

Part B PROCEDURAL SAFEGUARDS NOTICE

New York State Education Department PROCEDURAL SAFEGUARDS NOTICE July 2017

Rights for Parents of Children with Disabilities, Ages 3-21

As a parent, you are a vital member of the Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE) in New York State. The CSE/CPSE is responsible for developing recommendations for special education programs and services for your child. You must be given opportunities to participate in the CSE/CPSE discussion and decision-making process about your child's needs for special education. The following information concerns procedural safeguards that are your legal rights under federal and State laws to be informed about and involved in the special education process and to make sure that your child receives a free appropriate public education (FAPE).

A copy of this procedural safeguards notice must be provided to you one time a year and:

- upon initial referral or your request for an evaluation of your child.
- whenever you request a copy.
- upon receipt of the first due process complaint in a school year requesting mediation or an impartial hearing.
- the first time in a school year when the school district receives a copy of a State complaint that you submitted to the New York State Education Department (NYSED).
- when a decision is made to suspend or remove your child for discipline reasons that would result in a disciplinary change in placement.

The Procedural Safeguards Notice has been adapted from the model form developed by the United States Department of Education (USDOE). Information was added regarding New York State's requirements.



The University of the State of New York
New York State Education Department
Office of Special Education

Difference Between Due Process Hearing Complaint and State Complaint Procedures 13

Adoption of State Complaint Procedures 13

Minimum State Complaint Procedures 14

Filing a Complaint..... 15

Due Process Complaint Procedures 16

Filing a Due Process Complaint 16

Due Process Complaint..... 16

Model Forms 18

Mediation..... 18

The Child’s Placement While the Due Process Complaint and Hearing are Pending (Pendency)..... 20

Resolution Process 20

Hearings on Due Process Complaints 23

Impartial Due Process Hearing 23

Hearing Rights 24

Hearing Decisions 25

Appeals 26

Finality of Decision; Appeal; Impartial Review..... 26

Timelines and Convenience of Hearings and Reviews 27

Civil Actions, Including the Time Period in Which to File Those Actions 27

Attorneys’ Fees 28

Procedures When Disciplining Children with Disabilities 30

Authority of School Personnel 30

Change of Placement Because of Disciplinary Removals..... 33

Determination of Setting..... 34

GENERAL INFORMATION**PRIOR WRITTEN NOTICE (NOTICE OF RECOMMENDATION)****34 CFR section 300.503; 8 NYCRR section 200.5(a) and (c)****Notice**

Your school district must give you written notice (provide you certain information in writing), whenever it:

1. proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or**
2. refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

If the prior written notice relates to an action by the school district that requires parental consent, the district will give notice at the same time they request such consent.

Content of notice

The written notice must:

1. describe the action that your school district proposes or refuses to take;
2. explain why your school district is proposing or refusing to take the action;
3. describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. include a statement that you have protections under the procedural safeguards provisions in Part B of the Individuals with Disabilities Education Act (IDEA);
5. tell you how you can obtain a description of the procedural safeguards notice if the action that your school district is proposing or refusing is not an initial referral for evaluation;
6. include resources for you to contact for help in understanding Part B of the Individuals with Disabilities Education Act (IDEA);
7. describe any other choices that your child's Committee on Special Education (CSE) or Committee on Preschool Special Education (CPSE), considered and the reasons why those choices were rejected; **and**
8. provide a description of other reasons why your school district proposed or refused the action.

Notice in understandable language

The notice must be written in language understandable to the general public and be provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

3. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

PARENTAL CONSENT

34 CFR section 300.300; 8 NYCRR sections 200.5(a) and (b)

Consent for initial evaluation

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described under the heading *Parental Consent*.

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation and your child is school-age, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances and your child can not receive special education services even if he/she would have been eligible.

Special rules for initial evaluation of wards of the State

If a child is a ward of the State and is not living with his/her parent, the school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. despite reasonable efforts to do so, the school district cannot find the child's parent;
2. the rights of the parents have been terminated in accordance with State law; or
3. a judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

In New York State, ward of the state means a child or youth under the age of twenty-one:

1. who has been placed or remanded pursuant to section 358-a, 384 or 384-a of the Social Services Law, or article 3, 7, or 10 of the Family Court Act, or freed for adoption pursuant to section 383-c, 384, or 384-b of the Social Services Law; or
2. who is in the custody of the Commissioner of Social Services or the Office of Children and Family Services; or

Parental consent for reevaluations

Your school district must obtain your informed consent before it reevaluates your child, unless your school district can demonstrate that:

1. it took reasonable steps to obtain your consent for your child's reevaluation; **and**
2. you did not respond.

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

Documentation of reasonable efforts to obtain parental consent

Your school must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations and reevaluations, to provide special education and related services for the first time, and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the school district's attempts in these areas, such as:

1. detailed records of telephone calls made or attempted and the results of those calls;
2. copies of correspondence sent to the parents and any responses received; **and**
3. detailed records of visits made to the parent's home or place of employment and the results of those visits.

Parental consent for insurance access

Parent consent is required prior to the school district accessing a parent's private or public insurance proceeds as described under the heading of *Use of Public and Private Benefits/Insurance*.

Consent for Parentally-Placed and Home-Instructed Students

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may not use its consent override procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

Other consent requirements

Your consent is not required before your school district may:

1. review existing data as part of your child's evaluation or a reevaluation; **or**
2. give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

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

Parent-initiated evaluations

If you obtain an IEE of your child at public expense or you choose to share with the school district an evaluation of your child that you obtained at private expense:

1. Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for IEE, in any decision made with respect to the provision of FAPE to your child; **and**
2. You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

Requests for evaluations by impartial hearing officers

If an impartial hearing officer requests an IEE of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

School district 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 district 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 district may not impose conditions or timelines related to obtaining an IEE at public expense.

