An Explanation of Procedural Safeguards Available to Parents of Children with Disabilities

Educational Rights Of Parents

Under Provisions of the Individuals with Disabilities Education Act (IDEA) and the Rules for the Administration of the Exceptional Children's Educational Act (ECEA)

Colorado Department of Education
Exceptional Student Services Unit
201 E. Colfax
Denver, CO 80203

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INTRODUCTION

Described in this pamphlet are parent educational rights required under Federal and State special education rules and regulations. It is important that you, as a parent, understand your rights in special education relating to your child.

School staff are available to assist you in understanding these rights and are available on request to provide you with any further explanation. If needed, the school will provide an interpreter or translation to help assure that you understand.

If you have any questions or would like further information please contact:

Name Telephone

FREE APPROPRIATE PUBLIC EDUCATION

You have a right to participate in meetings with respect to the:

- identification,
- evaluation,
- eligibility,
- Individualized Education Program (IEP),
- placement, and
- the provision of a free appropriate public education (FAPE) for your child.

Your child's general education teacher should be involved with the IEP development.

An eligible child with a disability has a right to receive a free appropriate education that is outlined as an Individualized Education Program. The IEP is meant to address your child's unique needs.

TERMINATION OF FAPE

A student's right to FAPE under special education law ends at the end of the semester in which the student turns 21, or when the student has graduated with a regular high school diploma or GED. A student's right to FAPE is not terminated by any other kind of graduation or completion certificate.

A student's right to FAPE under special education law would also end if the IEP team determines that special education services are no longer needed. If a parent does not agree that their son or daughter should graduate with a regular high school diploma, or that their son or daughter no longer needs special education services, they are entitled to procedural due process to resolve the disagreement.

PRIOR NOTICE TO PARENTS

The school will notify you by letter if they are proposing to change or refuse to change your child's special education program. The notice must be easily understandable. You must also receive notice of special education meetings about your child within a reasonable time so you can attend.

The school district must provide you with written prior notice before each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child. The notice must include:

1. a full explanation of all of the procedural safeguards and State complaint procedures available to you in your native language;
2. a description of the action proposed or refused by the school district;
3. an explanation of why the school district proposes or refuses to take the action;
4. a description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action;
5. a statement that you, as a parent of a child with a disability, have protection under the procedural safeguards of special education law, and the means by which a copy of the procedural safeguards can be obtained;
6. sources for you to contact to obtain assistance in understanding the provisions of special education;
7. a description of other options considered by the IEP Team and the reasons why those options were rejected; and
8. a description of the factors that are relevant to the school district's proposal or refusal.

If you need assistance in understanding any of the procedural safeguards, or anything else relating to your child's education,

please contact the Director of Special Education of your local school district.

A copy of the procedural safeguards will be provided to you only one time a year, except that a copy also shall be given to you:

- upon the initial referral or parental request for evaluation,
- upon the first occurrence of the filing of a due process hearing request, and
- upon your request.

A copy of these procedural safeguards can also be found on the Colorado Department of Education Special Education Law Website at: http://www.cde.state.co.us/spedlaw/info.htm

Any notice to you must be written in your native language or other mode of communication, unless it is clearly not feasible to do so, and written in an easily understandable manner. The school district must make sure that you understand your special education rights, ensure that this will be translated to you if necessary, and document their process of providing you these rights.

A parent of a child with a disability may elect to receive notices by an electronic mail (e-mail) communication, if the school district makes this option available.

PARENT CONSENT

Your written permission is required before your child is initially evaluated, re-evaluated, and placed in special education.

The school must obtain your informed consent before conducting an initial evaluation, or re-evaluation, and initial provision of special education and related services to your child. Consent for initial evaluation may not be construed as consent for initial placement. In cases of re-evaluation, the school district does not have to have your consent if it can demonstrate that it has taken reasonable measures to obtain your consent and you failed to respond. Reasonable measures would include detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to you and any responses received, and detailed records of visits made to your home or place of employment and the results of those visits. The school district may require your consent for other services and activities. However, your refusal to consent does not result in a failure to provide the child with a free appropriate public education.

