purported disability; a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; a proposed resolution of the problem to the extent known and available to the parents at the time; and the reason for challenging the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education to the child. A form for this purpose is available from the State Department of Education to assist parents in filing a complaint for a due process hearing.

A copy of this request must be mailed by the parent of the child with a disability, or the attorney representing the child on behalf of the parents, to the administrator of the local educational agency and to the Oklahoma State Department of Education, Special Education Services, Attention: Due Process Hearings, 2500 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105-4599.

IMPARTIAL DUE PROCESS HEARING

A parent or a public educational agency may initiate a hearing regarding the public agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

When a hearing is initiated under this section, the public agency shall inform the parents of the availability of mediation.

The hearing will be conducted by the public agency directly responsible for the education of the child.

A hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of the child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing. (A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.)

The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the State or the area, if the parent requests the information or the parent or the agency initiates a due process hearing.

The OSDE maintains a list of qualified hearing officers. When a due process is assigned, the OSDE shall provide the name of the hearing officer assigned and their qualifications to all parties involved.

The State educational agency shall ensure that a final hearing decision is reached and mailed to the parties within 45 days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension at the request of either party.

At least five business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by the date of the hearing and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar 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.

The decision made in a due process hearing is final, unless a party to the hearing appeals the decision under the procedures for impartial administrative appeal.

The record of the hearing and the findings of fact and decisions must be provided at no cost to parents.

The State educational agency, after deleting any personally identifiable information, shall transmit the findings and decisions to the State advisory panel.

MEDIATION

The Oklahoma State Department of Education supports resolution of disputes, involving any matter subject to the due process hearings, through mediation or other informal means between parents and educators concerning the education of a child with a disability or purported to have disabilities. The State shall bear the costs of the mediation process.

When a due process hearing is initiated under IDEA, the school shall inform the parents of the availability of mediation as an alternative to resolving disputes.

Participation in the mediation process is voluntary on the part of the parties. Mediation may be requested by either party but must be attended and agreed upon by both parties. The parties involved may or may not have representatives at the mediation; however, those persons attending should be in a position of authority to make decisions. Either party may refuse to participate in a conference without prejudice to any procedural safeguard afforded under any applicable State or Federal law.

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute. Mediation is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under these requirements. Also, the mediation meeting does not alter the required time lines for due process hearings.

An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the mediation process.

Trained, qualified, and impartial mediators are available, and may be requested from the Early Settlement Centers of the Alternative Dispute Resolution System, under the direction of the Administrative Office of the Courts. Information and referral may also be obtained at no cost through the Oklahoma State Department of Education, Special Education Services, the Oklahoma Areawide Service Information System (OASIS), Oklahoma Parent Center, or the Oklahoma Disability Law Center (ODLC).

DUE PROCESS HEARING RIGHTS

Any party to a hearing has the following safeguards and rights to:

- (1) be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (2) present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) prohibit the introduction of any evidence at the hearing that has not been disclosed to all parties at least five business days before the hearing;
- (4) obtain a written or electronic verbatim record of the hearing; and
- (5) obtain written or electronic findings of fact and decisions.

Additional disclosure of information:

- (1) At least 5 business days prior to a hearing being conducted, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

- (2) A hearing officer may bar any party that fails to comply with the disclosure requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parents involved in hearings must be given the right to have the child who is the subject of the hearing present and to open the hearing to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to parents.

After deleting any personally identifiable information, the public agency shall transmit those findings and decisions to the State advisory panel and make them available to the public.

FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW

A decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision.

STATE LEVEL APPEAL: IMPARTIAL REVIEW

Any party aggrieved by the findings and decision in the hearing may appeal to the State educational agency. If there is an appeal, the State educational agency shall conduct an impartial review of the hearing. The official appeal officer conducting the review shall:

- (1) examine the entire hearing record;
- (2) insure that the procedures at the hearing were consistent with the requirements of due process;
- (3) seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above apply;
- (4) afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- (5) make an independent decision on completion of the review; and
- (6) give a copy of written findings and the decision to the parties.

Each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

The State educational agency shall ensure that a final decision is reached in an administrative, State level appeal review and mailed to the parties within 30 days after the receipt of a request for a review, unless the reviewing official grants a specific extension at the request of either party. The decision made by the reviewing official is final, unless a party brings a civil action under the procedures described below.

The State educational agency, after deleting any personally identifiable information, shall transmit the findings and decisions to the State advisory panel.

CIVIL ACTION

Any party aggrieved by the findings and decision made in an administrative review has the right to bring a civil action in State or Federal Court. In any civil action, the court:

- (1) shall receive the records of the administrative, State level appeal review proceedings;

- (2) shall hear additional evidence at the request of a party; and
- (3) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.

