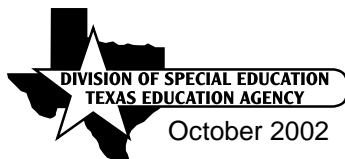


# Notice of Procedural Safeguards

## **Rights of Parents of Students with Disabilities**



# **Notice of Procedural Safeguards Rights of Parents of Students with Disabilities**

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# Notice of Procedural Safeguards

## Rights of Parents of Students with Disabilities

### ■ What Is This Document?

This document gives you as a parent of a child with a disability, a description of your legal rights, or *procedural safeguards*, under the Individuals with Disabilities Education Act (IDEA). The term *parent* includes legal guardians and surrogate parents.

The document begins by defining several common terms that are used frequently by the school and throughout this document. Then it explains your specific rights related to certain activities or areas that impact your child. Additional information regarding the IDEA is available in a companion document, "A Guide to the Admission, Review, and Dismissal Process," that is available from your school.

### ■ Why Do You Need This Document?

This document will provide you with critical information that may help you make decisions about the education of your child. Not all parts may seem important to you at this time, but understanding your rights will make a positive difference in your child's education.

### ■ Frequently Used Terms in This Document

#### What is the IDEA and What is a FAPE?

The IDEA stands for the *Individuals with Disabilities Education Act*. It is the federal law that requires public schools to provide a *free appropriate public education* (FAPE) to eligible children with disabilities. A FAPE means special education and related services that are provided as described in your child's individualized education program (IEP), at no cost to you, the parent.

#### What is an IEP?

This stands for *Individualized Education Program*. It is a written document describing the educational program of an eligible child with a disability. It includes measurable annual goals and the amount and type of special education and related services that your child will receive. It also tells how your child will be taught the general curriculum, which is called the Texas Essential Knowledge and Skills (TEKS). The IEP is developed by an ARD committee.

#### What is an ARD Committee?

This stands for *Admission, Review, and Dismissal Committee*. Each eligible child with a disability has an ARD committee. As a parent, you are a member of your child's ARD committee. You play a very important role in making decisions. An ARD committee determines whether your child is eligible for special education (admission). If your child is eligible, the ARD committee develops an IEP at least once a year (review). Lastly, an ARD committee determines whether your child is no longer eligible for special education (dismissal). This committee is sometimes called an *IEP team*.

#### What is Written Notice?

IDEA requires a school to tell parents of children with disabilities when it is considering making certain decisions or taking certain actions. The information must be in writing and be given at least five school days in advance. This is called *written notice*. The purpose is to provide you with the information you need to be able to participate in the decision-making process.

The notice must be written in language that is understandable to the general public. It must be translated into your native language or other mode of communication that you use, unless it clearly is not feasible to do so. If your native language or other mode of communication is not a written language, the school must translate the notice orally or by other means so that you understand it.

The school must give you written notice before it takes or refuses to take any action to:

- identify your child as a student who needs special education;
- evaluate your child;
- place your child in a special education program;
- change your child's placement; or
- change the special education services provided to your child.

A written notice must:

- describe what the school is proposing to do or refusing to do;
- explain why the action is proposed or refused;
- describe other options that were considered and why those options were rejected;
- describe each evaluation procedure, test, record, or report supporting what is proposed or refused;
- describe any other factors related to what is proposed or refused;
- tell you that you are protected under certain procedural safeguards, and how to get a copy of these rights; and
- give you the contact information for people or organizations that can help you understand the your rights related to special education.

### **What is Parent Consent?**

*Consent* is your written permission. Without your consent, the school cannot evaluate your child for special education or determine if your child needs special education. The school also needs your consent to initially place your child in a special education program, and to reevaluate your child after your child begins to receive special education services.

Consent is more than a signature. Your consent indicates that:

- you were given all the relevant information in your native language or other mode of communication;
- you understand and agree in writing to the activity; and,
- you understand that your consent is voluntary and that it can be revoked at any time.

The written consent must:

- describe what you are agreeing to, and,
- if records are to be released, describe which records and to whom they will be sent.

If you refuse to give consent for a particular activity, the school cannot use that refusal to withhold other services from your child. If you

give your consent and then revoke it, your revocation will not be retroactive.

If you refuse to give consent, but the school believes that if it does not take action, your child's right to a FAPE will be violated, the school may request a *due process hearing*. A hearing officer will determine if the school must proceed without your consent.

### **What are Mediation, a Complaint, and a Due Process Hearing?**

These are three options you have to resolve disagreements that you and your school cannot work out locally. They are available through the Texas Education Agency (TEA). The section, "Resolving Disagreements," provides detailed information about these processes.