Your consent is not required before reviewing the existing data as part of an evaluation or a re-evaluation; or before giving a test or other evaluation that is given to all children unless, before they give a test or evaluation, they have asked for consent from all parents.

Information regarding consent will be written in your native language or other mode of communication. You should understand:

- the reason written consent is being asked,
- that giving your consent is voluntary, and
- that you can revoke your consent at any time. (If you revoke your consent, that revocation is not retroactive [i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked]).

Your consent should identify any records to be released, to whom they will be released, and for what purpose they will be released. Giving your written consent also means that you understand and agree that the school will perform the activities for which you have given your consent.

If you refuse consent for initial evaluation or a re-evaluation, the school district may continue to seek an evaluation by using due process hearing procedures or mediation procedures. Pending any due process hearing decision, your child would remain in his or her present educational placement, unless you and the school district agree otherwise, or unless appropriate discipline procedures are invoked. A school district may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity of the school district, except as may be required by special education law. Also, you have a right to appeal the decision of a due process hearing officer.

PERSONALLY IDENTIFIABLE INFORMATION

Your consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information or used for any purpose other than meeting a requirement of this part. A school district may not release information from education records to participating agencies without parental consent unless authorized to do so under FERPA (Family Education Rights and Privacy Act).

Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each participating agency shall 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 the State's policies and procedures for confidentiality and under FERPA. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

The agency shall inform parents when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student'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.

INDEPENDENT EDUCATIONAL EVALUATION

If you disagree with the school's evaluation of your child, you can request an independent evaluation, conducted by someone not employed by your school district.

If you disagree with an evaluation obtained by your school district, you have the right to obtain an independent educational evaluation of your child at public expense, unless the school can show its evaluation is sufficient. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the school district. The school district will provide, upon your request, information about where an independent educational evaluation may be obtained.

Your school district may initiate a due process hearing to show that the school district's evaluation is sufficient. If it is determined, by decision of a hearing officer, that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense.

If you request an independent educational evaluation, the school district may ask why you object to the public evaluation. However, the school district cannot require an explanation from you, and the school district may not unreasonably delay either providing the independent educational evaluation at public expense, or initiating a due process hearing to defend their evaluation.

If you obtain an independent educational evaluation at private expense, the results of the evaluation must be considered by the evaluation and/or planning team in any decision made with respect to the provision of a free appropriate public education for your child, and may be presented as evidence at a due process hearing regarding your 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.

Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualification of the examiner, must be the same as the criteria which the school district uses when it initiates an evaluation, to the extent those criteria are consistent with your right to an independent educational evaluation. A school district may not impose additional conditions or timelines related to obtaining an independent evaluation at public expense.

EDUCATIONAL SURROGATE PARENTS

Some children do not have parents who can advocate for them in the special education process. An educational surrogate parent is someone appointed to represent the child at special education meetings.

Each school district shall have a method for determining whether a child needs an educational surrogate parent and shall ensure that an individual is assigned, through the Colorado Department of Education, to act as an educational surrogate parent for a child whenever the parents of a child are not known and/or the school district cannot, after reasonable efforts, locate the parents, or if parental rights have been terminated for that child.

The person assigned as the educational surrogate parent shall not be an employee of the Colorado Department of Education, school district, or any other agency that is involved in the education or care of the child.

The Colorado Department of Education shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

The educational surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, including the provision of a free appropriate public education.

TRANSFER OF RIGHTS AT AGE OF MAJORITY

When a student reaches 21, or becomes emancipated, all special education rights transfer from the parent to the student.

All rights of parents under special education law transfer to the student when the student reaches the age of majority under State law (21 in Colorado), or earlier if the student is emancipated. These rights include, but are not limited to: consent for evaluation or re-evaluation, decisions about services and placement, and rights to special education due process procedures.

