

PROCEDURAL SAFEGUARDS NOTICE

SECTION I: PRIOR WRITTEN NOTICE*

When prior written notice must be provided:

A Local Educational Agency (LEA) must provide the parent with prior written notice each time it:

1. Proposes to initiate or change the identification, evaluation, or educational placement of the child;
2. Refuses to initiate or change the identification, evaluation, or educational placement of the child;
3. Proposes or refuses to make changes regarding the provision of a free appropriate public education (FAPE) to the child; and
4. No later than the date on which the decision to take disciplinary action is made, LEA must notify the parent of that decision and of all available procedural safeguards.

What prior written notice must contain:

Prior written notices must be written in the native language of the parent, unless it clearly is not feasible to do so. Prior written notice must contain:

1. A description of the action proposed or refused by the LEA;
2. An explanation of why the LEA proposes or refuses to take the action and a description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;
3. A description of other options considered by the Individualized Education Program (IEP) Team and the reasons why those options were rejected;
4. A description of the factors that are relevant to the LEA's proposal or refusal;
5. A statement that the parent of a child with a disability has procedural safeguards protection and, if the notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
6. Sources the parent may contact to obtain assistance in understanding these provisions;
7. A statement informing the parent about the state complaint procedures, including a description of how to file a complaint and the timelines under those procedures.

*In Pennsylvania, prior written notice is provided on the form "Notice of Recommended Educational Placement" (NOREP).

SECTION II: PROCEDURAL SAFEGUARDS NOTICE

When a Procedural Safeguards Notice must be provided:

A copy of the Procedural Safeguards Notice must be given to the parent one (1) time a year, except that a copy must also be given to the parent:

1. Upon initial referral for evaluation;
2. Upon the parent's request for evaluation;
3. Upon receipt of the first occurrence of the filing of a request for due process; and
4. Upon request by the parent.

A LEA may place a current copy of the Procedural Safeguards Notice on its Internet website if such website exists.

What a Procedural Safeguards Notice must contain:

The Procedural Safeguards Notice must include a full explanation of available procedural safeguards, written in the native language of the parent, unless it is clearly not feasible to do so. It must be written in an easily understandable manner, describing the procedural safeguards available relating to:

1. Independent educational evaluation;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;
5. Opportunity to present and resolve complaints, including the time period in which to file a Due Process Hearing Request;
6. The opportunity for the LEA to resolve the Due Process Hearing Request;
7. The availability of mediation;
8. The child's placement while due process proceedings are pending;
9. Procedures for children who are subject to placement in an interim alternative educational setting;
10. Requirements for unilateral placement by the parent of a child in private school at public expense;
11. Due process hearings, including requirements for disclosure of evaluation results and recommendations;
12. State level appeals;
13. Civil actions, including the time period in which to file such actions;
14. Attorneys' fees; and
15. State complaint procedures, including applicable time periods.

SECTION III: WHEN PRIOR PARENTAL CONSENT MUST BE OBTAINED

Parental consent must be obtained by the LEA prior to conducting an initial evaluation to determine if the child qualifies as a child with a disability, and before providing special education and related services to the child. Parental consent for an evaluation shall not be construed as consent for their child to receive special education and related services. The screening of a child by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation is not considered to be an evaluation for eligibility for special education and related services; therefore, parental consent is not required in this instance.

Consent for Wards of State. The Individuals with Disabilities Act of 2004 contains language about seeking parental permission for initial evaluations when a child is a ward of the State. In Pennsylvania, however, if a child is designated a ward of the State, the whereabouts of the parent is not known or the rights of the parent have been terminated in accordance with State law; someone other than the parent has been designated to make educational decisions for the child. Consent for an initial evaluation should therefore be obtained from the individual designated to represent the interests of the child.

SECTION IV: ABSENCE OF PARENTAL CONSENT

If the parent does not provide consent for an initial evaluation, or the parent fails to respond to a request to provide consent, the LEA may pursue an initial evaluation of the child through mediation or due process procedures.

If the parent does not provide consent for the child to receive special education and related services, the LEA will not provide special education and related services, nor will the LEA use mediation or due process procedures.

If the parent refuses to consent to the receipt of special education and related services, or the parent fails to respond to a request to provide consent, and therefore the child does not receive special education and related services, the LEA will not be in violation of its requirement to make a free appropriate public

education (FAPE) available to the child for its failure to provide special education and related services to the child; and the LEA does not have to convene an Individualized Education Program (IEP) meeting or develop an Individualized Education Program (IEP) for the child regarding special education and related services.

