A Guide to Parent Rights in Special Education

Special Education Procedural Safeguards Notice

April 2025

Ohio Department of Education & Workforce

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About Special Education

Special education, for students ages 3 to 21, is guided by federal and state requirements. The federal requirements are referred to as the Individuals with Disabilities Education Act (IDEA). The state requirements are referred to as the Ohio Operating Standards for the Education of Children with Disabilities (Ohio Operating Standards).

This guide can help you understand your rights and your child's rights according to IDEA and the Ohio Operating Standards. It also gives you information and resources to help you understand your child's special education supports and services.

Your local educational agency (for example, your school district) also can help you understand your rights under this law. If you have questions about the information in this guide, please contact the director of special education for your educational agency.

Your School Contact for Special Education

Please add the following information to this interactive section:
Educational agency: Rocky River City School District
Special Education Director: Mrs. Tara Zbin
Phone number: 440-356-6006 ext. 6006
Email address: zbin.tara@rrcs.org

Ohio Department of Education and Workforce Contact for Special Education

(Phone) 614-466-2650
(Toll free) 877-644-6338
(Fax) 614-728-1097

25 S. Front Street
Mail Stop 409
Columbus, Ohio 43215
Additional contact information

Exceptionalchildren@education.ohio.gov

For callers using a teletypewriter (TTY), please call Ohio Relay Service at (800) 750-0750.

Introduction to this Guide of Parent Rights

The Individuals with Disabilities Education Act (IDEA) protects the rights of students with disabilities and the rights of their parents. This guide tells you about those rights. Your school must give you a copy of the guide once every year if your child receives special education services. You also must receive a copy:

- If you ask for your child to be evaluated because you think your child may have a disability
- If your educational agency wants to have your child evaluated because it thinks your child may have a disability
- If you file (submit) a complaint – in writing – with the Office for Exceptional Children at the Ohio Department of Education and Workforce, and it is your first complaint of the school year
- If you file (submit) a request – in writing – with the Office for Exceptional Children at the Ohio Department of Education and Workforce for a due process hearing regarding your child's education, and it is the first time in the school year you have asked for one
- If your child has been removed from school for disciplinary (behavior) reasons – and your child has already been removed from school for 10 days or more during the current school year
- Any time you ask for a copy of the guide

General Information

Informed Parental Consent

Anyone can refer a child for a special education evaluation. Whenever, you, the parent, have concerns about your child's learning, development, or functioning, you should submit a written request for a special education evaluation to the child's teacher, principal of the school, and the special education supervisor or administrator. Once the school receives the request, the school has 30 days to respond to you of its intent to evaluate or not evaluate. A parent must provide written consent to start the evaluation process.

Once a child has been determined eligible for special education and related services, an Individualized Education Program (IEP) will be developed based on the information from the evaluation team report (ETR). An IEP is a document of statements that outlines the educational goals and objectives your child will work toward during the school year. It also outlines the support and services your child needs to meet the goals stated in the IEP.

Your child will be assigned an IEP team, of which the members include:

- The parent(s)
- At least one general education teacher (if the child is, or may be, participating in the regular education environment)
- At least one special education teacher or provider of the child
- A qualified educational agency representative
- An individual who can interpret the instructional implications of evaluation results
- At the discretion of the parent or the educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate
- Whenever appropriate, the child with a disability

IEP review: The IEP team is required to meet at least once a year to review the IEP but can meet more often to revise the IEP, especially if the child is not making progress. Under Ohio law, parental consent is required to initiate special education services but is not required for implementation of subsequent IEP reviews or revisions. However, active parental participation in the IEP process remains essential. Parents are required IEP team members in any revision meeting.

Parent participation: As parents of a child with a disability, you have a right to be notified and afforded the opportunity to participate in each IEP team meeting. The educational agency must provide notification of the meeting early

What is a Surrogate Parent?
A surrogate parent is an individual who may represent a child with a disability in all matters related to qualifying for and receiving special education services.

The educational agency where you live appoints a surrogate parent whenever any of the following occur:

- The parent cannot be identified
- The educational agency, after reasonable efforts, cannot locate the parent
- The child is an unaccompanied homeless youth
- The child is a ward of the state

enough to ensure that you will be able to attend and to schedule the meeting at a mutually agreed upon time and place.

Informed parental consent means that you and/or the educational agency-appointed surrogate parent give permission, in writing, for the educational agency to take an action. Your informed consent also means the educational agency gave you information about the proposed action. The educational agency must get your written informed consent:

- Before the educational agency evaluates your child for the first time to find out if your child needs special education and related services
- Before the educational agency starts giving your child the special education services listed in his or her first individualized education program, also called an IEP
- Before the educational agency reevaluates your child to find out if your child's needs have changed
- Before the educational agency conducts extra individual assessments with your child. An example would be a Functional Behavior Assessment
- Before the educational agency changes your child's educational placement. This does not have to mean a change in building location. Instead, it means a change in your child's educational program
- Before the educational agency gives information about your child to someone other than those listed in state or federal law

Parental consent is required for a reevaluation even if the IEP team decides that the existing student information is sufficient, and no additional testing is required. This is sometimes referred to as a "record review" reevaluation.

Informed parental consent is not required when either of the following occur:

- The educational agency is reviewing existing student information as part of the evaluation/reevaluation process
- The educational agency conducts assessments with your child that are administered to all students

To Give Your Informed Parental Consent, the Educational Agency must:

- Make sure it has used your native language, or another form of communication you understand, to give you all the information you need to make a decision
- Make sure you understand and agree in writing for the educational agency to carry out an activity and your consent describes the activity, as well as any of your child's records that will be shared with others and with whom
- Make sure you understand that you are giving your consent by your own choice, and you can change your mind at any time
- Make sure you understand that if you withdraw your consent, the educational agency does not have to undo any action it took between the time you gave permission and the time you withdrew it

WITHDRAWING CONSENT

Withdrawing consent means that you take away your permission. You may withdraw your consent at any time if you decide you no longer want your child to receive special education services as offered in your child's IEP. You must do this *in writing*.

Then, your educational agency:

- Must stop providing your child the special education services in the IEP, but before it stops providing the services, the educational agency must give you notice in writing that it is stopping the services. The notice the educational agency gives you is called a prior written notice. This prior written notice must meet the requirements set forth in the Prior Written Notice section on page 8 of this guide.

Once the educational agency has given you this prior written notice stating that it will no longer provide special education services to your child and once services stop, the educational agency no longer considers your child eligible for special education and will instead consider your child a general education student.

Is Your Child Eligible For Special Education?

To be considered a student with a disability under The Individuals with Disabilities Act (IDEA) and Ohio Administrative Code, your child must have one of the disabilities listed below. That disability must have an adverse effect on your child's educational performance and your child must require special education and/or related services because of his or her disability.

- Intellectual disability
- Hearing impairment
- Speech or language impairment
- Visual impairment
- Emotional disturbance
- Orthopedic impairment
- Autism
- Traumatic brain injury
- Other health impairment
- Specific learning disability
- Deafness
- Deaf-blindness
- Multiple disabilities
- Developmental delay

Native Language or Other Mode of Communication

All the meetings you attend, your child's evaluation, and all notices you receive must be written or spoken in your native language or other mode of communication you use.