The school district must notify the student and the parent of the transfer of rights. Beginning at least one year before the student reaches the age of majority, the student's IEP must include a statement that the student has been informed of his or her rights, under IDEA, that will transfer to the student on reaching the age of majority.

STUDENT RECORDS

You have the right to see or request copies of your child's school records. If you disagree with items in the records, you can ask if they can be changed or removed.

ACCESS TO RECORDS

The Family Educational Rights and Privacy ACT (FERPA) gives rights to parents regarding their children's education records. These rights transfer to a student, or a former student, who is attending any school beyond the high school level, or who has reached age 18. Schools may still provide access to records to the parents of a student who is 18 and a dependent.

Your school district must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the school district or agency, with respect to the identification, evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child. The school district must comply with your request without unnecessary delay, and before any meeting regarding an IEP, or any hearing relating to the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education to your child, and in no case more than 45 days after your request has been made.

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

- the right to a response from the school, or other participant agency, to reasonable requests for explanations and interpretations of the records;
- the right to have your representative inspect and review the records; and
- the right to request that the school district provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school may presume that you have authority to inspect and review records relating to your child unless the school district has been advised that you do 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, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

The school district must provide you, on request, a list of the types and locations of education records collected, maintained, or used by the school district.

FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

The school may not charge a fee to search for or to retrieve information in your child's educational records, but may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

RECORD OF ACCESS

The school must keep a record of those persons or organizations obtaining access to your child's education records, including the name of the person or organization, the date access was given, and the purpose for which the person or organization was authorized to use the records. The school does not have to keep a record of access by eligible parents or authorized school employees.

AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in your child's education record is inaccurate, misleading or violates the privacy rights, or other rights of your child, you may request the school district to amend the information. The school district must decide whether to amend the information within a reasonable period of time of receipt of your request. If the school district decides to refuse to amend the information, it must inform you of the refusal and of your right to a hearing.

The school district shall provide an opportunity for a hearing (under the Family Educational Rights and Privacy Act) to challenge information in the education records to ensure that the information is not inaccurate, misleading, or otherwise in violation of the privacy rights, or other rights of the student.

If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy rights, or other rights of the student, it must amend the information and inform you in writing of the amendment.

If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of

the privacy rights, or other rights of your child, it must inform you of the right to place in the records a statement commenting on the information or giving any reasons for disagreeing with the decision of the school. Any explanation placed in the student's records must be maintained by the school as part of the records of the student as long as the record or contested portion is kept by the school. If the records of the student or the contested portion is disclosed by the school district to any person or organization, the explanation must also be disclosed to the person or organization.

DISCIPLINE

Discipline is an important part of learning. The IEP Team, including the parent, needs to determine appropriate disciplinary procedures for students with disabilities.

A free appropriate public education must be made available to all eligible children with disabilities, including children with disabilities who have been removed from school (e.g., suspended or expelled) for more than a total of ten consecutive school days in a given year, or for more than ten school days that otherwise constitute a change in placement.

CHANGE OF PLACEMENT FOR DISCIPLINARY REMOVALS

A change in placement occurs if your child is removed 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 include 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

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of student conduct. School personnel may remove, as they would a child without a disability, a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days.

If school personnel seek to order a change in placement that would exceed 10 consecutive school days, or for more than 10 cumulative school days that constitutes a change in placement, and the behavior that gave rise to the violation of the school code is determined not to be 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 and for the same duration in which the procedures would be applied to children without disabilities. However, a Free Appropriate Public Education (FAPE) must still be provided, although it may be provided in an interim alternative educational setting. Therefore, a child with a disability who is removed from their current placement under this paragraph (irrespective of whether the behavior is determined to be a manifestation of the child's disability) shall continue to receive educational services so as to enable the child to continue to participate in the general curriculum, although perhaps in another setting, and to progress toward meeting the goals set out in the child's IEP and receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

MANIFESTATION DETERMINATION

Not later than 10 school days after any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the IEP Team (as determined by the parent and the school district) shall 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: if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the school district's failure to implement the IEP. If the school district, the parents and the relevant members of the IEP team determine that either of these is applicable, the conduct shall be determined to be a manifestation of the child's disability.

DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION

If the school district, the parents, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the school district had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement. In the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior. And, except regarding the special circumstances below, return the child to the placement from which the child was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

INTERIM ALTERNATIVE EDUCATIONAL SETTING

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child: 1) carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of the school district or the Colorado Department of Education; 2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the school district or the Colorado Department of Education; or 3) has inflicted serious bodily injury upon another person while at school , on school premises, or at a school function under the jurisdiction of the school district or the Colorado Department of Education.

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision, and of all procedural safeguards according to these parents rights.

The interim alternative educational setting is to be determined by the IEP team.

MANIFESTATION DETERMINATION APPEAL HEARING

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or a school district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request an expedited hearing. A hearing officer shall hear, and make a determination regarding an appeal requested in these cases. In making this determination the hearing officer may order a change in placement of a child with a disability. In such situations, the hearing officer may return a child with a disability to the placement from which the child was removed; or order a change in placement of a 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 such child is substantially likely to result in injury to the child or to others.

PLACEMENT DURING APPEALS

When an appeal regarding placement or the manifestation determination has been requested by either the parent or the school district, the child shall remain in the interim alternative

educational setting pending the decision of the hearing officer or until the expiration of the disciplinary removal time period, whichever occurs first, unless the parent and the Department of Education or the school district agree otherwise. The Colorado Department of Education shall arrange for an expedited hearing, which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

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 and who have engaged in behavior that violated any rule or code of conduct of the school district, may assert any of the protections provided here if the school district had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A school district shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred: 1) the parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to appropriate personnel of the school district that the child is in need of special education and related services; 2) the parent of the child has requested an evaluation of the child; or 3) the teacher of the child, or other school district personnel, has expressed concern about the behavior or performance of the child to the director of special education of the school district or to other personnel in accordance with the agency's established child find or special education referral system.

A school district shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child or has refused special education services or the child has been evaluated and it was determined that the child was not a child with a disability.

If a school district 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 would be applied to a child without a disability who engaged in comparable behaviors.

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 and expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district and information provided by the parents, the school district shall provide special education and related services.

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

The school district may report a crime committed by your child with a disability to appropriate authorities. Law enforcement officers and officers of the court will use Federal and State laws to determine appropriate actions. Copies of the special education and disciplinary records of your child will be provided to the appropriate authorities to the extent permitted by the Family Educational Rights and Privacy Act.

MEDIATION

You might disagree with the special education testing, services or placement for your child. You can try to resolve your disagreements by requesting mediation, which is a free service. A mediator is a neutral person, not employed by the school district, who assists you and the school in resolving differences. You may also request a due process hearing. Please have the school explain the process before you make a final decision.

There might be times when you and the school district disagree on important issues regarding your child's education. If agreement cannot be reached, you have the right to request an impartial mediator to help you and the school reach a mutually agreeable solution. Both you and the school district must agree to mediation.

Mediation is conducted by a qualified, impartial mediator, who is trained in effective mediation techniques. The Colorado Department of Education maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. A mediator will be assigned on a rotational basis from this list. A mediator may not be an employee of any administrative unit or the Department of Education (including if it provides direct services to a child who is the subject of the mediation process), and must not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator is not an employee of a school district or the Department of Education solely because he or she is paid by the Department to serve as a mediator.

Mediation is a service that is available to you at no cost (the Department bears this cost). The mediation process is available to resolve disputes involving any matter, including matters arising prior to the filing of a due process hearing. At a minimum, mediation, must be available to you when you request a due process hearing. Mediation cannot be used to delay or deny your right to a due process hearing or deny any other rights afforded under special education law.

Each session in the mediation process shall be scheduled in a timely manner and shall be held at a location that is convenient to the parties in the dispute. When a resolution is reached and resolves the complaint through the mediation process the parents and school district shall execute a legally binding agreement that sets forth such resolution and that: 1) states that all discussions during mediation are confidential and may not be used as evidence in subsequent due process hearings or civil proceedings; 2) is signed by both the parent and a representative of the school district who has the authority to bind the school district, and 3) is enforceable in any State court of competent jurisdiction or in a district court of the Unites States. Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins.

