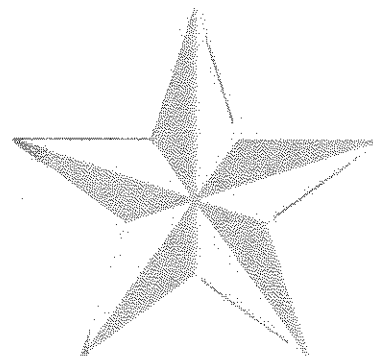


Notice of
Procedural
Safeguards

2012
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Notice of Procedural Safeguards

Rights of Parents of Children with Disabilities

The Individuals with Disabilities Education Act (**IDEA**), as amended in 2004, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA and its implementing regulations. This document, produced by the Texas Education Agency (**TEA**), is intended to meet this notice requirement and help parents of children with disabilities understand their rights under the IDEA.

■ **Procedural Safeguards in Special Education**

Under the IDEA, the term *parent* means a biological parent, an adoptive parent, a foster parent if allowed by state requirements, a guardian, an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, an individual who is legally responsible for the child's welfare, or a surrogate parent. The term *native language* when used with someone who has limited English proficiency means the language normally used by that person; when used for people who are deaf or hard of hearing, *native language* is the mode of communication normally used by the person.

The school is required to give you this Notice of Procedural Safeguards only one time a school year, except that the school must give you another copy of the document: upon initial referral or your request for evaluation; upon receipt of the first special education complaint filed with the TEA; upon receipt of the first due process hearing complaint in a school year; when a decision is made to take disciplinary action that constitutes a change of placement; or upon your request.

You and the school make decisions about your child's educational program through an *admission, review, and dismissal (ARD)* committee. The ARD committee determines whether your child qualifies for special education and related services. The ARD committee develops, reviews, and revises your child's *individualized educational program (IEP)*, and determines your child's educational placement. Additional information regarding the role of the ARD committee and the IDEA is available from your school in a companion document, A Guide to the Admission, Review, and Dismissal Process. You can also locate it at <http://framework.esc18.net/>.

■ **Child Find**

All children with disabilities residing in the state, who are in need of special education and related services, including children with disabilities attending private schools, must be identified, located, and evaluated. This process is called *Child Find*.

■ **Prior Written Notice**

You have the right to be given written information about the school's actions relating to your child's special education needs. *Prior written notice* is written notification from the school given to you at least five school days in advance. This prior written notice is intended to provide you with information to help you participate in the decision-making process with regard to your child.

The notice must be written in language understandable to the general public and must be translated into your native language or other mode of communication, 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 in your native language or other mode of communication so that you understand it. The school must have written evidence that this has been done.

The school must give you prior written notice before it proposes to initiate or change the identification, evaluation, or educational placement of your child or the *free appropriate public education (FAPE)* provided to your child. You also have a right to prior written notice before the school refuses to initiate or change the identification, evaluation, or educational placement of your child or the FAPE provided to your child. The school must provide the prior written notice regardless of whether you agreed to the change or requested the change.

The school must include in the prior written notice: a description of the actions the school proposes or refuses to take; an explanation of why the school is proposing or refusing the action; a description of each evaluation procedure, assessment, record, or report the school used in deciding to propose or refuse the action; a statement that you have protections under the procedural safeguards of the IDEA; an explanation of how to get a copy of this Notice of Procedural Safeguards; contact information for individuals or organizations that can help you in understanding the IDEA; a description of other choices that your child's ARD committee considered and the reasons why those choices were rejected; and a description of other reasons why the school proposes or refuses the action.

If, at any time after the school begins providing special education and related services to your child, you revoke your consent for services, the school must discontinue providing special education and related services to your child. Before

discontinuing services, however, the school must give you prior written notice.

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

■ Parental Consent

The school must obtain informed consent before it may do certain things. Your *informed consent* means that: you have been given all the information related to the action for which your permission is sought in your native language, or other mode of communication; you understand and agree in writing to the activity for which your permission is sought, and the written consent describes the activity and lists any records that will be released and to whom; and you understand that the granting of your consent is voluntary and may be withdrawn at any time. If you wish to revoke your consent for the continued provision of special education and related services, you must do so in writing. If you give consent and then revoke it, your revocation will not be retroactive.

The school must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations to provide special education and related services for the first time; to complete a reevaluation; and to locate parents of wards of the state for initial evaluations.

The documentation must include a record of a school's attempts to obtain consent, such as detailed telephone records, copies of correspondence and detailed records of visits made to your home or place of employment.