SECTION V: INDEPENDENT EDUCATIONAL EVALUATION

The parent has the right to obtain an independent educational evaluation of their child at public expense if the parent disagrees with an evaluation obtained by a LEA. An independent evaluation is an evaluation by a qualified professional who is not an employee of the LEA responsible for the child.

Once the parent requests an independent evaluation at public expense, the LEA must, without unnecessary delay, either request a due process hearing to demonstrate that its evaluation is appropriate, or ensure that an independent evaluation is conducted. If a due process hearing is requested by the LEA, and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent evaluation, but not at public expense.

If the parent asks for an independent evaluation, the LEA may ask for the parent's reason why he or she objects to the evaluation. However, the parent is not required to give this explanation and the LEA may not unreasonably delay either providing the independent evaluation at public expense or requesting a due process hearing.

If the parent obtains an independent evaluation at private expense, the results of the evaluation must be considered by the LEA if the evaluation meets LEA criteria, in any decision made with respect to the provision of a free appropriate public education (FAPE) to the child; and may be presented as evidence at a due process hearing.

If a Hearing Officer requests an independent evaluation as part of a hearing, the cost of the evaluation must be at public expense.

The LEA will provide, on request, information about where an independent evaluation may be obtained.

Whenever an independent evaluation is conducted at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent evaluation.

SECTION VI: DISPUTE RESOLUTION SYSTEMS

When disputes arise between the parent and a LEA, the following formal systems are available to assist in resolving the dispute:

1. Pre-Hearing Conferences.
(Not applicable to charter schools)

Although not a federal requirement, Pennsylvania requirements allow the parents to request a Pre-Hearing Conference before a formal due process request. The Pre-Hearing Conference is intended as an opportunity for the parent and LEA to try to resolve special education disagreements about a child's identification, evaluation, program, and/or educational placement. It also gives the parties an opportunity to understand the reason for the other's position. In many cases, disputes are resolved by this process. Because a Pre-Hearing Conference is optional, either the parent or LEA may waive the right to a Pre-Hearing Conference and proceed straight to a due process hearing.

If a Pre-Hearing Conference is held, the following requirements apply. The conference will be scheduled within ten (10) days of the date the LEA receives the parent's request. The conference will be chaired by the superintendent, chief executive officer, or a designee. If an agreement is reached, the agreement will be implemented. If agreement is not reached, a due process hearing will be arranged, if requested.

If the Pre-Hearing Conference results in agreement, the provisions regarding Individualized Education Programs (IEPs) shall be applied.

Within five (5) days of the agreement, a parent may notify the LEA, in writing, of a decision not to approve the identification, evaluation, recommended assignment or the provision of a free appropriate public education (FAPE). When the parent gives notice not to approve the identification, evaluation, recommended assignment, or the provision of a free appropriate public education (FAPE), or if the Pre-Hearing Conference does not result in an agreement, either party has the right to proceed to due process.

2. Mediation

Mediation is a voluntary process in which the parent and LEA involved in a dispute regarding special education both agree to obtain the assistance of an impartial mediator to resolve the conflict. Mediation is available for parties to special education disputes involving any special education matter, including matters arising prior to the filing of a Due Process Hearing Request. Mediation can be requested alone, or in conjunction with due process. Mediation cannot be used to deny or delay the parent's right to a due process hearing or to deny any other rights of the parent.

The Pennsylvania Department of Education's Bureau of Special Education, through the Office for Dispute Resolution, maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations regarding the provision of special education and related services. Mediators are not employed by any local or state agency providing direct services to the child, and the mediator must not have a personal conflict of interest. The mediator's services are paid for by the Pennsylvania Department of Education.

Mediations are scheduled in a timely manner and are held in a location that is convenient for the parties to the dispute. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearing or court proceeding. The mediator may not be called as a witness in future proceedings.

In the event the parties resolve the dispute through mediation, they are required to execute a legally-binding agreement that sets forth the resolution terms; states that all discussions that occurred during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings; and is signed by both the parent and a representative of the LEA who has the authority to bind the LEA. This agreement is enforceable by a court.

3. Due Process Hearings

The parent or LEA may request a due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) by filing a "Due Process Hearing Request". A due process hearing will not proceed until all required information is provided and procedures followed.

Timeline for requesting Due Process. The parent or LEA must request a due process hearing through the filing of a Due Process Hearing Request within two (2) years of the date the parent or the LEA knew or should have known about the alleged action that forms the basis of the Due Process Hearing Request.

There are limited exceptions to this timeline. This timeline will not apply to the parent if the parent was prevented from requesting the due process hearing due to the specific misrepresentations by the LEA that it had resolved the problem forming the basis of the Due Process Hearing Request; or if the LEA withheld information from the parent which was required to be provided to the parent.