### **■ What Are Your Rights Related to Identification and Referral?**

If you or someone else believes your child has a disability and refers your child for an initial evaluation for special education, the school must give you written notice that your child will be considered for special education. The school also must give you a copy of your procedural safeguards.

The school will gather information to determine if your child should be evaluated. The evaluation is part of a FAPE and must be provided at no cost to the parent. This includes evaluations and reports from doctors needed to determine eligibility.

If you refer your child, but the school refuses to evaluate, the school must give you written notice that includes the reasons it determined an evaluation was not needed. At that point, you may file a complaint with TEA or request a due process hearing.

### **■ What Are Your Rights Related to Evaluation and Reevaluation?**

#### **Initial Evaluation**

If your school determines that there should be an initial evaluation to determine if your child has a disability and a need for special education, you and the other members who would make up an ARD committee, will, if appropriate, review existing data and determine what additional

evaluations are needed. The school must give you written notice about the evaluation and the school must have your written consent before it can begin to evaluate your child. After the evaluation is complete, the school must give you a copy of your child's evaluation report.

### **Reevaluation**

At least every three years after the first evaluation, the school must reevaluate your child. The ARD committee members review existing data and determine if additional evaluations are needed. If additional evaluations are needed, the school must give you written notice of the evaluation and a copy of your procedural safeguards. The school must have your written consent before it can begin the additional evaluations. If the school makes a reasonable effort to obtain your consent, but you do not respond to the school, the school may go ahead and reevaluate your child without your consent.

### **Full Evaluation**

Your school must use a variety of evaluation tools and strategies. The ARD committee will use the resulting information to determine if your child is eligible for special education and, if so, design an IEP for your child. Therefore, the evaluation must assess your child in all areas related to the suspected disability. It must be comprehensive enough to identify all of your child's needs for special education and related services even if the needs are not commonly related to the disability.

### **Nondiscriminatory Evaluation**

Your school may not use testing or evaluation materials or procedures that are biased against your child because of race, culture, language, or disability. These materials and procedures must be provided and administered in your child's native language or mode of communication, unless this is clearly not feasible.

### **Independent Educational Evaluation**

An independent educational evaluation (IEE) means an evaluation conducted by a qualified person who is chosen by you and is not employed by your school. When you ask for an IEE, the school must give you information about its evaluation guidelines and where to get the

independent evaluation. The IEE must meet the same guidelines the school uses for its own evaluations. This includes the qualifications of the examiner and the location of the evaluation.

If you disagree with an evaluation of your child by your school, you can ask the school to pay for an IEE. If you ask the school to pay for an IEE, the school must either pay for it or request a due process hearing without unnecessary delay to show that its evaluation is appropriate. The school may ask you why you disagree with its evaluation, but the school cannot unreasonably delay or deny the IEE by requiring you to explain your disagreement.

The school does not have to pay for the IEE if it can show at a due process hearing that the school's evaluation is appropriate. Also, the school does not have to pay for the IEE if it can show that the IEE does not meet the school's IEE guidelines. If the hearing officer decides that the school's evaluation is appropriate, you still can get an IEE, but the school does not have to pay for it.

You always have the right to get an IEE at your own expense. No matter who pays for it, the school must consider the IEE in any decision about providing a FAPE to your child. You may also present an IEE at a due process hearing. If a hearing officer orders an IEE, the school must pay for it.

### **■ What Are Your Rights Related to ARD Committee Meetings?**

You and your school make decisions about your child's educational program through an ARD committee. The school must hold an ARD committee meeting to identify your child as requiring special education or related services; and to develop, review, or revise your child's IEP.

### **Parent Participation**

You are an important member of your child's ARD committee. You have a right to be actively involved in the ARD committee meeting and to discuss any aspect of your child's education program. While you are not required to attend, your school must invite you to each meeting of your child's ARD committee.

Your school must give you written notice of a scheduled ARD committee meeting at least five school days before the meeting, unless you agree otherwise. The notice must meet the basic requirements for written notice. In addition, this notice must state the purpose, time, and place for the meeting, and who will attend. It must tell you that you may bring others to the meeting to help you or represent you. The school also must give you a copy of your procedural safeguards.

The meeting must take place at a time and place agreed upon by you and the school. The school must make reasonable efforts to find a time that you are able to meet. If needed, the school must use other methods—telephone, letter, or personal conferences—to allow you to participate before or during the meeting. If you choose not to attend or participate, or, after reasonable attempts by the school to reschedule, the school may hold the meeting without you.

If you have a hearing impairment or use a native language other than English, the school must provide an interpreter at the meeting.