Your consent is not required before the school reviews existing data as part of your child's evaluation or reevaluation or gives your child a test or other evaluation that is given to all children unless parental consent is required for all children.

The school may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

- ◆ **Initial Evaluation**—Before conducting an initial evaluation of your child to determine if your child qualifies as a child with a disability under the IDEA, the school must give you prior written notice of the proposed evaluation and get your informed consent. The school must make reasonable efforts to obtain your consent for an initial evaluation. Your consent for initial evaluation does not mean that you have also given your consent for the school to start providing special education services to your child. If your child is a ward of the state and is not residing with you, the school is not required to obtain your consent if they cannot find you or if your parental rights have been terminated or assigned to someone else by a court order.
- ◆ **Initial Services**—The school also needs your informed consent to provide special education services to your child for the first time. If you do not respond to a request to provide your consent for services for the first time, refuse to give your consent, or give your consent and then revoke your consent in writing, the school will not be in violation of the requirement to provide FAPE and is not required to convene an ARD committee meeting or develop an IEP for your child.
- ◆ **Reevaluation**—The school must get your consent to reevaluate your child unless it can demonstrate that it took reasonable measures to obtain your consent and you failed to respond.
- ◆ **Override Procedures**—If your child is enrolled in the public school and you refuse to give consent for an initial evaluation or a reevaluation, the school may, but is not required to, pursue your child’s evaluation or reevaluation by using

the mediation or due process procedures. While a due process hearing officer may order the school to evaluate your child without your consent, a hearing officer may not order that your child be provided special education services without your consent.

If you initially gave consent for your child to receive services and later revoked your consent in writing for the continued provision of services after the school began providing services, the school may not use the mediation process to obtain your agreement or the due process procedures to obtain an order from a hearing officer to continue services.

■ **Independent Educational Evaluation**

If you disagree with an evaluation provided by the school, you have the right to request that your child be evaluated, at public expense, by someone who does not work for the school. *Public expense* means that the school either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you. An *independent educational evaluation (IEE)* is an evaluation conducted by a qualified person who is not employed by the school. When you ask for an IEE, the school must give you information about its evaluation criteria and where to get an IEE.

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.

You are entitled to only one IEE at public expense each time the school conducts an evaluation with which you disagree. 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.

- ◆ **IEE Criteria**—If an IEE is at public expense, the criteria under which the

evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE). Except for the criteria described above, a school may not impose conditions or timelines related to obtaining an IEE at public expense.

- ◆ **Hearing Officer Determination**—If the school requests a due process hearing and a hearing officer determines that the school’s evaluation is appropriate or that the IEE you obtained does not meet the school’s IEE criteria, the school does not have to pay for the IEE.
- ◆ **IEE at Private Expense**—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 FAPE to your child if the IEE meets the school’s criteria. You may also present an IEE as evidence in a due process hearing.
- ◆ **IEE Ordered by a Hearing Officer**—If a hearing officer orders an IEE as part of a due process hearing, the school must pay for it.

■ Discipline Procedures

If your child violates the school’s code of conduct, the school must follow certain discipline procedures if it removes your child from the child’s current placement and the removal constitutes a *change in placement* (see **Change of Placement** below) process.

- ◆ **Removals of 10 School Days or Less at a Time**—If your child violates the school’s code of conduct, the school may remove your child from the current placement for 10 school days or less 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 unless services are provided to children without disabilities. If the school chooses to suspend your child, under state law, the suspension may not exceed three school days.

If your child is removed from his or her current placement for more than a total of 10 school days in a school year, your child has additional rights. If the removal is not a change of placement (see **Change of Placement** below), school personnel, in consultation with at least one of your child’s teachers, must determine the extent to which services are needed so as to enable your 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 IEP.

- ◆ **Change of Placement**—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 whether the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals, and 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. Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school and, if challenged, is subject to review through due process and judicial proceedings.

On the date in which the decision is made to change your child’s placement because of a violation of the code of conduct, the school must notify you of that decision and provide you with this Notice of Procedural Safeguards. Within 10 school days of any decision to change the placement of your

child because of a violation of the code of conduct, the school, you, and relevant members of the ARD committee (as determined by you and the school) must conduct a *manifestation determination review (MDR)*.