Service of Due Process Hearing Request. A copy of the Due Process Hearing Request must be sent to the other party and, at the same time, to the Office for Dispute Resolution.

Contents of Due Process Hearing Request. The Due Process Hearing Request must contain the following information:

1. The name of the child; the address where the child lives, and the name of the school the child is attending;
2. If the child or youth is homeless, available contact information for the child and the name of the school the child is attending;
3. A description of the nature of the problem, including facts relating to such problem; and
4. A proposed resolution of the problem to the extent known and available to the party filing the Request.

Challenging Sufficiency of the Due Process Hearing Request. The Due Process Hearing Request will be considered to be sufficient unless the party receiving it notifies the Hearing Officer and the other party in writing within fifteen (15) days of receipt that the receiving party believes the Request does not meet the requirements listed above.

Response to Request. If the LEA has not sent a prior written notice (NOREP) to the parent regarding the subject matter contained in the parent's Due Process Hearing Request, the LEA must send to the parent, within ten (10) days of receiving the Due Process Hearing Request, a response including the following information:

1. An explanation of why the LEA proposed or refused to take the action raised in the parent's Due Process Hearing Request;
2. A description of other options the Individualized Education Program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
4. A description of the factors that are relevant to the LEA's proposal or refusal.

Filing this response to the parent's Due Process Hearing Request does not prevent the LEA from challenging the sufficiency of the Due Process Hearing Request. If the LEA has already sent prior notice (NOREP) to the parent, or it is the parent receiving the Due Process Hearing Request, then a response to the Due Process Hearing Request must be sent to the other side within ten (10) days of receipt of the request. The response should specifically address the issues raised in the Due Process Hearing Request.

Hearing Officer Determination of Sufficiency of Due Process Hearing Request. Within five (5) days of receiving a party's challenge to the sufficiency of the Due Process Hearing Request, the Hearing Officer must make a determination based solely on the information contained within the Request, whether the Request meets requirements. The Hearing Officer must immediately notify both parties in writing of his or her determination.

Amended Due Process Hearing Request. Either the parent or a LEA may amend its Due Process Hearing Request only if:

1. The other party consents in writing to the amendment and is given the opportunity to resolve the issues raised in the Due Process Hearing Request through a preliminary meeting/resolution session; or
2. The Hearing Officer grants permission for the party to amend the Due Process Hearing Request. However, the Hearing Officer may grant this permission not later than five (5) days before a due process hearing occurs.

Subject Matter of the Hearing. The party requesting the due process hearing is not permitted to raise issues at the due process hearing that were not raised in the Due Process Hearing Request (or Amended Due Process Hearing Request) unless the other party agrees otherwise.

Preliminary Meeting/Resolution Session. Before a due process hearing will take place, the LEA must convene a preliminary meeting with the parent and the relevant member or members of the Individualized Education Program (IEP) Team who have specific knowledge of the facts identified in the Due Process Hearing Request in an attempt to resolve those issues without the need to proceed to a due process hearing. This preliminary meeting must be convened within fifteen (15) days of the LEA's receiving the parent's Due Process Hearing Request. A representative of the LEA who has decision-making authority must be present at this meeting. The LEA may not have an attorney attend the meeting unless the parent is also accompanied by an attorney. At the meeting, the parent will discuss the Due Process Hearing Request, and the LEA will be provided the opportunity to resolve the Due Process Hearing Request, unless the parent and the LEA agree, in writing, to waive this meeting, or agree to use the mediation process.

If the parent and LEA resolve the issues in the Due Process Hearing Request at the preliminary meeting, they must put the agreement terms in writing, and both the parent and a representative of the LEA who has the authority to bind the LEA must sign the agreement. The agreement is a legally-binding document and may be enforced by a court.

Either the parent or LEA may void the agreement within three (3) business days of the date of the agreement. After three (3) days, the agreement is binding on both parties.

Administrative Matters at Preliminary Meetings, Mediation and Due Process. When carrying out administrative matters such as scheduling, exchange of witness lists, and status conferences, the parent and LEA may agree to use alternative means of meeting participation, such as videoconferences and conference calls.

Timeline for Completion of Due Process Hearing. If the LEA has not resolved the Due Process Hearing Request within thirty (30) days of receiving it, or within thirty (30) days of receiving the Amended Due Process Hearing Request, the due process hearing may proceed and applicable timelines commence. The timeline for completion of due process hearings is forty-five (45) days, unless the Hearing Officer grants specific extensions of time at the request of either party.

Disclosure of Evaluations and Recommendations. Not less than five (5) business days prior to a due process hearing, each party must disclose to all other parties all evaluations completed by that date, and recommendations based on the offering party's evaluations that the party intends to use at the due process hearing. Failure to disclose this information may result in a Hearing Officer prohibiting the party from introducing the information at the hearing unless the other party consents to its introduction.