All tests and other materials used to evaluate your child must be in your child's native language — or another means of communication that will give the district accurate information on what your child knows and can do academically, developmentally and functionally, unless clearly not feasible to provide or administer.

ASK THE EDUCATIONAL AGENCY TO EVALUATE YOUR CHILD

If you think your child may have a disability that is affecting his or her education, you can request the educational agency evaluate your child to determine whether he or she would be eligible for special education (considered a child with a disability under IDEA). An educational agency must respond within 30 days of your request by either obtaining your informed consent or providing a prior written

notice that explains why the educational agency does not suspect a disability. The educational agency can ask you at any time for permission to evaluate your child if a disability is suspected. In either case, after the educational agency has gotten your informed consent in writing, it must finish the initial (first) evaluation within 60 calendar days.

IF YOUR CHILD MOVES FROM ONE SCHOOL TO ANOTHER SCHOOL

If your child moves from one educational agency to another educational agency in Ohio, the new educational agency has 30 days from the date the prior educational agency's evaluation was received to either:

- Accept the evaluation from the prior educational agency; or
- Obtain consent for a reevaluation

Any reevaluation by the new educational agency must be conducted within 60 days of your parental consent.

IF A CHILD IS A WARD OF THE STATE

If your child is a *ward of the state* and not living with his or her parent, the educational agency does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability in the following situations:

- If, despite reasonable efforts to do so, the educational agency cannot locate the child's parent
- The rights of the parents have been terminated; or
- The rights of the parents have been assigned by a judge to an individual who consents to the initial evaluation

Independent Educational Evaluations (IEE)

An independent educational evaluation (IEE) also is called an outside evaluation. The educational agency will pay for this outside evaluation only if it has already done its own evaluation of your child and you disagree with what the educational agency found. The purpose is to find out if your child needs special education or continues to need special education. The person who evaluates your child for this outside evaluation cannot work for your child's educational agency. You, as a parent, have the right, at any time, to arrange and pay for an outside evaluation for your child. Once you disagree with your educational agency's evaluation of your child and ask for an outside evaluation, your educational agency must take one of these actions without unnecessary delay:

- The educational agency must tell you where you can obtain an outside evaluation of your child on your own and inform you of the criteria necessary for the educational agency to pay for it. Once the educational agency agrees and you get the outside evaluation, the educational agency must pay the cost
- The educational agency must submit a request to the Ohio Department of Education and Workforce's Office for Exceptional Children for a due process hearing (see page 20) because it disagrees with your request for an outside evaluation. This would be because the educational agency thinks its own evaluation of your child was appropriate

CRITERIA FOR OUTSIDE EVALUATIONS

The same criteria that apply to evaluations that the educational agency conducts also apply to outside evaluations that you arrange, and the educational agency pays for. These criteria include where your child goes for the evaluation and the experience of the person who examines your child. The educational agency must pay the full cost of an outside evaluation that meets the educational agency's criteria.

If you request an outside evaluation for your child, the educational agency may ask you why you disagree with the educational agency's evaluation of your child (that is, the reasons you want an outside evaluation), but you do not have to explain this unless you wish to do so. You only have the right to one outside evaluation paid for by the educational agency, per each time the educational agency evaluates your child and you disagree with the educational agency's evaluation results.

Once your child has had an outside evaluation that meets the educational agency's criteria, regardless of who pays for it, the educational agency must consider the results of that evaluation and determine how it will provide your child a free appropriate public education (FAPE).

Prior Written Notice

OVERVIEW

An educational agency must give you a written notice (called a prior written notice) within a reasonable amount of time before it proposes or refuses to take certain actions. These actions include the educational agency initiating or changing the identification, evaluation or education placement of your child or the provision of a free appropriate public education to your child. Prior written notice is a required special education form.

PRIOR WRITTEN NOTICE CONTENTS

A prior written notice must provide enough detail to allow you to participate in your child's educational services decisions in an informed way. Prior written notice must include:

- A description of the action proposed or refused by the educational agency
- An explanation of why the educational agency proposes or refuses to take the action
- A description of each evaluation procedure, assessment, record or report the school used to make its decision
- A statement that you have protection under the IDEA's procedural safeguards, and if the notice is not an initial referral for evaluation, the means by which you can get a description of the procedural safeguards
- Sources for you to contact for assistance in understanding the requirements of the IDEA
- A description of the other options the IEP team considered and the reasons why those options were rejected
- A description of other factors relevant to the educational agency's proposal or refusal

PRIOR WRITTEN NOTICE IN AN UNDERSTANDABLE LANGUAGE

Prior written notice must be provided in a language that is understandable to the general public and it also must be written in your native language or other mode of communication unless it is clearly not practical to do so.

If your native language or other mode of communication is *not* a written language, then the educational agency needs to take steps to verbally translate the prior written notice, or by another understandable way, in your native language or other mode of communication. The educational agency will need to make sure that it can show, in writing, that the prior written notice was translated appropriately and that you understood its contents.

Individualized Education Program (IEP)

An individualized education program (IEP) is a document of statements that outlines the educational goals and objectives your child will work on during the school year. It also outlines the support and services your child needs to meet the goals stated in the IEP.

The IEP team members include:

- The parent(s)
- At least one general education teacher (if the child is or may be participating in the regular education environment)
- At least one special education teacher or provider of the child
- A qualified educational agency representative
- An individual who can interpret the instructional implications of evaluation results
- At the discretion of the parent or the educational agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate
- Whenever appropriate, the child with a disability

IEP review: The IEP team is required to meet at least once a year to review the IEP but can meet more often to revise the IEP, especially if the child is not making progress. In Ohio, the annual IEP review and revision does not require parental consent to implement the IEP. Parental consent is only required for the initial IEP. You take an active role in providing input into the development of the IEP and are strongly encouraged to participate in IEP reviews.

Parent participation: As parents of a child with a disability, you have a right to be notified and afford the opportunity to participate, in each IEP team meeting. The educational agency must provide notification of the meeting early enough to ensure that you will be able to attend and to schedule the meeting at a mutually agreed-upon time and place.

Educational Records

Accessibility of Records

The Family Educational Rights and Privacy Act (FERPA) is a federal law that gives you certain rights to inspect and review your children's education records. Rights under FERPA transfer from you to your student when your student turns 18 years old or begins attending postsecondary school (such as a college or university), whichever occurs first.

WHAT ARE EDUCATION RECORDS?

Whether certain information about a student is protected by FERPA depends on whether the item meets the meaning of education record. FERPA defines education records as:

1. Records that are directly related to one specific student, sometimes called personally identifiable information by schools
2. Records that are kept by an education agency or institution (for example, your school district) or by a party acting for that agency

PERSONALLY IDENTIFIABLE INFORMATION INCLUDES:

- Your child's name
- A family member's name
- Your child's address or the family's address
- A personal identification, such as your child's social security number, student number or biometric record
- Other indirect ways of identifying your child, such as date of birth, place of birth, mother's maiden name, race or ethnicity
- Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty
- Information requested by a person who the school believes to have knowledge of the identity of your child
- Other examples as defined by FERPA

MAINTENANCE AND CONFIDENTIALITY OF RECORDS

Education records may be maintained in many ways. Some examples are:

- Handwritten
- Print
- Computer
- Video or audio tape
- Film, microfilm, or microfiche

Student records are confidential, meaning they are *private*. The educational agency must protect the privacy of your child's records when it collects, stores, releases or destroys them.