When conducting the MDR, the members must review all relevant information in your child's file, including the child's IEP, any teacher observations, and any relevant information provided by you. The members determine if your child's conduct was the direct result of the school's failure to implement your child's IEP or if your child's conduct was caused by or had a direct and substantial relationship to your child's disability. If the members determine that either of these conditions is applicable, then your child's conduct must be considered a manifestation of your child's disability.

- ◆ **When Behavior Is a Manifestation**—If your child's conduct is a manifestation of his or her disability, the ARD committee must: conduct a *functional behavioral assessment (FBA)*, unless it conducted one before the behavior that resulted in the change of placement occurred, and implement a *behavioral intervention plan (BIP)* for your child. Where a BIP has already been developed, the ARD committee must review the BIP and modify it as necessary to address the behavior. If your child's conduct was the direct result of the school's failure to implement your child's IEP, the school must take immediate steps to remedy those deficiencies. Finally, except in the special circumstances described below, the ARD committee must return your child to the placement from which your child was removed, unless you and the school agree to a change of placement as part of the modification of the BIP.
- ◆ **Special Circumstances**—The school may remove your child to an *interim alternative*

educational setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of your child's disability if your child: carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function; 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; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

- ◆ **When Your Child's Behavior Is Not a Manifestation**—When your child's behavior is not a manifestation of your child's disability, then your child can be disciplined in the same manner and for the same duration as non-disabled children except that your child must continue to receive FAPE.
- ◆ **Alternative Setting**—If your child is removed from his or her current educational placement either because of special circumstances or because the behavior is not a manifestation of your child's disability, the IAES must be determined by your child's ARD committee. In Texas, one type of IAES may be a disciplinary alternative education program. Your child will continue to receive educational services as necessary to receive FAPE. The services must enable him or her to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the IEP. Your child must receive, as appropriate, an FBA, behavioral intervention services, and modifications that are designed to address the behavior so that it does not recur.
- ◆ **Expedited Due Process Hearing**—If you disagree with any decision regarding disciplinary placement or manifestation determination, you have the right to

request an expedited due process hearing. Additionally, if the school believes that maintaining your child in his or her current placement is substantially likely to result in injury to your child or to others, the school may request an expedited due process hearing. The hearing must occur within 20 school days of the date the hearing is requested. The hearing officer must make a determination within 10 school days after the hearing. Unless you and the school agree otherwise, your child must remain in an IAES until the hearing officer makes a determination or until the school's IAES placement expires, whichever occurs first. Remaining in a current setting is commonly referred to as *stay-put*.

When the school requests an expedited due process hearing, the hearing officer may order continued placement in an appropriate IAES for not more than 45 school days if maintaining your child's IEP placement is substantially likely to result in injury to your child or others. The hearing officer may order the IAES placement even if your child's behaviors are a manifestation of his or her disability. Alternatively, the hearing officer may decide to return your child to the placement from which he or she was removed.

- ◆ **Protection for Children Not Yet Determined Eligible for Special Education**—If the school had knowledge that your child was a child with a disability before the behavior that resulted in the disciplinary action, then your child has all the rights and protections that a child with a disability would have under the IDEA. A school is considered to have prior knowledge if: you expressed concerns in writing to an administrator or teacher that the child is in need of special education and related services; you requested an evaluation of the child in accordance with the IDEA; or a teacher of the child or other school personnel expressed specific concerns about a pattern of behavior

demonstrated by the child directly to the special education director or other supervisory personnel.

A school is considered not to have prior knowledge if: you have refused to consent to an IDEA evaluation; you have refused IDEA services with regard to your child; or your child has been evaluated and determined not to be eligible for special education services.

If you initially gave your consent for services and then later revoked your consent in writing for the continued provision of services after the school began providing services, you have refused IDEA services, and your child may be subjected to the disciplinary measures applied to children without disabilities and is not entitled to IDEA protections.

If you request an initial evaluation of your child during the time period in which your child is subjected to disciplinary measures, 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.

- ◆ **Referral to and Action by Law Enforcement and Judicial Authorities**—The IDEA does not prohibit a school from reporting a crime committed by a child with a disability to appropriate authorities or 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. If a school reports a crime committed by a child with a disability, the school must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the school reports the crime; however, these records

may be transmitted only to the extent permitted by the *Family Educational Rights and Privacy Act (FERPA)*.

■ Educational Records

- ◆ **Notice to Parents**—The TEA must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including: a description of the extent to which the notice is given in the native languages of the various population groups in the state; a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the state intends to use in gathering the information, including the sources from whom information is gathered, and the uses to be made of the information; a summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and a description of all of the rights of parents and children regarding this information, including the rights under FERPA and its implementing regulations in 34 Code of Federal Regulations (CFR) Part 99.