CHILD'S PLACEMENT DURING PENDENCY OF DUE PROCESS PROCEDURE

During the pendency of any administrative or judicial proceeding regarding a due process hearing complaint, unless the State or local educational agency and the parents of the child agree otherwise, the child involved in the complaint must remain or "stay put" in the then current educational placement.

If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of this section.

If the hearing involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school program until the completion of all the proceedings.

AWARD OF ATTORNEYS' FEES

In any action or proceeding brought under this section of the Individuals with Disabilities Education Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child or youth with disabilities who is the prevailing party. Funds under IDEA, Part B may not be used to pay attorney's fees or costs of a party related to an action or proceeding.

Fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating fees awarded for these purposes.

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent, 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 administrative proceedings, at any time more than ten days before the proceeding begins;
- (2) the offer is not accepted within ten days; and
- (3) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in this notice of procedural safeguards that is conducted prior to the filing of a complaint for a due process hearing under this section of IDEA. An award of attorneys' fees and related costs may be made to a parent who is a prevailing party and who was substantially justified in rejecting the settlement offer.

The court shall reduce, accordingly, the amount of the attorneys' fees awarded, whenever the court finds that:

- (1) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- (2) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar kind and quality of services furnished by attorneys of reasonably comparable skill, reputation, and experience;
- (3) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- (4) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with IDEA.

The provisions for reduction of attorneys' fees shall not apply in any action or proceedings if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section of IDEA.

LOCAL OR STATE LEVEL COMPLAINTS

A signed written complaint regarding alleged violations of IDEA, Part B may be filed with the local school district administrator or the State (34 CFR §§ 300.660-300.662). If the complaint is filed with the local school district, the complainant may request that the State review the findings. A written complaint must include a statement that the school district has violated a requirement under IDEA, Part B and the facts on which the statement is based. The complaint must allege the violation occurred not more than one year prior to the date the complaint is filed, unless the violation is ongoing, or there is a request for compensatory services for a violation that occurred not more than three years prior to filing the complaint. Relevant information may be submitted orally and in writing regarding the alleged issue for consideration in determining if there is a violation of IDEA, Part B. A written letter of findings will be issued within 60 days after receipt of a complaint, unless exceptional circumstances exist which require lengthier involvement.

Mediation is also encouraged as an option to facilitate early resolution of complaint issues. Information to assist in requesting mediation or filing a complaint may be obtained by contacting the special education director or administrator of the local school district or Special Education Services at the State level.

REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

The IDEA does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to

the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

The cost of reimbursement may be reduced or denied if:

- (1) at the most recent IEP meeting attended by the parents prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- (2) ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described above; or
- (3) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements of the IDEA, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or
- (4) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Notwithstanding the notice requirements above, the cost of reimbursement may not be reduced or denied for failure to provide such notice if:

- (1) the parent is illiterate and cannot write in English;
- (2) compliance with the notice requirement would likely result in physical or serious emotional harm to the child;
- (3) the school prevented the parent from providing the notice; or
- (4) the parents had not received notice of the notice requirement.

DISCIPLINARY PROCEDURES; PLACEMENT IN AN ALTERNATIVE EDUCATIONAL SETTING

Change of Placement for Disciplinary Removals: For purposes of removals of a child with a disability from the child's current educational placement under IDEA, a change of placement occurs if the removal is for more than 10 consecutive school days or the child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

Authority of School Personnel: To the extent removal would be applied to children without disabilities, school personnel have the authority to remove a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and any additional removals 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.

School personnel may order a change in the placement of a child with a disability to:

- (1) an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten school days (to the extent such alternatives would be applied to children without disabilities); and
- (2) an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but not more than 45 days, if the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement:

- (1) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension, the agency shall convene an IEP meeting to develop an assessment plan; or
- (2) if the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify, as necessary, to address the behavior.

As soon as practicable after developing the functional behavioral assessment plan, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

The alternative educational setting shall be determined by the IEP team. Any interim alternative educational placement shall be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in the IEP; and include services and modifications designed to address the behavior so that it does not recur.

Authority of Hearing Officer: A hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer:

- (1) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others;
- (2) considers the appropriateness of the child's current placement;
- (3) considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- (4) determines that the interim alternative educational setting enables the child to continue to participate in the general curriculum and to continue to receive those services and modifications that will enable the child to meet the goals set out in the IEP, and includes services and modifications designed to address the behavior so that it does not recur.