The school must give you a copy of your child's IEP. If Spanish is your native language and you are unable to speak English, the school must provide you with the IEP in Spanish. It may be either a written or audiotaped translation. If your native language is not Spanish and you cannot speak English, the school must make a good faith effort to provide you with a written or audiotaped translation of the IEP in your native language.

### **Frequency**

The ARD committee must meet at least once a year and must have an IEP for your child in effect by the beginning of each school year. At any time, you may request an ARD committee meeting to be held at a time both you and the school can agree on. The school must either hold the meeting or ask for help through the TEA mediation process.

### **Disagreements about the IEP**

If you disagree with the school about the IEP, the school must offer to recess the ARD committee meeting for no more than 10 school days. If the school does not offer a recess, you may request one. This recess gives you and the school time to gather more information that will

help you reach agreement. If you and the school still cannot agree, the school must implement the IEP that it determines is appropriate for your child. The school must give you written notice that this is what will happen. The reasons for the disagreement must be stated in the IEP. You may write your own statement about the disagreement, if you choose.

If you cannot reach agreement, you may request mediation, file a complaint, or ask for a due process hearing. If you request a due process hearing, your child will stay in the current placement until a hearing officer makes a decision.

### **■ What Are Your Rights Related to Discipline?**

Discipline is not a substitute for thoughtful, planned instruction that targets inappropriate behaviors related to a child's disability. If your child's behavior impedes your child's learning or the learning of other children, the ARD committee must consider *positive* intervention, strategies and supports to address those behaviors. If the ARD committee decides that these are needed, they must be documented in the IEP. If your child violates school rules, you and your child have certain rights throughout the school's discipline process.

#### **Short-term Removals**

If your child violates school rules, the school may remove your child from the current placement for 10 or less consecutive or cumulative school days in a school year, just as it does when disciplining children without disabilities. The school is not required to provide educational services during these short-term removals if it does not provide them to students without disabilities. If the school chooses to suspend your child, the suspension may not exceed three school days.

#### **Long-term Removals**

##### ***Removals for more than 10 school days***

If your child is removed from the current placement for more than a total of 10 school days in a school year, your child has certain rights. These apply to removals such as suspensions, expulsions, and placement in disciplinary alternative education programs. Beginning on

the eleventh school day of removal, the school must provide your child with services to the extent necessary to allow progress in the general curriculum and advancement toward achieving the IEP goals.

Within 10 business days after the eleventh day of removal, the school must:

- give you written notice of an ARD committee meeting and give you a copy of your procedural safeguards; and
- hold an ARD committee meeting to:
  - review your child's educational program in relation to the behavior;
  - if your child already has a behavioral intervention plan (BIP), review it and its implementation, and change it as needed to address your child's behavior; and
  - if the school did not previously complete a functional behavioral assessment (FBA) and follow a BIP for your child, develop an assessment plan to address your child's behavior.

After the assessments in the plan have been completed, the ARD committee must meet as soon as possible to develop a BIP and make sure it is implemented.

### ***Removals that are a change of placement***

Your child has certain additional rights when there is a *change of placement* for disciplinary reasons. Your child's placement is changed if the removal is for more than 10 consecutive school days, or if a series of shorter removals totaling more than 10 school days forms a *pattern*. When deciding if there has been a pattern of removals, the school must consider factors such as:

- the length of each removal;
- the total amount of time the child has been removed; and
- how close the removals are to one another.

If a change of placement based on your child's behavior is being considered for your child, not later than 10 school days after the decision to take action is made, the school must give you written notice of an ARD committee

meeting, a copy of your procedural safeguards, and hold an ARD committee meeting. The ARD committee must determine the relationship between your child's disability and the misconduct by:

- reviewing all relevant information about your child in terms of the behavior;
- determining if your child's IEP and placement were appropriate in relation to the behavior;
- determining if your child's IEP was followed in relation to the behavior; and
- determining whether your child's disability impaired her ability to understand the impact and consequences of the behavior and the ability to control the behavior subject to disciplinary action.

This decision-making process is called a *manifestation determination review* (MDR). If any of these standards were not met, then your child's conduct must be considered a *manifestation* of the disability. Generally, this means that your child cannot be disciplined for the behavior by changing the placement. For example, your child could not be removed to a disciplinary alternative educational setting.

If the ARD committee decides that your child's behavior was not related to the disability, then your child can be disciplined in the same manner as non-disabled students. However, beginning on the eleventh day of removal, the school must provide your child with services to the extent necessary to allow appropriate progress in the general curriculum and advancement toward achieving the IEP goals. This applies even when your child is expelled, suspended, or placed in a disciplinary alternative education setting.

If you disagree with the decisions made, you have the right to request an expedited due process hearing.