Personally identifiable information includes: your child's name, your name as a parent, or the name of another family member; your address; a personal identifier (like social security number); or a list of characteristics that would make it possible to identify your child with reasonable certainty.

Before any major Child Find activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the state of the activity to locate, identify, and evaluate children in need of special education and related services.

- ◆ **Safeguards and Destruction**—The school must protect the confidentiality of your child's records at collection, storage, disclosure, and destruction stages. *Education records* means the type of records covered under the definition of education records in 34 CFR Part 99.

The school must inform you when information in your child's records is no longer needed to provide educational services to your child. The information must be destroyed at your request except for name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed. *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

- ◆ **Types and Locations**—You have the right to request and obtain a list of the types and locations of education records collected, maintained, or used by the school.
- ◆ **Access and Timelines**—You have the right to review your child's entire education record including the parts that are related to special education. The school may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce. You can also give permission for someone else to review your child's record. When you ask to review the records, the school must make them available without unnecessary delay and before any ARD committee meeting or any due process hearing or resolution session, and in no case more than 45 calendar days after the date of the request.
- ◆ **Information on More than One Child**—If any education record includes information on more than one child, you have the right to inspect and review only

the information relating to your child, or to be informed of that specific information.

- ◆ **Clarification, Copies, and Fees**—If you ask, the school must explain and interpret the records, within reason. The school must make 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**—FERPA permits certain individuals, including school officials, to see your child’s records without your consent. Otherwise, your consent must be obtained before personally identifiable information is disclosed to other individuals.

Your consent, or the consent of an eligible child who has reached the age of majority under state law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. If your child is attending, or is going to attend, a private school that is not located in the same school district where you reside, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

The school must keep a log of everyone (except for you and authorized school officials) who reviews your child’s special education records, unless you provided consent for the disclosure. This log 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.

One official at the school must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state’s policies and procedures regarding confidentiality under the IDEA and FERPA. Each school must maintain, for public inspection, a current listing of the names and positions of those employees within the school who may have access to personally identifiable information.

- ◆ **Amending Records**—If you believe that your child’s education records are inaccurate, misleading, or violate your child’s rights, you may ask the school to amend the information. Within a reasonable time the school must decide whether to amend the information. If the school refuses to amend the information as requested, it must inform you of the refusal and of your right to a hearing to challenge the information in the records. This type of hearing is a local hearing under FERPA and is not an IDEA due process hearing held before an impartial hearing officer.

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must change the information and inform you in writing. If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, you must be informed of your right to place a statement commenting on the information in your child’s records for as long as the record or contested portion is maintained by the school.

If you revoke your consent in writing for your child’s receipt of special education and related services after the school

initially provided services to your child, the school is not required to amend your child's education records to remove any references to your child's previous receipt of special education services. However, you still have the right to ask the school to amend your child's records if you believe the records are inaccurate, misleading, or violate your child's rights.

■ **Voluntary Private School Placements by Parents**

You have specific rights when you voluntarily place your child in a private school. The IDEA does not require a public school to pay for the cost of education, including special education and related services, for your child with a disability at a private school or facility if the public school made FAPE available to your child and you choose to place the child in a private school or facility. However, the public school where the private school is located must include your child in the population whose needs are addressed under the IDEA provisions regarding children who have been placed by their parents in a private school.

■ **Private School Placements by Parents When FAPE is at Issue**

You have specific rights when you place your child in a private school because you disagree with the public school regarding the availability of a program appropriate for your child.

If your child previously received special education and related services under the authority of a public school and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the public school, a court or a hearing officer may require the public school to reimburse you for the cost of that enrollment if the court or hearing officer finds that the public school had not made FAPE available to your child in a timely

manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the state standards that apply to education provided by the TEA and schools.

◆ **Limitation on Reimbursement**—The cost of reimbursement described in the paragraph above may be reduced or denied if: at the most recent ARD committee meeting that you attended prior to your removal of your child from the public school, you did not inform the ARD committee that you were rejecting the placement proposed by the public school to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or at least 10 business days, including any holidays that occur on a business day, prior to your removal of your child from the public school, you did not give written notice to the public school of that information; or, prior to your removal of your child from the public school, the public school provided prior written notice to you of its intent to evaluate your child, including a statement of the purpose of the evaluation that was appropriate and reasonable, but you did not make the child available for the evaluation; or a court finds that your actions were unreasonable.