Due Process Hearing Rights. The hearing for a child with a disability or thought to be a child with a disability must be conducted and held in the LEA at a place and time reasonably convenient to the parent and child involved.

1. The hearing must be an oral, personal hearing and must be closed to the public unless the parent requests an open hearing. If the hearing is open, the decision issued in the case, and only the decision, will be available to the public. If the hearing is closed, the decision will be treated as a record of the child and may not be available to the public.
2. The decision of the Hearing Officer must include findings of fact, discussion and conclusions of law. Although technical rules of evidence will not be followed, the decision must be based upon the substantial evidence presented at the hearing.
3. A written, or at the option of the parent, electronic verbatim record of the hearing will be provided to the parent at no cost to the parent.
4. Parent may be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.
5. Parent or parent representative must be given access to educational records, including any tests or reports upon which the proposed action is based.
6. A party has the right to compel the attendance of and question witnesses who may have evidence upon which the proposed action might be based.
7. A party has the right to present evidence and confront and cross-examine witnesses.
8. A party has the right to present evidence and testimony, including expert medical, psychological or educational testimony.

Decision of Hearing Officer. A decision made by a Hearing Officer must be made on substantive grounds, based upon a determination of whether the child received a free appropriate public education (FAPE). In disputes alleging a procedural violation, a Hearing Officer may find that a child did not receive a free appropriate public education (FAPE) only if the procedural inadequacies impeded the child's right to a free appropriate public education (FAPE); significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to the parent's child; or caused a deprivation of educational benefits.

A Hearing Officer may still order a LEA to comply with procedural requirements even if the Hearing Officer determines that the child received a free appropriate public education (FAPE). The parent may still file a Complaint with the Bureau of Special Education regarding procedural violations.

Administrative Appeal - Impartial Review. In most cases, a party dissatisfied by the findings and decision of a Hearing Officer in a due process hearing may appeal to a panel appointed by the Pennsylvania Department of Education (called "the Appellate Panel Officers" or "Appeals Panel"). For a school-aged child, the only exception to the right to appeal to the Appeals Panel is when the due process hearing addresses Section 504/Chapter 15 issues only. In that case, any appeal from a Hearing Officer order goes directly to court, not the Appeals Panel. If the due process hearing addresses both Section 504/Chapter 15 cases and other matters, that portion of the case dealing with non-Section 504 issues may be appealed to the Appeals Panel.

For early intervention preschool special education cases, the Appeals Panel review is not available and, therefore, any appeal from a Hearing Officer's order should go directly to court. In addition, it must be noted that Section 504/Chapter 15 issues do not apply to early intervention preschool cases.

On appeal, the Appeals Panel will do the following:

1. Examine the entire due process hearing record.
2. Ensure that the procedures at the hearing were consistent with the requirements of due process.

3. Seek additional evidence if necessary, at the discretion of the Appeals Panel. If a hearing is held by the Appeals Panel to receive additional evidence, any party to such a hearing generally has the right to:
 - Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
 - Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
 - Obtain a written or, at the option of the parent, electronic, verbatim record of the hearing at no cost to the parent;
 - The parent's representative shall be given access, if such was not already provided prior to or at the due process hearing, to educational records, including any tests or reports upon which the proposed action, or decision not to act, is based.
 - Each hearing must be conducted at a time and manner that is reasonably convenient to the parent and child.
4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the Appeals Panel. Oral arguments must be conducted at a time and place that is reasonably convenient to the parent and child.
5. Make an independent decision upon completion of the record review.
6. Provide the parent a written, or, at their option, an electronic copy of the findings of fact and decision.

Appeals Panel decisions are completed within thirty (30) days after request for review, unless at the request of either party the Appeals Panel grants a specific extension to file Exceptions or Answers to them. Requests for a specific extension of time in which to file appeal documents with the Appeals Panel must be directed to the particular Appeals Panel assigned to the matter. Contact information can be obtained from the Office for Dispute Resolution.

The decision by the Appeals Panel is final, unless a party brings a civil action under the procedures described below.

Disclosure of Appeals Panel Decisions. A copy of the Appeals Panel Decision, with the child's name removed from the Decision, is made available to the public, as required by law, through posting on the Office for Dispute Resolution webpage, and through dissemination to the State Special Education Advisory Panel. Questions regarding documents posted on the webpage should be directed to the Office for Dispute Resolution.