A school district may offer parents who elect not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party (who is under contract with a parent training and information center or community parent resource center in the State, or an appropriate alternative dispute entity) who would explain the benefits of the mediation process. However, a public agency may not deny or delay a parent's right to a due process hearing if the parent fails to participate in such a meeting.

STATE COMPLAINT PROCEDURES

If you feel the school district/agency is violating special education requirements for your child, you can file a written complaint with the Colorado Department of Education to resolve the problem.

An organization or individual may file a signed written complaint. The complaint must include a statement that a school district or agency has violated a requirement of special education law and the facts on which the statement is based. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

The Federal Complaints Officer will have 60 calendar days after the complaint is filed to:

1. give the school district or agency an opportunity to respond to the allegations;
2. give the parent an opportunity to submit additional information about the allegations;
3. carry out an independent on-site investigation, if the Federal Complaints Officer determines that an on-site investigation is necessary;
4. review all relevant information and make an independent determination of whether a violation of special education law has occurred;
5. issue a written decision to the school district or agency and the parents that addresses each allegation in the complaint and contains the findings of fact and conclusions and the reasons for the final decision.

The school district is obligated to implement the final decision.

The Department must permit an extension of the time limit only if exceptional circumstances exist with respect to a particular complaint and include procedures for effective implementation of the Department's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

If a written complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing.

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties the hearing decision is binding and the Department must inform the complainant to that effect.

The address for filing a Federal Complaint is:

Federal Complaints Officer
Colorado Department of Education
201 East Colfax, Room 300
Denver, CO 80203

Before filing a Federal Complaint it is advisable to call the Federal Complaints Officer at 303-866-6685.

IMPARTIAL DUE PROCESS HEARING

If an agreement cannot be reached between you and the school district, you may request a due process hearing. The hearing will be conducted by an impartial hearing officer. As a parent involved in the hearing you must be given certain rights, including the right to an appeal.

You or, if appropriate, the school district may request a due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child and which sets forth an alleged violation that occurred not more than 2 years before the date you or school district knew or should have known about the alleged action that forms the basis of the due process hearing.

Before a hearing is initiated, you or your attorney should provide due process hearing notice (which shall remain confidential), to the Director of Special Education of your school district, and forward a copy of such notice to the Colorado Department of Education, providing the following information:

1. name of your child;
2. address of residence of your child;
3. name of the school your child is attending;
4. 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;
4. description of the problem(s) relating to the proposed or refused initiation or change, including related facts; and
5. a proposed resolution of the problem to the extent known and available to you at the time.

You may not have a due process hearing until you, or your attorney, files a notice that meets the above stated notice requirements.

The school district will have a form available for you to use to file the written due process hearing notice. This required notice shall be deemed to be sufficient unless the school district notifies the hearing officer and you in writing that they believe the notice has not met the above stated requirements. This notice shall be provided to the hearing officer within 15 days of receiving the complaint. Within 5 days of receipt of this notification the hearing officer shall make a determination on the face of the notice of whether the notification meets the above requirements and shall immediately notify the parties in writing of such determination.

If the school district has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process hearing notice, the school district shall, within 10 days of receiving the notice, send to the parent a response that shall include: an explanation of why the school district proposed or refused to take the action raised in the complaint; a description of other options that the IEP Team considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; and a description of the factors that are relevant to the school district's proposal or refusal. In any case, the school district shall, within 10 days of receiving the complaint, send to the parents a response that specifically addresses the issues raised in the hearing notice.

Parents may amend their due process complaint notice only if the school district consents in writing to such amendment and is given the opportunity to resolve the complaint through a resolution session, or the hearing officer grants permission, except that the hearing officer may not grant such permission after the 5th day before a due process hearing occurs. If the parent files an amended notice, the timeline for a due process hearing shall recommence at the time the parent files the amended notice.