However, the cost of reimbursement must not be reduced or denied for failure to provide the notice if: the public school prevented you from providing the notice; you had not received notice of your responsibility to provide the notice described above; or compliance with the requirements above would likely result in physical harm to your child. At the discretion of the court or a hearing officer, the cost of reimbursement may not be reduced or denied for your failure to provide the required notice if you are not literate or cannot write in English; or

compliance with the above requirement would likely result in serious emotional harm to your child.

■ **Transfer of Rights When Your Child Turns 18**

The age of majority under Texas law is age 18. For the majority of children, all of the parental rights discussed in this document will transfer to the child at 18 years of age. Even if parental rights transfer to an adult student and he or she has the right to make educational decisions, you will still be provided with notices of ARD committee meetings and prior written notices. You, however, may not attend meetings unless specifically invited by the adult student or the school.

On or before your child's 17th birthday, the IEP must include a statement that you and your child were informed that the procedural rights under the IDEA will transfer to your child on his or her 18th birthday. The transfer occurs without specific ARD committee action. There are several exceptions and special situations:

- ◆ **Court-appointed Guardian for an Adult Student**—If a court has appointed you or another person as the adult student's legal guardian, the rights under IDEA will not transfer to the adult student. The legally-appointed guardian will receive the rights.
- ◆ **Incarcerated Adult Student**—If the adult student is incarcerated, all of the IDEA rights will transfer to the adult student at age 18. You will not keep the right to receive prior written notices related to special education.
- ◆ **Adult Students before 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 will transfer to your child at that time.

■ **Surrogate Parent**

- ◆ **General Requirements**—The rights explained in this document belong to parents of children with disabilities. If, after reasonable effort, the school cannot identify or find a parent of a child, or the child is a ward of the state, the school must assign a surrogate parent to act in place of the child's parent. The school must also appoint a surrogate parent for an unaccompanied homeless youth, as defined in the McKinney-Vento Homeless Assistance Act.
<http://www.ed.gov/policy/speced/guid/spec-ed-homelessness-q-a.pdf>

To be eligible to serve as a surrogate parent under the IDEA, you must not have a personal or professional interest that conflicts with the interest of the child and you must have knowledge and skills that ensure adequate representation of the child. Furthermore, the IDEA regulations prohibit employees of the TEA, the school, or any agency that is involved in the education or care of the child from serving as surrogate parents. Texas special education rules require a surrogate parent to complete an approved surrogate parent training program within 90 calendar days of his or her appointment.

- ◆ **Foster Parent as Parent or Surrogate Parent**—Foster parents often meet the criteria for serving as a child's parent. If you are a foster parent and you do not yet meet the criteria to serve as a parent, you may be appointed as a surrogate parent if you meet the requirements for serving as a surrogate parent as described above. In fact, the school must give you preferential consideration. If the school decides not to appoint you as a surrogate parent, it must give you written notice within seven calendar days explaining the reasons for its decision and informing you that you may file a complaint with the TEA.

■ Resolving Disagreements

There may be times when you disagree with the actions taken by the school related to your child's special education services. You are strongly encouraged to work with school personnel to resolve differences as they occur. You may ask the school about what complaint resolution options it offers for parents. The TEA offers three options for resolving special education disagreements: mediation services, the special education complaint resolution process, and the due process hearing program.

- ◆ **TEA Toll-free Parent Information Line**—If you need information about special education issues, you may call and leave a message at any time on the TEA's toll-free Parent Information Line, and a TEA staff person will return your call during normal working hours. The telephone number is (800) 252-9668. For individuals who are deaf or hard of hearing, the Text Telephone (TTY) number is (512) 475-3540, or you may call the voice number above using Relay Texas at 7-1-1.

■ TEA Mediation Services

Mediation is one of the available options used for resolving disagreements about a child's identification, evaluation, educational placement, and FAPE. If both you and the school agree to participate in mediation, the TEA makes the arrangements and pays for the mediation. Mediation may not be used to delay or deny you a due process hearing or any other rights under the IDEA.

The TEA automatically offers mediation services each time a due process hearing is requested. But, you may ask for mediation services any time you and the school have a disagreement about your child's special education program.

The mediators are not employees of the TEA or any school in Texas, and they cannot have any personal or professional interest that

would conflict with their objectivity. The mediators are professionals who are qualified and trained in resolving disputes and who have knowledge of special education laws. The mediator's role is to be objective and not take the side of either party at the mediation. The goal of mediation is to assist you and the school in reaching an agreement that satisfies both of you.