Manifestation Determination Review: If a disciplinary action is contemplated for behavior of a child with a disability, as described above, for placement in an interim alternative educational setting for more than ten (10) school days by school officials or as ordered by a hearing officer, or involving a change of placement that constitutes a change of placement is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children:

- (1) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under the IDEA; and
- (2) immediately, if possible, but in no case later than ten (10) school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

The review of the relationship between the child's disability and the behavior shall be conducted in a meeting by the IEP Team and other qualified personnel. In carrying out the review, the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team:

- (1) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including--
 - evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;
 - observations of the child; and
 - the child's IEP and placement
- (2) and then the IEP Team determines that--
 - in relationship to the behavior subject to the disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
 - the child's disability did not impair the ability of the child to understand the impact and consequence of the behavior subject to disciplinary action; and
 - the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

Determination That Behavior Was Not Manifestation of Disability: If the result of the review is a determination that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except that a free appropriate public education must be provided to any child with a disability during the term of suspension.

If the local school/public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination about the disciplinary action.

Parent Appeal: If the child's parents disagree with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing. The State or local educational agency shall arrange for an expedited hearing when requested by a parent. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the local school/public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements described for such determinations. In reviewing a decision to place the child in an interim alternative educational setting, the hearing officer shall apply the standards described for these purposes.

Placement During Appeals: If a parent requests a hearing regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for these circumstances (not more than 45 days), whichever occurs first, unless the parent and the State or local educational agency agree otherwise.

If a child is placed in an interim educational setting pursuant to these requirements and school personnel propose to change the child's placement after the expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided below.

If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing. In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards described in the law as being under the authority of the hearing officer for such determinations. A placement ordered by a hearing officer in an expedited hearing may not be longer than 45 days. The expedited hearing procedure may be repeated as necessary.

Expedited Due Process Hearings: Expedited due process hearings must meet the requirements of impartial due process hearings and rights of the parties, except a State may provide that the time periods identified for introduction of evidence

and additional disclosures of information and evaluations in impartial due process hearings (34 CFR 300.509 (a)(3) and (b)) are not less than two business days for expedited due process hearings. The timelines for expedited due process hearings must result in a written decision mailed to the parties within 45 days of the public agency's receipt of the request for the expedited hearing, without exceptions or extensions.

Protections for Children Not Yet Eligible for Special Education and Related Services: A child who has not been determined to be eligible for special education and related services under IDEA and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described above, may assert any of the protections provided for under IDEA if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. If a local educational agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as those applied to children without disabilities who engaged in comparable behaviors. If a request for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provision under IDEA, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

Nothing in the IDEA shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to 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. An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. An agency reporting a crime under this section may transmit copies of the special education and disciplinary records of the child, only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act (FERPA).

TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

The State may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law):

- (1) the local school/public agency shall provide any notice required by the law to both the student and the parents;
- (2) all other rights accorded to parents under this law transfer to the student;
- (3) the local school/public agency shall notify the student and the parents of transfer of rights; and
- (4) all rights accorded to parents under this law transfer to students who have reached the age of majority and are incarcerated in an adult or

juvenile Federal, State, or local correctional institution.

If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent under State law, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.

RESOURCES FOR PARENTS AND SCHOOLS

Oklahoma State Department of Education Special Education Services

2500 North Lincoln Blvd.
Oklahoma City, OK 73105-4599
(405) 521-3351 or (405) 521-4875 TTY

including:

Regional Education Service Centers
(405) 521-4155
Early Intervention Regional Offices
1-800-42-OASIS

OASIS

Oklahoma Areawide Service Information System
1-800-42-OASIS or in the Oklahoma City area 271-6302

Oklahoma Parents Center

(formerly PRO Oklahoma)
1-877-553-4332 or (405) 619-0500

Alternative Dispute Resolution Program (Mediation) Administrative Office of the Courts

1-877-521-6677

Office of Handicapped Concerns

1-800-522-8224 V/TDD
(405) 521-3756 V/TDD

Oklahoma Disability Law Center

1-800-226-5883 V/TDD
Tulsa (918) 743-6220 V/TDD
Oklahoma City (405) 525-7755 V/TDD

Legal Aid Services of Oklahoma

(405) 521-1302

Legal Services of Eastern Oklahoma

(918) 584-3211

Oklahoma Indian Legal Services

1-800-658-1497 or (405) 943-6457

Department of Career and Technology Education (formerly Department of Vocational Technical Education)

(405) 377-2000
(405) 743-6816 TDD

Department of Health

(405) 271-5600

Department of Mental Health & Substance Abuse Services

(405) 522-3908

Department of Human Services

(405) 521-2778

Department of Rehabilitation Services

1-800-845-8476
(405) 951-3400 V/TDD/TTY

Office of Juvenile Affairs

(405) 530-2800

Department of Corrections

(405) 962-6139