Civil Action. Either the parent or LEA who disagrees with the findings and decision of the Hearing Officer (in the case of Section 504/Chapter 15 cases and early intervention cases) or the Appeals Panel (for all other cases) has the right to file an appeal in state or federal court. Sometimes the issues in a due process case deal not only with special education issues, but also regarding a child's status and/or claim as a gifted child. In that instance, the final order of the Appeals Panel -- to the extent it deals with issues of giftedness -- can only be appealed to Commonwealth Court. For all other appeals, the party filing an appeal is encouraged to seek legal counsel to determine the appropriate court with which to file an appeal. A party filing an appeal to state or federal court has ninety (90) days from the date of the Hearing Officer decision in which to do so.

Attorneys' Fees. A court, in its discretion, may award reasonable attorneys' fees as part of the costs:

1. To a prevailing party who is the parent of a child with a disability;
2. To a prevailing party who is a State Educational Agency or LEA against the attorney of the parent who files a Due Process Hearing Request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of the parent who continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or
3. To a prevailing State Educational Agency or LEA against the attorney of the parent, or against the parent, if the parent's Due Process Hearing Request or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Fees awarded will be based on rates prevailing in the community in which the action or proceeding arose for the kind and quantity of attorney services furnished.

The federal law imposes certain requirements upon the parent and LEA and in some circumstances may limit attorney fee awards. Parents should consult with their legal counsel regarding these matters. The following rules apply:

4. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to the parent if the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedures, or, in the case of an administrative hearing, at any time more than ten (10) days before the proceeding begins; the offer is not accepted within ten (10) days; and the court finds that the relief finally obtained by the parent is not more favorable to the parent than the offer of settlement.

An award of attorneys' fees and related costs may be made to the parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

Attorneys' fees may not be awarded relating to any meeting of the Individualized Education Program (IEP) team unless the meeting is convened as a result of an administrative proceeding or judicial action.

A due process resolution session is not considered to be a meeting convened as a result of an administrative hearing or judicial action, nor an administrative hearing or judicial action for purposes of reimbursing attorneys' fees.

The Court may reduce the amount of any attorneys' fee award when:

1. The parent, or the parent's attorney, during the course of the action or proceeding unreasonably protracted the final resolution of the controversy;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing the parent did not provide to the local educational agency the appropriate information in the Due Process Hearing Request.

These reductions do not apply in any action or proceeding if the court finds that the State or LEA reasonably protracted the final resolution of the action or proceeding.

Child's Status during Administrative Proceedings. Except for discipline cases, which have specific rules, while the due process case (including an appeal to the Appeals Panel) or appeal in court is occurring, the child must remain in his or her present educational placement unless the parent and LEA agree otherwise. If the decision of the Appeals Panel agrees with the child's parent that a change of placement is appropriate, that placement must be treated as an agreement between the LEA and the parent. If the due process hearing involves an application for initial admission to public school, the child, with the parental consent, must be placed in the public school program until completion of all the proceedings, unless the parent and LEA agree otherwise.

SECTION VII: PARENTAL CLAIMS FOR TUITION REIMBURSEMENT

If the parent of a child with a disability, who previously received special education and related services under the authority of a LEA, enroll the child in a private school without the consent of or referral by the LEA, a court or a Hearing Officer may require the LEA to reimburse the parent for the cost of that enrollment if the court or Hearing Officer finds that the LEA had not made free appropriate public education (FAPE) available to the child in a timely manner prior to that enrollment. However, the cost of reimbursement may be reduced or denied if:

1. At the most recent Individualized Education Program (IEP) meeting that the parent attended prior to removal of the child from the public school, the parent did not inform the Individualized Education Program (IEP) Team that the parent was rejecting the placement proposed by the LEA to provide free appropriate public education (FAPE) to the child, including stating the parent's concerns and intent to enroll the child in a private school at public expense; or
2. Ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parent did not give written notice to the LEA of the information listed above;
3. Reimbursement may also be reduced or denied if prior to the parental removal of the child from the public school, the LEA informed the parent, through prior written notice, of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the child available for such evaluation; or
4. Upon a judicial finding of unreasonableness with respect to actions taken by the parent.

Despite the requirement that the LEA provide prior written notice, the cost of reimbursement will not be reduced or denied for failure to provide such notice if:

1. The LEA prevented the parent from providing such notice; or
2. The parent had not received prior written notice explaining the notice requirement; or
3. Complying with the provision to give notice at the Individualized Education Program (IEP) meeting of the intent to remove the child or complying with the provision to give ten (10) day written notice of the intent to remove the child, would likely result in physical harm to the child; and
4. Reimbursement may not be reduced or denied for failure to provide notice, in the discretion of the Hearing Officer or court, if:
 - o The parent is illiterate and cannot write in English; or
 - o Compliance with the notice provisions would likely result in serious emotional harm to the child.