A current list of mediators is available at <http://www.tea.state.tx.us/WorkArea/linkit.aspx?LinkIdentifier=id&ItemID=2147500268&libID=2147500265>.

When mediation or a due process hearing is requested, a TEA staff member will contact the parties to explain the mediation services. If you and the school agree to mediate, the two of you can agree to use a specific mediator or a mediator will be randomly assigned. In either case, the 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 you are not required to do so. You will have to pay for the attorney or advocate if you choose to hire one to help you with the mediation. The discussions that occur during mediation are private and cannot be used as evidence in a future due process hearing or court proceeding.

If you and the school reach agreement, you and the school's authorized representative will sign a written agreement. The agreement is legally-binding and enforceable in a court that has authority under state law to hear this type of case or in a federal district court.

You may find more information about the mediation process on the TEA website at <http://www.tea.state.tx.us/index4.aspx?id=5087>.

■ Special Education Complaint Resolution Process

Another option for resolving special education disputes is the TEA's special education complaint resolution process. If you believe a

public agency has violated a special education requirement, you may send a written complaint to the TEA at the address given at the end of this document. You must also send your complaint to the entity against whom the complaint is filed. Any organization or individual may file a complaint with the TEA.

Your written complaint must describe a violation that occurred not more than one year before the date that the complaint is filed. The complaint must include: a statement that the public agency has violated a special education requirement; the facts upon which the statement is based; your signature and contact information; a proposed solution to the problem to the extent known and available to you at the time; and, if the complaint concerns a specific child, the child's name and address or available contact information if the child is homeless, and the name of the child's school.

The TEA will give you the opportunity to submit additional information or enter into voluntary mediation. The TEA will also give the public agency an opportunity to respond to the complaint and the opportunity to submit a proposal to resolve the complaint.

Within 60 calendar days after receiving your written complaint, unless extended due to special circumstances or party agreement, the TEA will conduct an investigation, including an on-site investigation, if necessary. The TEA will review all relevant information and determine whether the public agency has violated a special education requirement. You will be given a written decision addressing each of the allegations including findings of fact, conclusions, and reasons for the TEA's decision.

If the TEA determines that the public agency has violated a special education requirement, it must require the public agency to take appropriate steps to address the violations found, including engaging in technical assistance activities, negotiations, and corrective actions. Corrective actions may

include providing services to make up for services that were not previously provided to a specific child or a group of children and appropriate future provision of services for all children with disabilities. The TEA's decisions regarding your complaint are final and may not be appealed. Filing a complaint, however, does not take away your right to request mediation or a due process hearing.

If you file a complaint and request a due process hearing about the same issues, the TEA must set aside any issues in the complaint that are being addressed in the due process hearing until the hearing is over. Any issue in the complaint that is not a part of the due process hearing will be resolved within the timelines and procedures described in this document. If an issue raised in a complaint is decided in a due process hearing involving the same parties, the hearing decision is binding on that issue.

You can find more information about the complaint process on the TEA website at <http://www.tea.state.tx.us/index2.aspx?id=2147498481>. A form to file a complaint is available on the TEA website at <http://www.tea.state.tx.us/index2.aspx?id=2147497563>.

■ Due Process Hearing Program

The third option for resolving special education disputes is the due process hearing program. In a due process hearing, an impartial hearing officer hears evidence from the parties and makes a legally-binding decision.

You have the right to request a due process hearing on any matter relating to the identification, evaluation or educational placement of your child, or the provision of FAPE to your child. If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the hearing is over.

You must request a due process hearing within one year of the date you knew or should have known about the alleged action that forms the basis of the hearing request. This timeline does not apply to you if you were prevented from requesting the hearing because of specific misrepresentations by the school that it had resolved the problem, or because the school withheld information from you that was required to be provided to you. If you request the due process hearing, you have the burden of proving that the school violated a special education requirement. In certain situations, the school may request a due process hearing against you. In these situations, the school has the burden of proof.

Before you sue the 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 an attorney representing you must send a written request for a due process hearing or “due process complaint notice” to the TEA at the address at the end of this document. The TEA must send you this Notice of Procedural Safeguards upon receipt of your request. A form to request a due process hearing is available from TEA at <http://www.tea.state.tx.us/index2.aspx?id=2147498501>.