REVIEWING YOUR CHILD'S RECORDS

The educational agency must allow you to review your child's education records without unnecessary delay and before any IEP team meeting or any due process proceeding in which you are involved. The educational agency cannot wait more than 45 days from the date of your request to allow you to view the records.

You have the right to review only information in the record that is about *your* child. You have a right to ask the school for an explanation of your child's records. You have a right to have someone who is acting on your behalf to examine the records (such as a friend or lawyer).

The educational agency may provide you with copies of your child's records; however, the educational agency must provide you with copies if failure to do so would prevent you from exercising your right to review the records. You always have the right to receive copies of the records at your expense.

CHANGES TO EDUCATION RECORDS

You have the right to ask the educational agency to change wrong or misleading information in your child's education records. Your child's school does not have to change the education records pursuant to your request (just because you ask), but the school must *consider* your request. If the school decides not to change your child's record as you asked, the school must tell you that you have the right to a hearing to talk about the matter.

After the hearing, if the school still decides not to change an education record, you have the right to include your statement on the matter in your child's record. This statement must remain a part of your child's record.

SHARING OF EDUCATION RECORDS

Usually, the educational agency *must* get your permission in writing if it wants to share education records that identify your child with someone other than you. However, there are some instances when your permission is not required. To find out more about when an educational agency does *not* have to get your written permission to share records, see FERPA general guidance for parents on the U.S. Department of Education's website at www.ed.gov.

Dispute Resolution

Dispute Resolution Process

If you are concerned about the education of your child with a disability, the first step is to work with your educational agency. To begin, contact your student's teacher or the special education director. Tell that person what you are thinking. If you and the educational agency do not agree about your concern, there are ways you can work together to solve the problem.

These processes have formal names that your educational agency may use, but this guide will help you understand what those names mean and how you and the school can help your child. The following section describes these processes or methods you can use to work with your educational agency.

ADMINISTRATIVE REVIEW

If you disagree with your educational agency's decision regarding the education of your child with a disability, you can submit a complaint to the agency's administration. In response, your educational agency superintendent (or a designee) will conduct an administrative review. This review may include an administrative hearing.

The review and the administrative hearing, if one is held, must occur at a time and place that works for all required participants. Both you and the educational agency can invite others to attend the review or administrative hearing. For example, you could invite other family members or a friend, someone who is knowledgeable about special education, or a lawyer. If your child is educated in a program run by a county board of developmental disabilities or other public educational agency, the educational agency must consult with the board or agency for the administrative review.

In reviewing the situation, every effort should be made to resolve the disagreement about your child's education. The superintendent (or a designee) will hear both sides of the disagreement and make a decision. Once a decision is reached, the superintendent must notify you, in writing, of the decision. This must happen within 20 days of when you first notified the educational agency about your concern.

ADDITIONAL PROCESSES YOU CAN TRY

If you have completed this process and you and the educational agency still do not agree about how to resolve the problem, there are more processes you can try. While you are not required to request an administrative review before moving on to the other dispute resolution processes, it is encouraged. There are additional options you can use to resolve the problem. The Ohio Department of Education and Workforce's Office for Exceptional Children can get involved and assist you with your request for additional tools to help resolve your concerns. The following entities can also help you:

- Your local State Support Team (Region #____) at (phone #_____). The parent and family consultant at the State Support Team will work with you.
- Your local parent mentor, if your educational agency has one.

    - A parent mentor provides information and support to families of a child with a disability and educational agencies. The parent mentor is an educational agency employee and also a parent of a child with a disability.
    - For more information, contact_____.
- Ohio Coalition for the Education of Children with Disabilities (OCECD)
    - The OCECD is a statewide nonprofit organization that serves families of infants, toddlers, children, and youth with disabilities in Ohio, and educators and agencies who provide services to them. OCECD's programs help parents become informed and effective representatives for their children in all educational settings.

For more information, contact the OCECD at (740) 382-5452 or visit the OCECD website at www.ocecd.org.

Early Complaint Resolution

Early complaint resolution is when you attempt to settle your differences with the educational agency informally and typically before you start utilizing other dispute resolution options. Someone from the Ohio Department of Education and Workforce's Office for Exceptional Children will work with you to help you address your questions and concerns about your child's education.

The Ohio Department of Education and Workforce encourages early complaint resolution before you ask for more formal processes, such as written complaints or due process hearings. You may contact someone at the Ohio Department of Education and Workforce's Office for Exceptional Children to help address your questions and concerns about your child's education. To talk to someone about early complaint resolution, please contact the Department:

- By telephone: (614) 466-2650, or toll-free at (877) 644-6338
- By email: exceptionalchildren@education.ohio.gov

Facilitation

If you are concerned about the evaluation or reevaluation of your child for special education, or about your child's Individualized Education Program (IEP), an option called facilitation might work for you.

Facilitation is when you ask the Department to arrange for a facilitator to attend a meeting of your child's evaluation or IEP team (you are also a member of this team). The educational agency can also make a request to the Department for a facilitator at one of these meetings involving your child's special education. You and the educational agency must both agree to have the facilitator present at the meeting.

THE PURPOSE OF FACILITATION

Facilitation takes place in a team meeting, such as an individualized education program team meeting, evaluation planning meeting, or evaluation team meeting. The facilitator is a neutral third party who is not a member of the team and does not make decisions for the team. Having a facilitator helps the team be productive and stay focused on the student. Facilitators are professional mediators who have been trained by the Office for Exceptional Children in special education processes.

You can request facilitation at any time. Once you do, you and the educational agency must both agree to participate. If you both agree, the Office for Exceptional Children will assign one for you. There is no cost to you or the educational agency for facilitation.

THE FACILITATOR:

- Remains a neutral third party (does not take sides or work for you or the educational agency)
- Is a professionally trained *mediator* (a qualified person who helps resolve disputes)
- Has been trained on and knows about special education laws and requirements
- Is not part of your child's IEP or evaluation team
- Does not make decisions, but guides the team to find solutions
- Helps open up conversation between you and the educational agency
- Keeps the meeting on track and helps keep everyone respectful of the process
- Keeps the team focused on your child and your child's needs

KEY POINTS TO REMEMBER ABOUT FACILITATION:

- Facilitation is voluntary.
  - Both you and the educational agency must agree to be part of the process. If you and the educational agency agree to have a facilitator at a meeting, this does not mean you have to agree with the educational agency at the meeting or agree with how the meeting turns out. Parents are always allowed to have their own opinions.
- Any agreement made during a facilitation meeting is generally binding. This means that both you and the educational agency have to follow the agreement after the decision is mutually made.
  - Any document that you and educational agency sign about your child's evaluation or IEP carries the same weight as documents they signed at any other IEP or evaluation team meeting.