SECTION VIII: RIGHTS REGARDING DISCIPLINE AND SUSPENSION

There are special rules in Pennsylvania for excluding children with disabilities served by school districts for disciplinary reasons. (Children in charter schools follow the federal rules unless indicated otherwise.)

When a child is excluded from school for more than ten (10) school days in a row or fifteen (15) total school days in any one (1) school year, (the "10/15 day rule") this will be considered a pattern, deemed a change in placement, and requires a prior written notice (a Notice of Recommended Educational Placement or "NOREP") . The exclusion of a child with mental retardation who attends either a school district or a charter school, for any amount of time is considered to be a change in placement and requires prior written notice (assuming the disciplinary event does not involve drugs, weapons and/or serious bodily injury). If the parent does not agree with the change in placement on the Notice of Recommended Educational Placement (NOREP), the child remains in the existing placement until due process is completed, unless school officials take further action and go to court. A removal from school is not a change in placement for a child who is identified with mental retardation when the disciplinary event involves weapons, drugs and/or serious bodily injury.

There are significant changes in the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). The following requirements apply:

Placement in alternative educational setting. School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a child with a disability who violates a code of child conduct. School personnel may remove a child with a disability who violates a code of child conduct from their current placement to an appropriate interim alternative setting, another setting, or suspension, for not more than ten (10) school days (to the extent such alternatives are applied to children without disabilities). The determination of an interim alternative educational setting is made by the Individualized Education Program (IEP) Team.

Pennsylvania's "10/15 day rule" will still apply under these circumstances:

1. If the current disciplinary exclusion, in conjunction with any prior disciplinary exclusions, results in a total of fifteen (15) total school days in one school year where the child was excluded, a Notice of Recommended Educational Placement (NOREP) must be issued.
2. If the parent does not agree with the change in placement on the Notice of Recommended Educational Placement (NOREP), the child remains in the interim placement until due process is completed, unless school officials take further action and go to court.

School personnel who seek to order a change in placement that would exceed ten (10) school days when the behavior that gave rise to the violation of the school code of conduct is determined not to be a manifestation of the child's disability, may apply the relevant discipline in the same manner and for the same duration in which the procedures would be applied to children without disabilities, although it may be provided in an interim alternative educational setting. A child may not be suspended under Pennsylvania's "10/15 day rule" unless the school district has issued a Notice of Recommended Educational Placement (NOREP) and obtained parental consent for any removal exceeding the Pennsylvania "10/15 day" rule.

Special Circumstances. School personnel may remove a child to an interim alternative educational setting for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation of the child's disability in the following cases:

1. The child carries or possesses a weapon to or at school, on school premises, or to or at a school function;
2. The child knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function;
3. The child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

The term "serious bodily injury" means bodily injury which involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

Any time a child is given a disciplinary change of placement, or any time a placement is changed for possession of weapons or drugs, or due to serious bodily injury, school officials must still provide a free appropriate public education (FAPE) so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's Individualized Education Program (IEP); and receive, as appropriate, a functional behavior assessment, behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur.

Manifestation Determination. Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of child conduct, the LEA, the parent, and relevant members of the Individualized Education Program (IEP) Team (as determined by the parent and LEA), must review all relevant information in the child's file, including the child's Individualized Education Program (IEP), any teacher observations, and any relevant information provided by the parent to determine:

1. If the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or
2. If the conduct in question was the direct result of the LEA's failure to implement the Individualized Education Program (IEP).

If the LEA, the parent, and relevant members of the Individualized Education Program (IEP) Team determine that either of these circumstances applies, the child's conduct shall be determined to be a manifestation of the child's disability. Once the determination has been made the conduct is a manifestation of the child's disability, the Individualized Education Program (IEP) Team must:

1. Conduct a functional behavioral assessment, and implement a behavioral intervention plan for the child, assuming the LEA had not already conducted such an assessment prior to the child's conduct and resulting manifestation determination resulted in a change of placement;
2. Where a behavioral intervention plan was already in place when the child engaged in conduct leading to a change in placement and manifestation determination, the Individualized Education Program (IEP) team must review the behavioral intervention plan and modify it, if necessary, to address the behavior; and
3. Return the child to the placement from which the child was removed, unless the parent and LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
 - o If the child was removed under "Special Circumstances" listed above, the LEA is not required to return the child to the placement from which he was removed even if the conduct was a manifestation of the child's disability. When "Special Circumstances" apply, school personnel may remove the child for not more than forty-five (45) school days without regard to whether the behavior is determined to be a manifestation.