### **Placement in an Interim Alternative Educational Setting (IEAS)**

#### ***What is an IEAS?***

An *interim alternative educational setting* (IAES) is a temporary educational placement for discipline purposes for a period of up to

45 calendar days. It is different than your child's current placement. In Texas, one type of interim alternative educational setting (IAES) may be a *discipline alternative education program* (DAEP).

### ***When can the school place your child in an IAES?***

- **Drugs or Weapons**—School authorities may remove your child to an IAES for up to 45 calendar days if your child:
  - carries a weapon to or possesses a weapon at school or a school function, or
  - knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function.
- **Dangerousness**—An impartial hearing officer may order your child to be removed to an IAES in a dangerous situation. For example, your child may be required to attend an IAES if the hearing officer decides that keeping your child in the current educational placement is substantially likely to result in injury to your child or to others.

Your child can be removed for up to 45 days for these behaviors even if they are a manifestation of your child's disability.

The ARD committee (for drugs or weapons) or the hearing officer (for dangerousness) can decide the IAES in which your child is placed. In either case, the IAES must:

- allow your child to continue to progress in the general education curriculum;
- provide the services and modifications described in your child's IEP that will enable your child to meet the IEP goals; and
- include services and modifications that are designed to prevent the behavior from recurring.

As a parent, you have the right to challenge the decision to place your child in an IAES. You may do so by requesting an expedited due process hearing through the TEA. During the due process hearing, your child will remain in the IAES until the hearing officer gives a decision, or until the removal period ends, unless

you and the school agree otherwise. Your child may not be placed in the IAES for more than 45 calendar days, unless a due process hearing officer issues an order extending the period of time your child is removed.

### **Protection for Students Not Yet Eligible for Special Education**

If the school had knowledge that your child was a student with a disability before the behavior that resulted in the disciplinary action, then your child has all the rights and protections that a student with a disability would have under federal law.

If you request an initial evaluation of your child during the time period in which your child is subjected to disciplinary actions, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

### **State Law and Rules on Confinement, Restraint and Time-Out**

Your school must protect the health and safety of your child and others. When dealing with discipline or behavior issues, your school cannot use any practice that is intended to injure or demean your child or deprive your child of basic human necessities.

#### ***Confinement***

State law prohibits schools from confining students with disabilities. This means that your school cannot lock your child in a room, closet or other specially designed space. There is one exception to this requirement. Your school can confine your child only if he or she has a weapon and confinement is necessary to prevent harm to your child or others.

#### ***Restraint***

Restraint is the use of physical force or a mechanical device to restrict your child's free movement. Things such as holding your child's hand or using adaptive equipment to meet your child's educational needs are not restraint. The school can restrain your child only in an emergency that involves the threat of serious

harm to your child or others or the threat of serious property damage. If the school restrains your child, the school must try to reach you on the day restraint is used. The school must also notify you in writing.

### ***Time-Out***

There are also requirements that the school must meet if the school repeatedly uses time-out to deal with your child's behavior. The school cannot use force or threats of force to put your child in time-out. Time-out cannot take place in a locked setting and no one is allowed to physically prevent your child from leaving time-out.

## ■ **What Are Your Rights Related to Accessing Your Child's Records?**

### **Timelines**

You, or someone who has your permission, have the right to review your child's entire education record including the parts that are related to special education. When you ask to review the records, the school must make them available within 45 calendar days. However, the school must let you review the records in time for you to use them for any ARD committee meeting or due process hearing.

### **Clarification, Copies, and Fees**

If you ask, the school must explain and interpret the records, within reason. If you ask, the school must provide a list of the types and locations of all of your child's records. The school must give you copies if that is the only way you will be able to inspect and review the records.

The school may not charge a fee to search for or to retrieve any education record about your child. However it may charge a fee for copying, if the fee does not keep you from being able to inspect and review the records.

### **Access by Others**

There are other people who have a right to see your child's records. Your school must keep records of everyone (except for you and authorized employees of the school) who reviews your child's special education records.

This record must include the name of the person, the date access was given, and the purpose for which the person is authorized to use the records.

### **Amending Records**

If you believe that information in the education records is inaccurate, misleading, or violates the rights of your child, you may ask your school to correct (amend) the information.

Within a reasonable time the school must decide whether to correct the information. If the school district refuses to correct the information as requested, it must inform you of the refusal and of your right to a records hearing. If you request the records hearing, the school must arrange and schedule the hearing. This is not a due process hearing and is not before a hearing officer appointed by the TEA.

During the records hearing, the school must determine whether the record is inaccurate, misleading, or otherwise in violation of the rights of your child. If, as a result of the hearing, the school refuses to make the corrections, it must inform you of this decision and of your right to place a statement in your child's education records.