For more information about facilitation, visit the Ohio Department of Education and Workforce website at education.ohio.gov and search ***facilitation.***

To Request Facilitation

Contact your educational agency's special education director to see if the district is willing to participate in this process, _____ at_____. Once both parties agree to participate in facilitation, please contact the Ohio Department of Education and Workforce's Office for Exceptional Children:

- By telephone: (877) 644-6338
- By email: OECMediationFacilitation@education.ohio.gov

Mediation

Mediation is when you and the educational agency agree to have a third party professional come to a meeting to help reach an agreement about the education of your student with a disability or your student who *is suspected of* having a disability. Third-party means that this person, also called the mediator, does not take sides and does not work for or act on behalf of the parent or the educational agency. Mediation is one choice for you and educational agencies any time there is disagreement involving your child's special education.

MEDIATION IS FREE AND CAN BE REQUESTED ANY TIME

Mediation can be requested at any time. Once mediation is requested, you and the educational agency must both agree to participate in the process. If you both agree to participate, the Office for Exceptional Children will assign a mediator for you. The mediator cannot tell you how you must resolve the issue involving your child's special education. Rather, the mediator helps both sides discuss the concerns involving your child and find a solution.

If you decide to make a formal complaint or ask for a due process hearing (see pages 17-28), the Ohio Department of Education and Workforce will ask you to consider mediation as a first step. There is no cost to you or the educational agency for mediation.

Request for Mediation	Receive Mediator and Schedule Meeting	Mediation Meeting	Agreement Reached	Agreement Not Reached
You or the school district can ask the Ohio Department of Education and Workforce for mediation at any time. If you file a complaint or ask for a due process hearing, the Department will offer mediation as a first step. Both you and the district must agree to use a mediator.	The mediator is a neutral third-party. The mediator will schedule a meeting as soon as possible. The Department pays for the mediator.	You and the school district each share your concerns. The mediator tries to help settle the dispute and come to a final, written agreement. Generally, nothing that is said during the mediation can be shared outside the meeting or used in future legal proceedings, unless an exception applies.	The written agreement is binding, and both you and the school district sign it. Binding means that you and the school must follow the agreement, and a court can enforce it.	If an agreement is not reached in mediation, and you filed a state complaint, then the Office for Exceptional Children will resolve the complaint. If an agreement is not reached in mediation and you filed for due process, then a due process hearing comes next.

THE MEDIATOR:

- Remains a neutral third party (does not take sides or work for you or the educational agency)

- Is not allowed to make decisions; instead, the mediator helps you and the educational agency resolve the issue involving your child's education.
- Works with you and the educational agency to decide on a written mediation agreement
- Keeps the mediation meeting on track and helps to keep everyone respectful of the process
- Keeps everyone focused on the student and the student's needs
- Helps open up conversation between you and the educational agency

KEY POINTS TO REMEMBER ABOUT MEDIATION

- Mediation is voluntary.
    - Both you and the educational agency must agree to be part of the process. If you and the educational agency agree to participate in mediation, this does not mean you have to agree with the educational agency at the meeting or agree with how the meeting turns out.
- Mediation is confidential.
    - Everything said in the mediation meeting generally remains confidential (private) and cannot be used later, unless an exception applies.
- Any written agreement made during mediation is generally binding. This means that both you and the educational agency have to follow the written agreement after the decision is mutually made.
    - Any document that you and educational agency sign about your child's evaluation or IEP carries the same weight as documents they signed at any other IEP or evaluation team meeting.

To Request Mediation

Contact your school district's special education director to see if the district is willing to participate in this process _____at_____. Once both parties agree to participate in mediation, please contact the Ohio Department of Education and Workforce's Office for Exceptional Children:

- By telephone: (877) 644-6338
- By email: OECMediationFacilitation@education.ohio.gov

Filing a State Complaint

Another option available to you, if you have a concern about your child's special education, is to make a formal state complaint in writing against the educational agency and submit this complaint to the Ohio Department of Education and Workforce's Office for Exceptional Children.

THERE IS NO COST TO FILE A STATE COMPLAINT

There is no cost to file a state complaint. The state complaint process generally gets the problem resolved faster than a due process hearing and is less adversarial (or confrontational) than a due process hearing. To file a state complaint, you must send your signed, written complaint (the original version) to the Office for Exceptional Children, and you must send *a copy* of the complaint directly to the educational agency.

Your complaint must include a statement of an alleged violation of federal or state special education requirements (an alleged violation of the Individuals with Disabilities Education Act or the Ohio

Operating Standards for the Education of Children with Disabilities). The complaint does not need to include the name or citation of a specific law, but it does need to state a specific action or inaction the educational agency took that you believe to be in violation of a special education requirement. Also, you must include facts in the complaint to support why you think your educational agency has violated the special education requirement.

STATE COMPLAINT REVIEW

The Office for Exceptional Children will review and, if necessary, investigate a properly filed complaint and determine if the educational agency has violated a special education requirement related to your child's education. Also, a third party – that is, a person other than you, or an agency or organization other than the educational agency – can file a state complaint with the Department if it believes that the educational agency has violated a special education requirement involving a student.

A state complaint may be filed with the Department any time within *one year* of the alleged special education violation. Any complaint that alleges violations occurring more than one year from the date the complaint was filed will not be investigated/resolved.

HOW TO MAKE A FORMAL STATE COMPLAINT

If you would like to make a formal state complaint regarding special education, you must:

- Complete the state complaint form on the DEW Dispute Resolution webpage; or
- Write a complaint letter and send to the Department via mail or email; or
- Call the Department's Office for Exceptional Children staff at 1-877-644-6338 and request a complaint form, which you will fill out and return to the Department.

Checklist of Items You Must Include in a State Complaint

- A statement that the educational agency has violated a federal or state special education requirement
- A description of the problem, including the facts on which you are basing your complaint
- Your contact information and original signature
- If you are alleging a special education violation with respect to a specific student
- The name and address of the residence of the student
- The name of the school the student is attending
- In the case of a homeless child or youth (as defined by the McKinney-Vento Homeless Assistance Act), available contact information for the student and the name of the school the student is attending
- A description of the nature of the problem, including facts related to the problem
- A proposed resolution of the problem to the extent known and available to the party
- at the time the complaint is filed
- The complaint must have a signature.

Note that anonymous complaints will not be accepted.

WHERE TO SEND YOUR COMPLAINT

Your complaint must be sent to *both* the Ohio Department of Education and Workforce's Office for Exceptional Children and to the educational agency's superintendent at the same time.

Send the original complaint to:
The Ohio Department of Education and Workforce Office for Exceptional Children
Attn: Assistant Administrator of Dispute Resolution Section
25 South Front Street, Mail Stop 409
Columbus, Ohio 43215-4183
By email: oeccomplaints@education.ohio.gov

ABEYANCE
Abeyance means putting issues in a state complaint on hold. If you and the educational agency are involved in a due process hearing, and either you or the educational agency also file a state complaint on the same issues, the Ohio Department of Education and Workforce will put the state complaint on hold. In other words, the Department will wait until the due process is over before resolving your state complaint. If you withdraw your due process hearing request, the Department will take the state complaint out of abeyance and proceed with the resolution of your complaint.

If a due process hearing occurs and a decision by the impartial hearing officer (IHO) is made, then the Department will take the state complaint out of abeyance to resolve it only if issues still remain in your complaint that were not decided upon by the hearing officer.