Appeals Regarding Placement and Manifestation Determinations. The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or a LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others may request a due process hearing. The Hearing Officer will hear and make a determination regarding the issues raised. In making this determination, the Hearing Officer may order a change in the placement of the child with a disability. In those situations, the Hearing Officer may:

1. Return a child with a disability to the placement from which the child was removed; or
2. Order a change in placement to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the Hearing Officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or others.

While due process has been requested by either the parent or the LEA, and during the pendency of the due process proceeding, the child must remain in the interim alternative educational setting pending the decision of the Hearing Officer or until the expiration of the applicable time period, whichever occurs first, unless the parent and LEA agree otherwise.

When an appeal has been initiated, the State or LEA must arrange for an expedited hearing, which must occur within twenty (20) school days of the date the hearing is requested and must result in a determination within ten (10) school days after the hearing.

Protections for Children Not Yet Eligible for Special Education and Related Services. A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violates a code of child conduct, may be able to claim any of the disciplinary protections afforded the child already deemed to be eligible for special education if the LEA had knowledge that the child was a child with a disability before the behavior that resulted in disciplinary action occurred.

A LEA shall be deemed to have knowledge that a child is a child with a disability if, prior to the behavior that resulted in disciplinary action, any of the following occurred:

1. The parent expressed concern in writing to supervisory or administrative personnel, or a teacher of the child, about the need for special education and related services;
2. The parent has requested an evaluation;
3. The teacher of the child or other school personnel have expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of the LEA or to other supervisory personnel of the agency.

School officials will not be deemed to have knowledge that the child is a disabled child in the following instances:

1. If the parent has not allowed an initial evaluation of the child; or
2. The parent has refused special education and related services for the child; or
3. If the child has been evaluated and it was determined that the child was not a child with a disability.

If the LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in similar behaviors.

If a request is made for an evaluation during the time period the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. If the child is determined to be a child with a disability, the LEA must provide special education and related services except that pending the results of the evaluation the child must remain in the educational placement determined by school authorities.

Nothing in these requirements is to be construed to prohibit a LEA from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and State law to crimes committed by a child with a disability.

Transmittal of Records. A LEA reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

SECTION IX: SURROGATE PARENTS

Each LEA must ensure that an individual is assigned to act as a surrogate of a child when no parent or person acting as the parent can be identified, or the LEA, after reasonable efforts, cannot locate the parent. The LEA must have a method of determining whether or not a child needs a surrogate parent, and for assigning a surrogate parent to the child.

The LEA may select a surrogate parent in any way permitted under State law, but must ensure that a person selected as a surrogate is not an employee of the State Educational Agency, the LEA or any other agency that is involved in the education or care of the child. For a child who is a ward of the State, a surrogate may be appointed by a judge overseeing the child's care or by the LEA.

For a homeless youth, not in the physical custody of the parent or guardian, the LEA must appoint a surrogate. The State Educational Agency must make reasonable efforts to ensure the assignment of a surrogate not more than thirty (30) days after there is a determination by the LEA that the child needs a surrogate.

SECTION X: RIGHTS PERTAINING TO EDUCATIONAL RECORDS

The LEA must permit the parent to inspect and review all educational records relating to their child with respect to the identification, evaluation and educational placement of the child, as well as the provision of a free appropriate public education (FAPE) to the child, which are collected, maintained, or used by the LEA. The LEA must comply with a request without unnecessary delay and before any meeting regarding an individual education program or hearing relating to the identification, evaluation, or placement of the child, and in no case more than forty-five (45) days after the request has been made.

The parent's right to inspect and review education records under this section include the right to a response from the participating agency to a reasonable request for explanations and interpretations of the records; the right to have a representative inspect and review the records; and the right to request that the LEA provide copies of the records containing the information if failure to provide these copies would effectively prevent the parent from exercising their right to inspect and review the records.

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

If any educational record includes information on more than one child, the parent has the right to inspect and review only the information relating to their child or to be informed of that specific information.

The LEA must provide the parent, on request, a list of the types and locations of educational records collected, maintained, or used by the LEA.

Fees for Searching, Retrieving and Copying Records. The LEA may not charge a fee to search for or to retrieve information, but may charge a fee for copies of records which are made for the parent if the fee does not effectively prevent the parent from exercising their right to inspect and review those records.

Record of Access. The LEA must keep a record of parties obtaining access to educational records collected, maintained, or used (except access by the parent and authorized employees of the participating LEA), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Amendment of Records at Parent's Request. If the parent believes that information in educational records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of their child, they may request the LEA that maintains the information to amend this information. The LEA must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the LEA decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and of their right to a hearing as set forth below.