This statement may comment on the information itself or it may give your reasons for disagreeing with the decision of the school. The school must keep your statement as part of your child's education record as long as the school maintains the part of the record you disagree with. If the school shares this part of the record with any person, your statement must also be included.

### **Texas Public Information Act**

The Texas Public Information Act also gives you the right to obtain copies of your child's education records. The Attorney General enforces the Public Information Act.

The toll free number you can call if you have questions is 1-877-673-6839.

You can find more information about the Texas Public Information Act at this website:

[http://www.oag.state.tx.us/opinopen/og\\_resources.htm](http://www.oag.state.tx.us/opinopen/og_resources.htm)

## ■ What Are Your Rights if You Choose to Send Your Child to a Private School?

### Children Ages 5-21

You may choose to place your child with a disability in a private school (including home schools). If you do, your child does not have a right to receive any of the special education services he or she would receive if enrolled in the public school. If you suspect that your child needs special education, the public school will provide an initial evaluation and reevaluations every three years.

The public school will hold an ARD committee meeting to determine if your child is eligible for special education and develop an IEP to provide a free and appropriate education for your child. However, the services in the IEP will be available to you only if you choose to enroll your child in the public school full-time. If you make it clear from the beginning that you will not place your child in the public school, the school does not need to develop an IEP.

Some special education services *may* be available to your child while enrolled in the private school, but the type and amount will be limited by how your public school decides to serve private school students. The school's decision is made after consulting with representatives of private school children with disabilities. The school determines how to use the limited federal funds that are designated for private school services. If a public school elects to provide any type of service to your child, then a *services plan* must be developed by a services plan committee. The services plan must include goals and benchmarks. It also contains those elements of a traditional IEP that are appropriate for your child and the services to be provided.

The process for developing the services plan is basically the same as it is for developing the IEP. The services plan committee has the same membership as an ARD committee, except it includes a representative of your private school. You must be given reasonable notice so that you can participate in the meetings of the committee.

You have the rights described in this document that are related to the areas of identification and evaluation of your child. These include the right to resolve disagreements

about identification and evaluation through mediation, the complaints process, and a due process hearing. When you disagree with the public school about other matters related to special education, including those related to your child's services plan, you have a right to file a written complaint with TEA, but you do not have a right to mediation or a due process hearing.

### Children Ages 3 and 4

If you choose to enroll your three- or four-year old child with a disability in a private school, you have the right to *dual enroll* your child. This means your child is enrolled in both the public school and the private school. Your child's ARD committee will develop an appropriate IEP. From the IEP, you and the school will determine which services will be provided and the location of those services.

You have the rights described in this document that are related to the areas of identification and evaluation of your child. These include the right to resolve disagreements about identification and evaluation through mediation, the complaints process, and a due process hearing. When you disagree with the public school about other matters related to special education, including those related to the development and implementation of the IEP, you have a right to file a written complaint with TEA, but you do not have a right to mediation or a due process hearing.

## ■ What Are Your Rights for Public Reimbursement if You Choose to Send Your Child to a Private School?

If your public school offers to provide an appropriate special education for your child in the public school, it is not required to pay for you to send your child to a private school. However, you and the public school may disagree about the appropriateness of the special education services being offered. If so, you have the right to ask for a due process hearing to determine if the public school must reimburse you for the cost of private schooling.

If your child is already receiving special education in the public school, you may believe that the special education services your child is receiving are not appropriate. If, as a result, you remove your child to enroll in a private school,

you still may ask for a due process hearing to determine if the public school must reimburse you for the costs of the private school.

At least 10 business days before removing your child, you should tell the school in writing that you are turning down their proposed placement and why, that you plan to enroll your child in a private school, and that you expect the school to pay for the private school. Or, you should provide this information to the ARD committee at the last ARD committee meeting before you remove your child. If you do not, even if the hearing officer agrees with your reasons for removing your child, payment may be denied or lowered.

The reimbursement may also be denied or lowered if, before you removed your child, your school gave you written notice that it planned to evaluate your child for reasonable and appropriate reasons, but you did not allow them to do so.

The hearing officer cannot reduce or deny the reimbursement because you did not provide the advance notice to your public school, if:

- you cannot read or write in English;
- giving the notice might result in harm to your child;
- the school kept you from providing the notice; or
- the school did not tell you in writing that you needed to give them notice.

## ■ What Are Your Rights When Your Child Turns 18?

### In general

At the age of 18, your child becomes an adult student. For the majority of students, all of the parent rights discussed in this document will transfer to your adult student at 18 years of age. However, you, the parent, will share with your adult student the right to receive all of the required written notices related to special education. The school must provide all notices to both you and your adult student. The transfer occurs without specific ARD committee action.