STATE COMPLAINT PROCESS

When the Department receives your state complaint, so long as it is properly filed, it will start reviewing it and, as necessary, investigate the alleged violation(s) of special education requirements. The Office for Exceptional Children must resolve the complaint within 60 calendar days from the date it received your complaint.

As part of the complaint process, the Office for Exceptional Children will:

- Review your complaint and decide if it has the authority to resolve the allegations in your complaint
- Tell both you and the educational agency in writing of the allegations that it will resolve, including an investigation (if necessary)
- Offer mediation or facilitation to both you and the educational agency as an alternative way of resolving the complaint
- Ask for more information it may need from you and the educational agency about the allegations in your complaint
- Review additional documents and information provided by you and the educational agency, conduct telephone interviews, and visit your child's educational agency, as it determines necessary
- Offer your educational agency the chance to respond to your complaint and offer a resolution
- Write a letter informing both you and the educational agency of its decision about whether a special education violation has occurred (after concluding its review and investigation, if necessary, and no more than 60 calendar days from the date it received your complaint)

TIMELINE EXTENSIONS

The Department can have more than 60 days to resolve the complaint and issue the letter with its decision, if there is a time extension. An extension of the 60-day timeline to resolve the state complaint can be made when:

- You and the educational agency agree for more time so you both can try to resolve the problem through mediation, facilitation, or some other means of alternative dispute resolution, or when
- There are exceptional circumstances (determined by the Office for Exceptional Children on a case-by-case basis).

IMPROPER FILING

If the Office for Exceptional Children determines that you have not properly filed a state complaint because you did not include all of the necessary information about the issue that you want to have resolved, or if the Office for Exceptional Children does not have authority to investigate the complaint, the Office for Exceptional Children will send you a letter that explains why it is not moving forward with resolving your complaint, the reason for this decision, and, if applicable, information that you need to include in a new complaint for it to be considered properly filed.

RESUBMITTING THE COMPLAINT

If you are resubmitting the complaint with new information, make sure to send the complaint to the Ohio Department of Education and Workforce and the educational agency within one year of when the alleged special education violation occurred. If you have included issues in your complaint that the Department does not have authority to resolve, it will refer you to resources to address these issues, as appropriate.

Filing a Complaint

- Complaint filed within a year of the alleged violation.
- Parent provides original to the Ohio Department of Education and Workforce and a copy to the educational agency.
- Complaint alleges violations of special education requirements with supporting facts.

Ohio Department of Education and Workforce Reviews Complaint

The Department sends an acknowledgement letter to the individual who filed the complaint and the educational agency.

The Department sends an insufficiency letter if the complaint is not properly filed, or if the Department does not have the authority to resolve it.

Review

The Department reviews all documents and requests additional documentation/information as needed.

The Department interviews the appropriate individuals, as needed.

The Department Sends a Letter of Findings

The Department makes determinations about each allegation and whether there is a special education violation.

The Department issues corrective actions where the educational agency has been found to be in violation.

Filing a Due Process Complaint

One way you can resolve certain concerns about your child's special education with their educational agency is to submit a request for a due process hearing directly to the educational agency, while also forwarding a copy to the Ohio Department of Education and Workforce. When you do this, you have filed a due process complaint (also called a due process request).

There are others who can file a due process complaint:

- Student, if at least 18 years old
- Educational agency

REASONS TO FILE

A due process complaint may be filed for concerns involving the following areas of your child's special education:

- Identification of a child with a disability
- Evaluation of a child with a disability
- Educational placement of a child with a disability
- The delivery of a free appropriate public education (FAPE) to your child

The due process complaint must allege that federal or state special education requirements have been violated and must be filed within *two years* of the date the parent (or public education agency filing the complaint) knew or should have known about the alleged special education violation at issue. Whenever the Ohio Department of Education and Workforce receives a due process complaint, the parents and educational agency involved must have the chance to participate in a due process hearing. The due process hearing is a formal proceeding in which an impartial hearing officer is assigned by the Department to conduct a hearing to resolve the due process complaint.

INFORMATION TO INCLUDE

The Department provides a form that can be used to request a due process hearing. The person or public education agency submitting the request does not have to use the Department's form, but that person or organization must still include this required information when submitting a due process complaint:

1. The student's name
2. The student's address or contact information
3. The name of the educational agency
4. If your child is homeless, available contact information for your child and the name of the school your child is attending
5. A description of the specific problem concerning your child, as well as facts about the problem
6. Ideas or suggestions to solve the problem

The due process complaint must contain the same detailed information as a state complaint (see page 16); however, an original signature is not required. It can be delivered to the educational agency and the Department in person, by mail, fax, or email. Issues that are not included in your original due process complaint will not be reviewed by the hearing officer during the due process hearing.

AMENDING A DUE PROCESS COMPLAINT

Amending a due process complaint is updating the complaint after it has already been submitted to the Ohio Department of Education and Workforce. You can amend your due process complaint only if:

- The other party agrees to the amended due process complaint, in writing, and is given the opportunity to resolve the complaint through a resolution meeting (resolution meeting is described on page 23), or
- The impartial hearing officer gives permission. The hearing officer may give such permission up to five days before a due process hearing begins, but not after that.

Due Process Timelines and Process

If you file a due process complaint against your child's educational agency, within 10 calendar days of receiving your due process complaint, the educational agency must give you prior written notice or a response regarding the alleged special education violation, unless the educational agency has already given such a notice.

The prior written notice that the educational agency gives you must include:

- A description of the action that your request or due process complaint is about. This could be an action the educational agency wanted to take or an action it refused to take. The educational agency also must explain in its response why the school wanted to take the action or refused to take the action.
- A description of all methods it used to evaluate your child, records about your child, and reports the educational agency used to make its decision to take the action or not take the action
- A description of other choices the IEP team considered for your child and the reason(s) why it rejected those choices
- A description of other factors that were relevant to the educational agency's decision to take or not take an action

The educational agency also must give you information about free or low-cost legal help and other relevant services you could get.

If a due process complaint is filed against you as the parent, you must respond to the complaint within 10 calendar days. Your response must specifically address the issues raised in the due process complaint.

Sufficiency

The due process complaint will be considered sufficient (meaning that it was properly filed) *unless* the other party notifies both the impartial hearing officer and the party who submitted the complaint alleging that it does not meet filing requirements (i.e., that it is insufficient). The other party must challenge the sufficiency of the due process complaint, in writing, within 15 calendar days of when the due process complaint was received.

For example, if you submit a due process complaint to your educational agency (and forward a copy to the Ohio Department of Education and Workforce), it will be considered sufficient unless the educational agency notifies the hearing officer, in writing and within 15 days, that it does not think your request has been properly filed. Then, the hearing officer has five calendar days from when he or she receives your educational agency's written notice to decide if your due process complaint is sufficient (that it meets the due process complaint requirements identified on page 22). The hearing officer also must send his or her decision to you and the educational agency, in writing, within 15 days.

If the hearing officer decides that your due process complaint is insufficient, you have the option to either re-file a new due process complaint or amend the original due process complaint, as long as the

educational agency consents and has a chance to resolve the situation through a resolution meeting or the hearing officer grants permission no later than five days before the start of the hearing.