The LEA must, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. The hearing is conducted by the LEA, not a due process Hearing Officer. If, as a result

of the hearing, the LEA decides that information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

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

SECTION XI: COMPLAINT PROCEDURES

Parents who believe that the educational rights of their child are being violated may file a Consumer Request Intake Form with the Bureau of Special Education, Pennsylvania Department of Education, requesting that this agency investigate the alleged violation. Requests for complaint investigation must be in writing, and should be sent to:

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

Parents may request a Consumer Request Intake Form by calling the Bureau of Special Education's ConsultLine, a parent helpline, at 800-879-2301.

The Bureau of Special Education's Compliance Advisor assigned to the region where the LEA is located will investigate the complaint in a timely manner to determine whether the LEA has failed to comply with State and/or federal laws and regulations. The investigation may include obtaining written or oral information and an on-site visit. Except in extenuating circumstances, the Bureau of Special Education's Compliance Advisor will complete the complaint investigation and issue a report of findings within sixty (60) calendar days.

If a written complaint is received that is also the subject of a due process hearing, or the written complaint contains multiple issues, of which one or more are part of that due process hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. However, any issue in the Consumer Request Intake Form that is not part of the due process action must be resolved using the time limit and procedures.

If an issue is raised in a Consumer Request Intake Form filed under this section that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding and the Bureau of Special Education must inform the person filing the Consumer Request Intake Form of this fact.

A Consumer Request Intake Form Alleging a LEA Failure to Implement a Due Process Decision must be Resolved by the Bureau of Special Education, not a Due Process Hearing Officer.

Either an organization or an individual may file a signed written Consumer Request Intake Form. The Consumer Request Intake Form must include a statement that a public agency has violated a requirement of Part B of the Individuals with Disabilities Education Act (IDEA) or applicable State regulations, and the facts on which the statement is based. The Consumer Request Intake Form must allege a violation that occurred not more than one (1) year prior to the date that the Consumer Request Intake Form is received, unless a longer period of time is reasonable because the violation is continuing, or the person filing the Consumer Request Intake Form is requesting compensatory education for a

violation that occurred not more than three (3) years prior to the date the Consumer Request Intake Form is received.

SECTION XII: APPLICABLE LAWS AND REGULATIONS

This Procedural Safeguards Notice has been written in accordance with The Individuals with Disabilities Education Improvement Act (IDEA 2004). Federal regulations underlying IDEA 2004 have not yet been issued so to the extent the new federal regulations alter the information contained within this Notice, it will be revised. The following sources have been used in whole, or in part, to develop this Procedural Safeguards Notice:

20 USC 1401 et. seq. The Individuals with Disabilities Education Improvement Act (2004)
34 CFR, Parts 300-303, Rules and Regulations for Individuals with Disabilities Education Act (in part)
22 Pa. Code, Chapter 14, Regulations of the State Board of Education (in part)
22 Pa. Code, Chapter 711, Regulations of the Department of Education (in part)

SECTION XIII: RESOURCES AND REQUEST FORMS

PARENT EDUCATION NETWORK

2101 Industrial Highway
York, PA 18618
717-600-100 (Voice/TTY)
800-522-5827 (Voice/TTY)
800-441-5028 (Spanish)
717-600-8101 (Fax)
www.parentednet.org

EDUCATION LAW CENTER OF PA

The Philadelphia Building
1315 Walnut Street, Suite 400
Philadelphia, PA 19107-4717
215-238-6970 (Phone)
215-772-3125 (Fax)
215-789-2498 (TTY)
elc@elc-pa.org

EDUCATION LAW CENTER OF PA

901 Law and Finance Building
429 Fourth Avenue
Suite 901
Pittsburgh, PA 15219
412-391-5225 (Phone)
412-391-4496 (Fax)
412-467-8940 (TTY)
elc.pgh@elc-pa.org

EDUCATION LAW CENTER OF PA

(Pennsylvania School Reform Network)
300 North Second Street
Harrisburg, PA 17101
717-238-7171 (Phone)
717-238-7552 (Fax)
215-238-5892 (TTY)
www.psrn.org

PENNSYLVANIA BAR ASSOCIATION

P. O. Box 186
Harrisburg, PA 17108
800-932-0311 (Phone)
www.pabar.org

BUREAU OF SPECIAL EDUCATION'S CONSULTLINE, A PARENT HELPLINE

800-879-2301

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

OFFICE FOR DISPUTE RESOLUTION

6340 Flank Drive, Suite 600

Harrisburg, PA 17112-2764

717-541-4960 (Phone)

800-222-3353 (Toll Free in PA only)

800-992-4334 (Toll Free)

800-654-4984 (TTY)

717-657-5983 (Fax)

ODR.pattan.net

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

THE PENNSYLVANIA TRAINING AND TECHNICAL ASSISTANCE NETWORK

www.pattan.net

Request Forms are attached to this Notice.