You do not have to use the TEA form, but your complaint notice must contain the following information: your child's name and address, or available contact information if your child is homeless; the name of your child's school; 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.

If you request the hearing, you must send a copy of your complaint notice to the school. You may not have a hearing until you, or an attorney representing you, sends a complaint notice that meets all of the above requirements. Within 10 calendar days upon receiving your complaint notice, the school must send you a response that meets the requirements of prior written notice unless it has already done so. Within 15 calendar days of receiving your complaint notice, the school must notify the hearing officer and you if it believes you did not include all the required information. The hearing officer has five calendar days to rule on whether the information in your complaint notice is sufficient.

You may only change your complaint if the school agrees or if the hearing officer gives you permission not later than five calendar days before the hearing. You may not raise issues at the hearing that were not raised in the complaint notice. If the complaining party, whether you or the school, makes changes to the due process complaint, the timelines for the resolution session and the time period for resolution start again on the date the amended complaint is filed.

The TEA must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or the school files a due process complaint.

- ◆ **Resolution Meeting**—Except in the case of an expedited hearing (see below for expedited resolution timelines), within 15 calendar days of receiving your complaint notice, the school must convene a meeting called a *resolution meeting* with you, a school representative with decision-making authority, and the relevant members of the ARD committee chosen by you and the school. The school may only include an attorney at the meeting if you

have an attorney at the meeting. Unless you and the school agree in writing to waive the resolution meeting or agree to go to mediation, the resolution meeting must occur before you can have a hearing.

If the school has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint during the time period for the resolution process, the due process hearing may occur.

The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except when you and the school have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the school is not able to obtain your participation in the resolution meeting, the school may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of the school's efforts must include: a record of the school's attempts to arrange a mutually agreed upon time and place, such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to you and any responses received; and detailed records of visits made to your home or place of employment and the results of those visits.

If the school fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint or fails to participate in the

resolution meeting, you may ask a hearing officer to order that the 45-calendar-day due process hearing timeline begin.

If you and the school agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next calendar day. After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next calendar day. If you and the school agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the school withdraws from the mediation process, then the 45-calendar-day timeline for the due process hearing starts the next calendar day.

The purposes of the resolution meeting are to give you an opportunity to discuss your complaint and the underlying facts with the school and to give the school the opportunity to resolve your complaint. If you reach an agreement in the meeting, you and the school must put your agreement in writing and sign it. This written agreement is enforceable in a court that has authority under state law to hear this type of case or in a federal district court unless one of the parties voids the agreement within three business days of the date it is signed.

If the school has not resolved your complaint to your satisfaction within 30 calendar days from the receipt of your complaint, the due process hearing may occur.

◆ **Resolution Meeting in Expedited Hearings**—For expedited hearings, the

school must convene the resolution meeting within seven calendar days. You have a right to a hearing if the school has not resolved the complaint to your satisfaction within 15 calendar days. If after making reasonable efforts and documenting such efforts, the school is not able to obtain your participation in the resolution meeting, the school may, at the end of the 15-calendar-day resolution period, request that a hearing officer dismiss your due process complaint.

- ◆ **Hearing Officer**—An impartial hearing officer appointed by the TEA will conduct the hearing. The hearing officer cannot be an employee of the TEA or 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 hearing officer must possess the necessary knowledge and skill to serve as a hearing officer. Hearing officers are paid through federal IDEA funds.

The TEA maintains a list of hearing officers that includes the qualifications of each hearing officer. You can request this list by faxing the TEA Office of Legal Services at (512) 475-3662. The list of current hearing officers is also available on the TEA website at <http://www.tea.state.tx.us/index4.aspx?id=5090>.

- ◆ **Child's Status during Proceedings (Stay-put)**—During a due process hearing and any court appeals, your child generally must remain in the current educational placement, unless you and the school agree otherwise. As stated previously, remaining in a current setting is commonly referred to as *stay-put*. If the proceeding involves discipline, see the discipline section for discussion of the child's placement during discipline disputes.

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 the child is turning three and transitioning from an *Early Childhood Intervention (ECI)* program, stay-put is not the ECI services. If the child qualifies for special education services and the parent consents, the services that are not in dispute must be provided.