If you do properly amend your due process complaint, then the 30-day resolution period begins when you file the amended complaint.

Resolution Period

The resolution period is the time between filing a due process complaint and the actual due process hearing. The resolution period involves a resolution meeting which provides an opportunity, once more, to resolve the special education dispute before the hearing officially begins. If you file a due process complaint but then fail to participate in the resolution process, this will delay the start of the due process timelines (more on the timelines below).

The resolution period is 30 days from the date the due process complaint was filed (or from the date the complaint was properly amended). If the educational agency has not resolved the due process complaint to your satisfaction by the time 30 days have passed, the due process hearing may proceed. Once the 30-day resolution period ends, there is a 45-day timeline for the due process hearing and for the impartial hearing officer to make a decision (see page 22), unless you and the educational agency have agreed to mediation that goes past the 30 days. Also note that the 30-day resolution period could end early if, during those 30 days, you and the educational agency agree in writing that no agreement is possible.

Due Process Hearings are Conducted by an Impartial Hearing Officer

When a due process complaint cannot be resolved, it will lead to a formal hearing conducted by an impartial hearing officer. The hearing officer must be an attorney who has been trained by the Ohio Department of Education and Workforce to conduct due process hearings.

The educational agency pays the cost of the hearing officer; however, this individual is a neutral, third party that is selected randomly. He or she is not employed by an educational agency involved in education and may not have a personal or professional interest that would favor one party over the other.

Additionally, the hearing officer is well acquainted with special education requirements, including IDEA, federal and state laws and regulations and how courts interpret special education cases.

After the hearing, the hearing officer will write a decision according to standard legal practice.

During the 30-day resolution period, and within the first 15 calendar days of receiving the due process complaint, the educational agency must schedule a resolution meeting. If the educational agency does not hold the resolution meeting within 15 calendar days or does not participate in the resolution meeting, you may request for the hearing officer to begin the 45-day due process hearing timeline. The educational agency is not required to schedule a resolution meeting if it filed the due process complaint.

RESOLUTION MEETING

The purpose of the resolution meeting is to give you an opportunity to discuss the problems in the complaint and for the educational agency to have the chance to work with you towards a resolution. The responsibility lies with the educational agency to call the resolution meeting, and you are required to participate. If you do not participate in the resolution meeting and the educational agency

documents your lack of participation, the educational agency can ask the hearing officer to dismiss your due process complaint at the end of the 30-day period.

You and the educational agency decide which members of the IEP team should attend the resolution meeting. This meeting must include an educational agency representative who has authority to make decisions for the educational agency.

The educational agency's lawyer will not attend this meeting unless you choose to have your lawyer there. This meeting is a required step in the resolution process unless you and the educational agency agree in writing to waive the resolution meeting, or you and the educational agency agree to use mediation in place of the resolution meeting. You and the educational agency are permitted to mediate past the 30-day resolution period if you both agree to do so. This will prevent the 45-day due process hearing and decision timeline from starting.

If you and the educational agency resolve your dispute at the resolution meeting, you both must sign a legally binding agreement that:

- Sets forth what will now happen in writing
- Is signed by both you and an educational agency representative
- A court can enforce

Legally binding means that if you or the educational agency do not stick to the agreement, a court can require either you or the educational agency to do so.

If either you or the educational agency decide not to agree after signing the agreement, either of you can cancel the agreement within three business days of signing it.

If you and the educational agency have reached an agreement about the due process complaint before the 30-day resolution period is over, the complaint will be closed and there will be no due process hearing conducted.

The Hearing Process

A due process hearing must be scheduled and conducted at a location and time reasonably convenient for you and the educational agency. The impartial hearing officer will contact you and the educational agency at the same time when communication is needed during the hearing process. In other words, all contact between the impartial hearing officer, you, and the educational agency will happen together and not separately.

The 45- day timeline includes the due process hearing and the window for the impartial hearing officer to make a decision. The 45-day due process hearing timeline begins after the 30-day resolution period ends, or after one of the following happens:

- You and the educational agency agree in writing to waive (not to have) the resolution meeting, or
- Once you begin discussing the issues in a resolution meeting or mediation meeting, you and the educational agency agree in writing that no agreement is possible, or

- You and the educational agency agree in writing to go beyond the 30-day resolution period so you can continue to mediate, and then either you or the educational agency withdraw from the mediation process.

Unless the impartial hearing officer agrees to give more time (or in other words, grants an extension), at the request of one of the parties within the 45-day hearing timeline, the following will take place:

- The hearing must be held.
- A hearing decision must be reached.; and
- A copy of the decision must be sent by certified mail to both you and the educational agency, as well as to the Ohio Department of Education and Workforce.

At least five days before the due process hearing, you and the educational agency must participate in a disclosure conference. This is a conversation to make sure that both you and the educational agency have the information that will be presented at the hearing.

HEARING RIGHTS

In a due process hearing, you have the right to:

- Have your child who is the subject of the hearing present
- Request that the hearing be open to the public
- Have your lawyer or people with special knowledge of children with disabilities be with you and advise you
- Present evidence (proof), confront, and cross-examine (question) witnesses and require the attendance of witnesses (again, the hearing will address only the issues you raised in your due process complaint, unless the educational agency agrees to let you raise new issues)
- Forbid any evidence being introduced that has not been shown to you at least five business days before the hearing
- At no cost to you, receive a word-for-word written (or electronic, if you prefer) record of the hearing, and any records of findings and decisions

If You Are Accompanied by Any Advocates Who Are Not Lawyers

If you are accompanied by any advocates who are not lawyers, these individuals are not entitled to receive attorney's (lawyer's) fees (or any fees for their services) from the other party. The advocate cannot practice law at the hearing and the advocate's involvement may be limited during the proceeding.

Expedited Due Process Complaints And Timeline

An expedited due process hearing is a hearing with faster timelines that facilitate faster resolution of certain special education disputes. Either you or the educational agency can submit a request for an expedited due process hearing in these situations only if:

1. You disagree with an educational agency's decision about your child's educational placement (program or services), and this was the result of the school disciplining your child; or
2. You disagree with the results of a manifestation determination; or

3. The educational agency believes your child's current educational placement (program or services) is substantially likely to result in injury to your child or others.

The expedited due process complaint timeline includes a resolution period of 15 calendar days and a hearing timeline of 20 school days. The educational agency must schedule a resolution meeting within seven calendar days of receiving a due process complaint. After an expedited due process hearing ends, the hearing officer has 10 school days to write a final decision and provide it to you and the educational agency. No extra time will be added during an expedited due process complaint.

Appealing A Decision

The decision made by the impartial hearing officer at the conclusion of the due process hearing is final unless the aggrieved party submits an appeal directly with the Ohio Department of Education and Workforce within 45 days of getting the decision. An aggrieved party is either the parent or the educational agency when the hearing officer's decision is unfavorable to the party (which means that the party did not prevail).

HOW TO APPEAL THE HEARING OFFICER'S DECISIONS

To appeal the hearing officer's decision, you must send or email a copy of your appeal in writing to the Department and a copy of the appeal to the superintendent of your educational agency. The Department will name a state-level review officer (or "review officer") to conduct an impartial review of the due process decision. The Ohio Department of Education and Workforce will pay for the review officer.