When a hearing is initiated the school district shall inform you of the availability of mediation. The school district must also inform you of any free or low-cost legal or other relevant services available in the area if you or the school initiate a due process hearing. The school should also provide this information to you whenever you request it.

The hearing will be conducted by an impartial hearing officer obtained through the Colorado Department of Education. The Department maintains a list of hearing officers and statements of their qualifications. Three hearing officers' names, selected by rotation, are provided to the parent(s) and the school district and by process of elimination both parties participate in the determination of a hearing officer.

A hearing officer conducting a due process hearing shall not be an employee of the Colorado Department of Education or the school district involved in the education or care of your child, or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing. A hearing officer conducting a due process hearing shall possess knowledge of, and the ability to understand, the provisions of IDEA, Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts; possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. A person who otherwise qualifies to conduct a hearing is not an employee of the school district solely because he or she is paid by the school district to serve as a hearing officer.

RESOLUTION SESSION

Prior to the opportunity for an impartial due process hearing, the school district shall convene a meeting with the parents and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the hearing request. This shall occur within 15 days of receiving notice of the parents' hearing request. The meeting shall include a representative of the school district who has decision making authority on behalf of the school district. The meeting may not include an attorney of the school district unless the parent is accompanied by an attorney. At the meeting the parents of the child should discuss their hearing request, and the facts that form the basis of the hearing request. The school district shall then be provided with the opportunity to resolve the hearing request. However, the parents and the school district may agree in writing to waive such a meeting, or the parents and the school district may agree to use the mediation process described above. If the school district has not resolved the hearing request to the satisfaction of the parents within 30 days of receipt of the hearing request, the due process hearing may occur, and all of the applicable timelines for a due process hearing shall commence. If this meeting results in a resolution the parents and the school district shall execute a legally binding agreement that is signed by both the parent and a representative of the school district who has the authority to bind the school district. This shall be enforceable in any State court of competent jurisdiction or in a district court of the United States. The parents or school district may void this agreement within 3 business days of the agreement's execution.

DUE PROCESS HEARING RIGHTS

Any party to a hearing or an appeal of a hearing decision has the right 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 that party at least five (5) days before the hearing;
4. obtain a written or electronic verbatim record of the hearing; and
5. obtain a copy of written or electronic findings of fact and decisions. (After deleting any personally identifiable information, the Colorado Department of Education will transmit those findings and decisions to the State advisory panel and make them available to the public.)

Not less than 5 business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date, and any recommendations based on any evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this disclosure rule from introducing the relevant evaluation or recommendation at the hearing unless the other party consents to its introduction.

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the original hearing notice, unless the other party agrees otherwise.

A parent or school district must request an impartial due process hearing within 2 years of the date the parent or school district knew or should have known about the alleged action that forms the basis of the hearing request. This 2 year timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to specific misrepresentations by the school district that it had resolved the problem forming the basis of the hearing request, or the school district's withheld of information from the parent that was required to be provided to the parent.

As parents, you must be given the right to have your child present at the hearing, and the right to open the hearing to the public. Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

The Department of Education shall ensure that not later that 45 days after completion of the 30 day resolution period a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the 45 days at the request of either party.

A decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education. In disputes alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies impeded the child's right to a free appropriate public education; significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parents' child; or caused a deprivation of educational benefits. However, nothing in this paragraph shall be used to prevent a hearing officer from ordering a school district to comply with the procedural requirements of the law.

The record of the hearing and the findings of fact and hearing decision must be provided to you at no cost. The decision made in a due process hearing is final unless there is an appeal.

ADMINISTRATIVE APPEAL OF A DUE PROCESS HEARING: IMPARTIAL REVIEW

A party may appeal to the Division of Administrative Hearings within 30 days after receipt of the Impartial Hearing Officer's decision.