- ◆ **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. Either party may contest the introduction of any evidence that has not been shared on time. The hearing officer may prohibit the introduction of evidence including evaluations and recommendations not disclosed within the timelines.
- ◆ **During the Hearing**—You have the right to bring and be advised by your attorney and by people with special knowledge or training regarding children with disabilities. You have the right to present evidence, confront, cross-examine, and compel the attendance of witnesses. You have the right to bring your child and to open the hearing to the public. You have the right to have each session of the hearing conducted at a time and place that is reasonably convenient to you and your child. You have the right to obtain a written or electronic verbatim record of the hearing and obtain written or electronic findings of fact and decisions at no cost to you.
- ◆ **The Decision**—The hearing officer's decision must be made on substantive grounds based upon a determination of whether your child received FAPE. If you complain about a procedural error, the hearing officer may only find that your

child did not receive FAPE if the error: impeded your child's right to FAPE; deprived your child of educational benefits; or significantly interfered with your opportunity to participate in the decision-making process regarding FAPE to your child.

The TEA must ensure that a final hearing decision is reached and mailed to the parties within 45 calendar days after the expiration of the 30-calendar-day resolution period, except for an expedited hearing. A final decision must be reached in an expedited hearing within 10 school days from the date of the hearing or within 45 calendar days from the date the hearing was requested, whichever is sooner. 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 state or federal court. The hearing officer's decision will be posted on the TEA's website after all personally identifiable information about your child has been removed.

The school must implement the hearing officer's decision within 10 school days even if the school appeals the decision except that any reimbursements can be withheld until the appeal is resolved. Nothing in the IDEA limits you from filing another due process complaint on an issue separate from the one addressed in a previous hearing.

- ◆ **Civil Action**—You have the right to appeal the hearing officer's findings and decision to state or federal court, no more than 90 calendar days after the date the decision was issued. As part of the appeal process, the court must receive the records of the due process hearing, hear additional evidence at the request of either party, base its decision on the preponderance of the evidence, and grant any appropriate relief.

Nothing in Part B of the IDEA limits the rights, procedures, and remedies available under the U.S. Constitution or other federal laws protecting the rights of children with disabilities, except that before filing a civil action in court seeking relief that is available under the IDEA, a parent or school must utilize the due process hearing procedures provided under the IDEA. This means that even if you have remedies under other laws that overlap with those available under the IDEA, you first must use the IDEA's due process hearing procedures before filing an action in court.

- ◆ **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 may award you reasonable attorney's fees and related costs.

The award of attorney's fees will not include costs related to the resolution session or to ARD committee meetings, unless a hearing officer or a court ordered the ARD committee meeting.

You cannot be awarded attorney's fees or costs for work done after the time the school gave you the written settlement offer if: the school made the offer more than 10 calendar days before the due process hearing began; you did not accept the offer within 10 calendar days; and the court found that the relief you obtained from the hearing was not more favorable.

The court must reduce the amount of attorney's fees awarded to you if it finds that: you or your attorney unreasonably protracted the dispute; the attorney's fees unreasonably exceed the hourly rate charged by similar attorneys in the community for similar services; the time spent by your attorney is excessive given the nature of the proceeding; or your attorney failed to give the school the appropriate information in the complaint notice. A reduction in fees is not required

if the court finds the school unreasonably protracted the proceedings or behaved improperly.

If the school wins at the hearing or court proceeding, a court may order you or your attorney to pay the school's reasonable attorney's fees if your attorney filed a complaint notice or subsequent cause of action that was frivolous, unreasonable, or without foundation, or continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation. You or your attorney could also be required to pay the school's attorney's fees if your due process hearing complaint or subsequent court proceeding was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Contact Information

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

Local Contact Information		
School	Education Service Center	Parent Training Information Center
http://www.mesquiteisd.org	http://www.region10.org	http://www.partnerstx.org/
Name: Kathryn Bohling	Name: Rosario Samandi	Name: Linda Westrick
Telephone Number: 972-882-7700	Telephone Number: 972-348-1674	Telephone Number: 214-425-3056
E-mail: kbohling@mesquiteisd.org	E-mail: rosario.samandi@region10.org	E-mail: lmw_path10@att.net

If you need the TEA's explanation of the dispute resolution options or assistance in requesting the TEA's services, you may leave a message with the Division of Federal and State Education Policy toll-free Parent Information Line: **(800) 252-9668**. A staff member will return your call during normal business hours.

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

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

To the attention of the following Divisions:

Office of Legal Services
Special Education Mediation Coordinator
Division of Federal and State Education Policy
Special Education Complaint Unit
Office of Legal Services
Special Education Due Process Hearings

Please visit the TEA Division of Federal and State Education Policy website at
<http://www.tea.state.tx.us/index2.aspx?id=2147491399>