The review officer will examine the records of the entire due process hearing. In addition, the review officer will make sure the hearing followed the due process requirements and seek additional evidence as determined necessary. The review officer can request oral or written arguments from you and the educational agency. If the review officer conducts a hearing to consider oral arguments, all the hearing rights (see page 25) that are afforded to you in a due process hearing are likewise afforded to you during the hearing before a review officer.

TIMELINE/EXTENSIONS

Within 30 days after the Department receives your request for a state-level review, the review officer will issue a decision, unless he or she grants an extension, which can be requested by either the parent or the educational agency (however, note that time extensions cannot be granted during an appeal from an expedited due process hearing). You may also request written copies or word-for-word electronic records of both the review officer's findings and the decisions.

APPEALING TO A FEDERAL OR STATE COURT

The state-level review decision is final unless it is appealed to a federal or state court. The party aggrieved (that does not prevail) by a review officer's decision has the right to file a lawsuit in a federal district court within 90 days from the date of the review officer's decision or in the court of common pleas of the county in which your child's educational agency is located within 45 days of receiving notice of the review officer's decision. The court will review the records, hear more evidence at the request of the parties, and then make a final decision based on the records and the evidence presented. You must pay the court costs for an appeal you file in court but if you prevail, you may be entitled to court fees and attorney fees at the discretion of the court.

Child's Status During Due Process

- Your child must remain or stay put in the current educational placement while a due process complaint is in progress, unless you and the educational agency agree that your child's educational placement can change.
- Your child's current educational placement is the one described in his or her most recently implemented IEP.
- If your child has been placed in an IAES (interim alternative educational setting, or a temporary learning setting outside of the school) because of discipline by the educational agency, your child stays in that educational setting until the hearing officer makes a decision or until the educational agency's discipline of your child ends, whichever happens first.
- If the due process complaint involves initial admission to the educational agency, your child, with your permission, must be placed in the educational agency until due process is completed.
- If the due process complaint involves the application to begin services under the school age part of the law because your child has turned three years old and is no longer eligible for services under the early intervention part of the law, the educational agency is not required to provide the early interventional services that your child has not been receiving.
- If your child is found eligible for special education services and the parent consents to the initial provision of services, then the educational agency must provide those services that are not in dispute between the parent and the educational agency.
- If the review officer agrees with you that a change of placement is appropriate, the placement must be treated as an agreement between the state and the parents for purposes of stay put.

To Request an Appeal of the Impartial Hearing Officer's Decision

You may object to the decision of the impartial hearing officer (appeal) in writing within 45 calendar days of receiving the decision. Send your appeal to:

Ohio Department of Education and Workforce
Office for Exceptional Children Dispute Resolution Section
25 South Front Street Mail Stop 409
Columbus, Ohio 43215
OECdueprocess@education.ohio.gov

For additional assistance, please call the Ohio Department of Education and Workforce Office for Exceptional Children at (614) 466-2650, or toll-free at (877) 644-6338.

Attorney's Fees

You may choose to hire an attorney (lawyer) at any time to represent you during the due process (or proceedings on appeal of a due process decision), but you must pay your own legal costs. If you choose to hire an attorney and you prevail (receive a favorable decision) in an action or a proceeding in federal or state court related to your due process (making you the prevailing party), the court can order the educational agency to pay you reasonable attorney's fees.

IF THE EDUCATIONAL AGENCY PREVAILS

If the educational agency prevails, the court can order you to pay the reasonable attorney's fees of the educational agency. The court may order you or your attorney to pay the attorney's fees of the Ohio Department of Education and Workforce or your educational agency if they prevail and the court decides any of the following:

- That the action was frivolous, unreasonable, or without foundation
- That you continued to bring legal action after the action clearly became frivolous, unreasonable, or without foundation
- That the action was brought for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of legal fees

IF THE COURT ORDERS LEGAL FEES TO BE REPAID TO YOU OR THE EDUCATIONAL AGENCY

If the court orders legal fees to be repaid to you or to the educational agency, the court will decide the amount that is reasonable. Attorney's fees must be based on typical rates in the community where the action or proceeding was brought, and on the type and quality of services provided. There are certain limits on the court's ability to award attorney's fees.

A court cannot award attorney's fees in these instances:

- Where the educational agency makes a written offer to settle the dispute within 10 days of the proceeding, you do not accept the offer within the 10 days, and the ruling in the case is less favorable to you than the proposed settlement the educational agency offered
    - However, a court may award fees to you if you prevail in the action and the court decides that you were substantially justified (had a good reason) not to accept the educational agency's settlement offer.
- For your lawyer's participation in an IEP meeting, unless that meeting is called as a result of an administrative hearing or court action
- For your lawyer's participation in a resolution meeting

REDUCING ATTORNEY'S FEES

The court may also reduce an award of attorney's fees if:

- During the course of the proceeding, you or your lawyer unreasonably delayed the final solution to the dispute
- The amount of your attorney's fees is unreasonably higher than the hourly rate that is the prevailing rate in the community for similar services by attorneys of reasonable comparable skill, reputation, and experience
- The time spent and legal services you received were excessive (too much) given the nature of the action or proceeding

- Your lawyer did not provide appropriate information to the educational agency in your complaint notice

None of the above apply if the court finds that the state or educational agency unreasonably delayed the final resolution of the action or proceeding, or otherwise violated the IDEA's procedural safeguards.

Discipline

Disciplinary Procedures for Children With Disabilities

In some cases, your educational agency may have to continue providing special education services to your child with a disability, even after the educational agency has suspended, expelled, or otherwise removed your child from his or her current educational placement (refer to your child's IEP for more information on his or her current educational placement).

EDUCATIONAL PLACEMENT AND ALTERNATIVES

If your child is removed from his or her current educational placement for violating educational agency rules for fewer than 10 consecutive school days, the educational agency does not have to provide your child special education services during that time. If your child is removed from school *for more than 10 consecutive school days,* the school must continue to provide your child with special education services, even if it is in another educational setting (for example, another classroom, building, or at the student's home).

If the educational agency removes your child from his/her current placement for more than 10 consecutive school days in the same school year, it is considered a change of your child's educational placement.

If the educational agency has removed your child from his or her current educational placement on separate occasions (a series of removals) that add up to more than 10 days in a school year, the school must determine if those removals constitute a change of your child's educational placement.

In making this determination, the school must consider the following factors:

- Length of each time your child was removed
- Total amount of time your child was removed
- How close together the removals were
- Similarity of your child's behavior to his or her behavior in prior incidents in which your child was removed

When changing a child's educational placement because your child did not follow school rules, the educational agency, parent, and relevant members of the IEP team, as determined by the parent and the educational agency, must meet to conduct a manifestation determination review. The purpose of the manifestation determination review is to determine if your child's behavior was caused by or had a direct and substantial relationship to your child's disability.

Manifestation Determination

Before changing your child's educational placement for disciplinary reasons, the educational agency must take certain steps to protect your child's rights. One step is to hold a manifestation determination review meeting. This is a meeting to determine if your child's behavior was caused by or had a direct and substantial relationship to your child's disability. In other words, was your child's behavior caused by his or her disability? The student's IEP team will determine whether or not your child's behavior was caused by the disability within 10 school days of any decision to change the educational placement.