Although you will continue to receive notices, you will no longer have the right to

agree with, participate in, or refuse what is proposed in the notice. For example, a notice of an ARD meeting does not mean that you are invited to or may attend the meeting. Still, the school district or your adult student may invite you to participate as an individual who has knowledge or expertise related to the student.

On or before your child's 17th birth date, the IEP must include a statement that your child was informed that the parents' rights under IDEA will transfer to your child on the 18th birth date.

There are several exceptions and special situations that are explained below.

### **If the courts have appointed a guardian for the adult student**

If a court has appointed you or another person as your child's legal guardian, the parents' rights under IDEA will not transfer to your adult student. The legally appointed guardian will maintain the rights. On or before your child's 17th birth date, the IEP must document that the transfer of rights issue was discussed with the student.

### **If the adult student is incarcerated**

If your adult student is incarcerated, all of the IDEA-B rights will transfer to your adult student at age 18. You will not keep the right to receive notices related to special education. If a court has appointed you or another person as your adult student's legal guardian, the parents' rights under IDEA will not transfer to the adult student. The legally appointed guardian will maintain the rights.

### **If the student becomes an adult before the age of 18**

There are certain conditions described in Chapter 31 of the Texas Family Code that result in a child becoming an adult before age 18. If your child is determined to be an adult under this chapter, the rights under the IDEA-B will transfer to your child at that time.

## ■ What Are Your Rights if You Are a Surrogate Parent?

### **General Requirements**

The rights explained in this document belong

to parents of children with disabilities. However, if, after reasonable effort, your school cannot identify or find a parent of a child, or the child is a ward of the state, (for example, under the managing conservatorship of the Texas Department of Protective and Regulatory Services), the school must assign a surrogate parent. This person represents the child in all matters relating to the identification, evaluation, educational placement, and the provision of a FAPE to the child.

If your school appointed you to be a surrogate parent, all of the rights explained in this document belong to you. You may not be an employee of any public agency that is involved in the education or care of the child or have any other conflict of interest with the child. However, the school may pay you to serve as a surrogate parent. You must have the knowledge and skills needed to adequately represent the child. Within 90 calendar days of your appointment, you must complete an approved surrogate parent training program.

### **Foster Parent as Surrogate Parent**

If you are a foster parent of the child, you may serve as the surrogate parent if you meet the following requirements. You must complete an approved training program within 90 calendar days of being assigned as a surrogate parent. You also must meet the other requirements for surrogate parents, including no conflict of interest. The fact that you are a foster parent is not a conflict of interest. In fact, the school must give you preferential consideration.

If you ask to be a surrogate parent for your foster child who needs a surrogate parent, and the school tells you no, then the school must give you written notice within seven calendar days. The written notice must tell you specifically why you are being denied the right to serve as the surrogate parent. It must also tell you that you may file a complaint with the TEA.

### **■ Resolving Disagreements**

There may be times when you disagree with the actions taken by your school related to your child's special education. You are strongly encouraged to work with your school personnel to resolve differences as they occur. You may ask your school about local resolution options that are available to you, as they are to all parents

in your school district. Beyond the school's local options, you have the right to ask for TEA mediation services, write a complaint to the TEA, or request a due process hearing through the TEA. These options are described below.

### **TEA Toll-free Parent Information Line**

If you need information about your rights related to special education, you may call and leave a message at any time on the toll-free number operated by the TEA's Division of Complaints Management. A staff person will return your call during normal working hours. The telephone number is 1-800-252-9668.

### **TEA Mediation Services**

Mediation is one of the options to resolve disagreements about your child's identification, evaluation, educational placement, and FAPE. If both you and the school volunteer to participate, the TEA makes the arrangements. There is no cost to you or the school. Mediation may not be used to delay or refuse you a due process hearing or any other special education rights.

The TEA will automatically offer mediation services to you and the school each time you request a due process hearing. However, you or the school are encouraged to ask for the TEA's mediation services any time you and the school cannot resolve a disagreement about your child's educational program.

The TEA mediators are professionals who are qualified and trained in resolving disputes. They also are trained in special education laws. They are not employees of the TEA or any school district in Texas. The mediator cannot advise or advocate for any person in the mediation. The mediator does not speak for the TEA.

When you or the school asks for mediation or a due process hearing, a TEA staff member will contact you and the school to explain the mediation services. If you and the school agree to mediate, a mediator will contact you promptly to schedule the mediation session at a place and time convenient to you and the school. You may bring an attorney or someone else to help you in the mediation, but are not required to do so. You will have to pay for your own attorney or advocate to attend if you choose to bring one.