If there is an appeal, an administrative law judge shall conduct an impartial review of the hearing and shall:

1. examine the entire hearing record;
2. ensure 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 administrative law judge, at a time and place reasonably convenient to the parties;
5. make a final and independent decision on completion of the review and mail such to all parties within 30 days after the receipt of a request for a review; and
6. give a copy of written or at the option of the parents, electronic findings of fact and the decision to the parties. (After deleting any personally identifiable information, the Colorado Department of Education will transmit those findings and decisions to the State advisory panel and make them available to the public.)

The administrative law judge may grant specific extensions of any of the timelines at the request of either party. The decision made by the administrative law judge is final, unless a party brings a civil action.

CIVIL ACTION

Any party has the right to bring a civil action in State or Federal Court. The action may be brought in any State Court of competent jurisdiction or in a U.S. District Court, without regard to the amount in controversy. The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action. In any action brought under this section, a Court shall receive the records of the administrative proceedings, hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant the relief that the Court determines to be appropriate.

Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, The Americans with

Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of civil action under these laws seeking relief that is also available under these procedural safeguards, the due process and appeal procedures must be exhausted to the same extent as would be required had the action been brought under these procedural safeguards.

CHILD'S STATUS DURING PROCEEDINGS

Pending any administrative or judicial proceeding, unless you and the school district agree otherwise, your child must remain in his or her present educational placement. However, if the child was placed in an interim alternative educational placement, then the child would remain in the alternative placement pending the decision of the hearing officer, or until the expiration of the time for which the student was removed, whichever comes first (unless the parent and the school district agree to another placement). 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), pending a due process proceeding, the school district may request an expedited due process hearing. If the decision of a hearing officer in a due process hearing or an administrative law judge in an appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the school district and the parents.

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

AWARD OF ATTORNEY'S FEES

In any action or proceeding discussed above, only a Court, in its discretion, may award reasonable attorney's fees as part of the costs to a prevailing party who is the parent of a child with a disability; to a prevailing party who is the State Education Agency or school district against the attorney of a parent who files a hearing request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or to a prevailing State Education Agency or school district against the attorney of a parent, or against the parent, if the parent's hearing request or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. However, neither due process hearing officers, administrative law judges nor the Federal complaints officer, may award attorney's fees.

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under the procedural safeguards section of special education law for services performed subsequent to the time of a written offer of settlement to a parent if: the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; the offer is not accepted within 10 days; and the Court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorney fees may not be awarded for any meeting of the IEP team unless such a meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation that is conducted prior to the filing of a request for due process. A Resolution Session shall not be considered such a meeting. An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. Except the Court may reduce, accordingly, the amount of the attorneys' fees awarded, if the Court finds that the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint according to the Rules. However, these provisions do not apply in any action or proceeding if the Court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of the procedural safeguards of special education law.

PRIVATE SCHOOL PLACEMENT

A school district is not required 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 school district made FAPE available to the child and the parents elected to place the child in a private school or facility.

Disagreements between a parent and a school district regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures.

If the parents of a child with a disability, who previously received special education and related services under the authority of a school district, enroll their child in a private school without the consent of, or referral by the school district, a court or due process hearing officer may require the school district to reimburse the parents for the cost of that enrollment only if the court or hearing officer finds the school district has not made a free appropriate public education available to the child in a timely manner, prior to 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 Department of Education and the school districts.

The cost of reimbursement may be reduced or denied if at the most recent IEP meeting that the parents attended 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 school district to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or at least 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 notice to the school district of this information.

The cost of reimbursement may be reduced or denied also if, prior to the parents' removal of the child from the public school, the school district informed the parents, through the notice requirements in this document, 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 the evaluation; or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

The cost of reimbursement may not be reduced or denied for failure by the parents to provide notice of their intent to remove the child if: the parent is illiterate and cannot write in english; compliance by the parents to provide notice of their intent to remove the child would likely result in physical or serious emotional harm to the child; the school prevented the parent from providing the notice; or, the parents had not received notice that they had to provide notice of their intent to remove the child.

William J. Moloney
Commissioner of Education, State of Colorado

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