THE MANIFESTATION DETERMINATION REVIEW MEETING

At the manifestation determination review meeting, you and the other members of the IEP team review relevant information including your child's IEP, teacher observations and any related information provided by you.

If the behavior is a manifestation of your child's disability, your child will be returned to the placement from which he or she was removed, unless the IEP team agrees to a change of placement.

If your child's behavior is found to be a manifestation of the disability, the IEP team must:

1. Start a functional behavioral assessment within 10 days and complete it as soon as possible. A functional behavioral assessment is a review of your child's behavior and is used to determine what in your child's environment triggers inappropriate behavior, as well as which replacement behaviors need to be taught so your child will receive positive results and feedback, and
2. Begin a behavioral intervention plan for your child if the functional behavioral assessment has already been completed and is related to the discipline at hand (a behavioral intervention plan addresses the behaviors that are not appropriate for school and specific ways the school will try to reduce them), or

3. If a behavioral intervention plan already exists, review the plan and make any needed changes within 10 days.

Interim Alternative (Temporary And Different) Educational Setting

The decision to place your child in an interim alternative educational setting (IAES) is made by your child's IEP team. An IAES is a different and temporary placement for your child to receive special education. On the date the IEP team makes the decision to change your child's placement to an IAES because your child has violated a school rule, the educational agency must notify you of the decision and give you the Guide to Parent Rights in Special Education.

Even if your child's behavior was caused by your child's disability, the educational agency may remove your child to an IAES for up to 45 school days if your child has:

- Carried a weapon
- Knowingly possessed or used illegal drugs, or sold or tried to buy or sell a controlled substance (for example, narcotics)
- Inflicted serious bodily injury on another person

This generally applies whether your child acted out the behavior on his or her way to school, at school, or at a school function.

If your child's behavior *was not directly caused by your child's disability*, your child can be placed in an IAES for the same amount of time that a child without a disability would be disciplined.

If your child's behavior *was directly related to or caused by your child's disability* and your child violated school rules, your child must be returned to the education setting from which he or she was removed, unless you and the educational agency agree to a change of placement as part of the change in the behavioral intervention plan or IEP.

However, if the educational agency believes that keeping your child in his or her current educational placement (according to your child's IEP) is very likely to result in injury to your child or others, the educational agency may call an IEP meeting to discuss this concern. If you and the educational agency disagree about the change of placement, the educational agency may ask for an expedited due process hearing — in other words, it may ask for a due process hearing that will be fast-tracked for a quicker resolution (see expedited due process on page 25).

When Your Child's Behavior is Due to a Suspected Disability

If your child does not have an IEP, you may ask the school to treat your child as a child with a disability if any of these things happened before your child violated a school rule:

- You told school administrative staff or your child's teacher, in writing, that you think your child may need special education services, or
- You requested an evaluation for your child, or
- Your child's teacher or other school staff member told the director of special education or other supervisory staff directly of specific concerns about your child's pattern of behavior.
- Your educational agency would not be expected to treat your child as a child with a disability if you have refused to give the agency permission to evaluate your child for special education. This is also true if you refused special education and related services for your child or if your child was evaluated and the team decided your child did not have a disability. The educational agency can discipline your child in the same manner it would discipline students without disabilities who behave in the same ways.

IF YOU DO NOT AGREE WITH A CHANGE OF EDUCATIONAL PLACEMENT OR MANIFESTATION DETERMINATION REVIEW HEARING FINDING

You can request an expedited due process hearing to challenge a decision to change your child's current educational setting due to discipline or to challenge the findings of a manifestation determination review (see due process information on page 25). The impartial hearing officer will decide during the expedited due process hearing if the educational agency followed requirements when it changed your child's placement or if the educational agency has shown that your child's behavior was or was not a manifestation of your child's disability.

As noted above, the educational agency may request an expedited due process hearing if the educational agency believes that continuing your child's placement is very likely to result in injury to your child or others (see expedited due process on page 25).

Unilateral Placement of Children with Disabilities by Parents in a Private School at Public Expense

Reimbursement Determination Process

If you choose to place your child in a private school, your educational agency does not have to pay for the cost of education or special education and related services at the private school, as long as the educational agency has offered your child a free appropriate public education (FAPE) in the educational agency. If you believe that your educational agency failed to provide your child with FAPE, you have the option to file a due process complaint where a hearing will be conducted and an impartial hearing officer will issue a decision as to whether the educational agency offered FAPE to your child (see due process information on page 24). If it is determined by an impartial hearing officer during due process that your educational agency did not provide FAPE, the hearing officer can decide you have a right to be reimbursed (paid back) for your cost of enrolling your child at a private school.

REDUCTION OR FORFEITURE OF REIMBURSEMENT

How much the educational agency may be required to reimburse you may be reduced, or you may forfeit reimbursement altogether, if any of the following occur:

- At the IEP meeting that occurred before you removed your child from the school, you did not tell the school that you were not going to accept the educational placement proposed by the IEP team and tell them about your concerns, and that you planned to enroll your child in a private school
- You did not tell the school in writing at least 10 business days before withdrawing your child from the educational agency that you were not accepting the IEP and you planned to enroll your child in a private school (note that these 10 business days include holidays that fall on weekdays)
- If, before removing your child from the school, the educational agency gave you proper written notice that it planned to evaluate your child, and you did not make your child available for the evaluation
- A court determines that you acted unreasonably

PROTECTION OF REIMBURSEMENT

The reimbursement (amount you are to be paid back) cannot be reduced, or repayment cannot be denied to you, if any of the following occur:

- The educational agency prevented you from providing notice
- The educational agency did not tell you that you were required to provide notice
- Providing the notice could result in physical harm to your child.

Also, a court or hearing officer may find that the cost of reimbursement may not be reduced or denied to you for failure to provide this notice if:

- You cannot read or write in English, or
- Providing the notice could result in serious emotional harm to your child.

Parent Notification of Scholarship Programs for Students with Disabilities

When Notification Happens

Each time an educational agency completes an evaluation for a child with a disability, or begins developing, reviewing, or revising a child's IEP, the educational agency must tell you about the Autism Scholarship Program and the Jon Peterson Scholarship Program.

AUTISM SCHOLARSHIP PROGRAM

For information on the Autism Scholarship Program, visit the Ohio Department of Education and Workforce website at education.ohio.gov and type ***Autism Scholarship Program*** in the search box, or email autismscholarship@education.ohio.gov.

JON PETERSON SPECIAL NEEDS SCHOLARSHIP PROGRAM

If your child is receiving special education services, you may qualify for the Jon Peterson Special Needs Program.

For information on the Jon Peterson Special Needs Scholarship Program, visit the Ohio Department of Education and Workforce website at education.ohio.gov and type ***Jon Peterson Scholarship*** in the search box, or email peterson.scholarship@education.ohio.gov.

Additional Information

Information on scholarship programs is available on the Ohio Department of Education and Workforce website at education.ohio.gov.

For more information or questions on these scholarship programs, contact The Office of Nonpublic Educational Options at (614) 466-5743, or toll-free at (877) 644-6338.