The discussions that occur during mediation are private. You may be asked to sign a confidentiality pledge as a condition of participating in mediation. What you and the school say during mediation cannot be used in a due process hearing or in a civil court proceeding.

If you and the school reach agreement, the mediator will put your agreement in writing and ask for your signature. You and the school must obey the agreement. If you have a complaint about the written agreement, you can write the TEA's Division of Complaints Management.

You can find more information about the mediation process on the TEA website at:

<http://www.tea.state.tx.us/special.ed/medcom/medinfo.html>

### **Complaint Investigations**

Any organization or individual may file a complaint with the TEA. If you believe your school has violated federal or state laws that apply to students with disabilities, you may send a written and signed complaint to the TEA at the address given at the end of this document.

If you need assistance or have any questions about filing a complaint, call the TEA toll-free parent information line at 1-800-252-9668.

Your written complaint should state the violation(s) you believe has occurred and state the facts on which you base your complaint. Within 60 calendar days after receiving your written complaint, the TEA will:

- conduct an independent investigation, including on-site investigation as needed, if the TEA determines such an investigation is necessary;
- give you an opportunity to give more information about the complaint;
- review all relevant information and determine whether the school has violated applicable laws; and
- give you a written decision that addresses each of the allegations and includes findings of fact, conclusions, and reasons for TEA's decision.

Filing a complaint does not take away your right to request mediation or a due process hearing. If you file a complaint and a due process hearing during the same time, the TEA will put your complaint on hold until the hearing officer gives you a written decision. The TEA will then continue its investigation of the issues that were not a part of the hearing officer's decision. The TEA's decisions regarding your complaint are final.

You can find more information about the complaint process on the TEA website at:

<http://www.tea.state.tx.us/special.ed/medcom/compinfo.html>

### **Impartial Due Process Hearing**

A due process hearing is a legal process that is similar to a civil court hearing. A hearing officer (similar to a judge) hears evidence from all parties and makes a binding decision.

You have the right to request a due process hearing about any of the following:

- identifying your child as needing special education;
- evaluating your child for special education;
- placing your child in special education; or
- your child's free appropriate public education (FAPE).

In certain situations, your school may request a due process hearing against you.

Before you sue your school in court about any of the matters listed above, you must request a due process hearing. If you have not participated in a due process hearing, your claims in court may be dismissed.

### **Requesting a Due Process Hearing**

To request a hearing, you or the person representing you must send a written request for a due process hearing to the TEA at the address at the end of this document. The TEA must send you a copy of your procedural safeguards upon receipt of your request.

A form you may use to request a due process hearing is available on the TEA website:

<http://www.tea.state.tx.us/special.ed/hearings/duepro.html>

You do not have to use the TEA form, but your request must contain the following information:

- your child's name, the address where your child resides, and the name of the school your child is attending;
- a description of the problem your child is having, including facts relating to the problem; and
- a resolution of the problem that you propose (to the extent known and available to you at the time).

You must send a copy of your due process hearing request to your school.

For due process hearings filed on or after August 1, 2002, you or the school must request a due process hearing within one year of the date you or the school knew or should have known about the alleged action that serves as the basis for the hearing request. This one year deadline for requesting a due process hearing is currently the subject of litigation. If you have questions about the deadline that applies to your case, you may contact the TEA Office of Legal Services at (512) 463-9720.

### **The Hearing Officer**

An impartial hearing officer appointed by the TEA will conduct the hearing. The hearing officer cannot be an employee of any agency involved in the education or care of your child and cannot have any personal or professional interest that would conflict with his or her objectivity in the hearing. The TEA pays the hearing officer, but that person is not an employee of the TEA.

The TEA maintains a list of current hearing officers. The list includes a statement of the qualifications of each hearing officer. You can request this list by faxing the TEA Office of Legal Services at (512) 475-3662.

It is also available on the TEA website:

<http://www.tea.state.tx.us/special.ed/hearings/officers.html>

### **Before the Hearing**

At least five business days before the due process hearing, you and the school must disclose to each other any evidence that will be introduced at the hearing. This includes evaluations completed by that date. The hearing officer may order that this exchange of information be done sooner. The hearing officer may refuse to allow any evidence that has not been shared on time.

### **During the Hearing**

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

- bring and be advised by your attorney and by people with special knowledge or training in the problems of children with disabilities;
- present evidence, and confront, cross-examine, and require the attendance of witnesses;
- bring your child and open the hearing to the public;
- have each session conducted at a time and place that is reasonably convenient to you and your child;
- obtain a written or electronic verbatim record of the hearing; and
- obtain written or electronic findings of fact and decisions.

### **The Decision**

The TEA must ensure that a final hearing decision is reached and mailed to the parties within 45 calendar days after the receipt of your request for a hearing. The hearing officer may grant a specific extension for a good reason at the request of either party.

The decision of the hearing officer is final, unless a party to the hearing appeals the decision to a state or federal court.

### **Child's Status During Proceedings**

During a due process hearing and any court appeals, your child generally must remain in the present educational placement, unless you and the school agree otherwise. This is commonly referred to as *stay-put*.

If the hearing involves an application for your child to be initially enrolled in public school, your child must be placed (if you

consent) in the public school program until the completion of all the proceedings.

If your child has been placed in an IAES for conduct involving drugs, weapons, or dangerousness, your child will remain in the IAES until the hearing officer gives a decision, or until the removal period ends, unless you and the school agree otherwise. (See the section "What are your Rights Related to Discipline?")

### **Civil Action**

You have the right to appeal the findings and decision of the hearing officer to state or federal court. The court must:

- receive the records of the due process hearing;
- hear additional evidence at the request of either party; and
- grant the relief the court determines is appropriate, based on a preponderance of the evidence before the court.

Effective with hearing officer decisions issued on or after August 1, 2002, an appeal must be initiated no more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. This 90-day appeal deadline has been overturned by state district court but is being appealed. If you have questions about the deadline that applies to your case, you may contact the TEA Office of Legal Services at (512) 463-9720.

If you want to sue your school about matters for which a due process hearing is available, you must have a due process hearing before filing suit in court. If you do not, your claims in court may be dismissed.

### **Award of Attorney's Fees**

If you win part or all of what you are seeking in a due process hearing or in court, a judge in a court proceeding may rule that you are the prevailing party. If so, the judge may order your school to pay for your attorney's fees and related costs, if they are reasonable.

This order may include attorney's fees and related costs for any due process hearing, for any appeal to court from a due process hearing, and for any mediation conducted after the filing of a due process hearing. This order will not include attorney's fees or costs for representation at ARD committee meetings, unless a due process

hearing officer or a judge ordered the ARD committee meeting.

Your right to have the school pay for your attorney's fees and costs may be limited in response to what you (or your attorney) do or fail to do in the process. First, if the school offers to settle the dispute on terms that are at least as favorable to you as what you win, the judge may rule that you cannot be awarded attorney's fees or costs for work done after the offer to settle.

The judge must enter this order if:

- the school makes an offer to settle the dispute more than 10 calendar days before a due process hearing;
- you do not accept the offer within 10 calendar days; and
- the judge or a due process hearing officer finds that the school's offer was at least as favorable to you as the order you received.

Second, the judge must reduce the amount of attorney's fees awarded to you whenever the judge finds that:

- you unreasonably protracted the dispute;
- the fees charged by your attorney unreasonably exceed the hourly rate charged by similar attorneys in your community for similar services;
- the time billed by your attorney is excessive considering the nature of the proceeding; or
- your attorney failed to give the school the required notice when your due process hearing was originally requested.

■ **Contact Information**

If you have any questions about the information in this document or need someone to explain it to you, please contact:

	SCHOOL DISTRICT	EDUCATION SERVICE CENTER	PARENT TRAINING INFORMATION CENTER
Contact Information	Name: Juanita C. Vela Director of Special Education United Independent School District 201 Lindenwood Telephone Number: (956) 717-6363 FAX (956) 764-6414	Name: Kelly Solis Region One ESC 1900 W. Schunior Edinburg, Texas 78539-2234 Telephone Number: (956) 984-6000 (956) 984-6206 Special Ed. FAX (956) 984-6189	Name: Project PODER 1017 N. Main Ave., Suite 207 San Antonio, Texas 78212 Telephone Number: (210) 222-2637 FAX (210) 475-9283 1-800-682-9747 TX only E-Mail: poder@tfepoder.org

If you need an explanation of the Agency’s complaint resolution options or assistance in requesting the Agency’s services, you may leave a message on the Division of Complaints Management toll-free Parent Information Line: **1-800-252-9668**. A staff member will return your call during normal business hours.

**When sending a written request for Agency services, please address your letter to the following address:**

Texas Education Agency  
 1701 N. Congress Ave.  
 Austin, TX 78701-1494

**To the attention of one of the following Divisions:**

Division of Complaints Management  
 Special Education Mediation Coordinator

Division of Complaints Management  
 Special Education Complaint Unit

Office of Legal Services  
 Special Education Due Process Hearings

**Please visit the TEA Special Education Website at:**

<http://www.tea.state.tx.us/special.ed/>