3. 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**
4. 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 CFR Part 99.

Before any major identification, location, or evaluation activity (also known as “child find”), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents of the activity to locate, identify, and evaluate children in need of special education and related services.

ACCESS RIGHTS

34 CFR section 300.613; 8 NYCRR sections 200.2(b)(6) and 200.5(d)(6)

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under Part B of IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. a request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; **and**
3. to have your representative inspect and review the records.

The participating agency 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, or separation and divorce.

RECORD OF ACCESS

34 CFR section 300.614

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

HEARING PROCEDURES

34 CFR section 300.621

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under FERPA.

RESULT OF HEARING

34 CFR section 300.620

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

1. be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; **and**
2. if the participating agency discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION

34 CFR section 300.622; 8 NYCRR section 200.5(b)

Unless the information is contained in education records, and the disclosure is authorized without parental consent under FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law (age 18), must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, 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.

STATE COMPLAINT PROCEDURES

DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES

The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, NYSED, or any other public agency. Only you or a school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. NYSED staff generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended. An impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days for school-age students and 30 calendar days for preschool students after the end of the resolution period, (as described in this document under the heading Resolution Process) unless the hearing officer grants a specific extension of the timeline. Such an extension would be at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below.

ADOPTION OF STATE COMPLAINT PROCEDURES

34 CFR section 300.151; 8 NYCRR section 200.5(l)

General

NYSED must have written procedures for:

1. resolving any complaint, including a complaint filed by an organization or individual from another State;
2. the filing of a complaint with NYSED. State complaints may be sent to:
Statewide Coordinator for Special Education
New York State Education Department
Office of Special Education
89 Washington Avenue, Room 309 EB
Albany, NY 12234
3. widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Remedies for denial of appropriate services

In resolving a State complaint in which NYSED has found a failure to provide appropriate services, NYSED must address:

complaint contains multiple issues of which one or more are part of such a hearing, NYSED must set aside the State complaint, or any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the school district), then the due process hearing decision is binding on that issue and NYSED must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by NYSED.

FILING A COMPLAINT

34 CFR section 300.153; 8 NYCRR section 200.5(I)

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

1. a statement that a school district or other public agency has violated a requirement of Part B of IDEA or its regulations;
2. the facts on which the statement is based;
3. the signature and contact information for the complainant; and
4. if alleging violations regarding a specific child:
 - (a) the name of the child and address of the residence of the child;
 - (b) the name of the school the child is attending;
 - (c) in the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
 - (d) a description of the nature of the problem of the child, including facts relating to the problem; **and**
 - (e) a proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with NYSED.

4. if the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. a description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. a proposed resolution of the problem to the extent known and available to you or the school district at the time.

Notice required before a hearing on a due process complaint

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney), files a due process complaint that includes the information listed above.

Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the school district) considers a due process complaint insufficient, the impartial hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

Complaint amendment

You or the school district may make changes to the complaint only if:

1. the other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; **or**
2. by no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

Local educational agency (LEA) or school district response to a due process complaint

If the school district has not sent a prior written notice to you, as described under the heading **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the school district must, within 10 calendar days of receiving the due process complaint, send a response to you that includes:

1. an explanation of why the school district proposed or refused to take the action raised in the due process complaint;

3. is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school district may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. who is under contract with the Community Dispute Resolution Center (CDRC); **and**
2. who would explain the benefits and encourage the use of the mediation process to you.

New York State uses qualified mediators trained by CDRC who know the laws and regulations relating to the provision of special education and related services. Mediators are selected by CDRCs on a random, rotational, or other impartial basis.

Arranging mediation

Mediation is arranged through the school district with CDRCs. The State is responsible for the cost of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

Mediation agreements

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. states that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; **and**
2. is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any federal court or State court of a State receiving assistance under Part B of IDEA.

Impartiality of mediator

The mediator:

1. may not be an employee of a State educational agency or school that is involved in the education or care of your child; **and**
2. must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

1. must include a representative of the school district who has decision-making authority on behalf of the school district; and
2. may not include an attorney of the school district unless you are accompanied by an attorney.

You and the school district determine the relevant members of the CSE or CPSE to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. you and the school district agree in writing to waive the meeting; or
2. you and the school district agree to use the mediation process, as described under the heading **Mediation**.

A school district must make reasonable efforts to obtain your participation in the resolution meeting.

Resolution period

If the school district 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 school-age students or 30-calendar-day timeline for preschool students 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 where you and the school district 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 you decide not to attend the resolution meeting, your impartial hearing may be dismissed by an impartial hearing officer.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that an impartial hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

1. detailed records of telephone calls made or attempted and the results of those calls;
2. copies of correspondence sent to you and any responses received; and
3. detailed records of visits made to your home or place of employment and the results of those visits.

If the school district 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

HEARINGS ON DUE PROCESS COMPLAINTS

IMPARTIAL DUE PROCESS HEARING

34 CFR section 300.511; 8 NYCRR sections 200.1(x), 200.5(i) and (j)

General

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the *Due Process Complaint* and *Resolution Process* sections. The school district appoints the impartial hearing officer from the rotational list. The impartial hearing officer convenes the impartial hearing.

Impartial hearing officer (IHO)

At a minimum, an IHO must:

1. not be an employee of a State educational agency or school that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
2. not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. be knowledgeable and understand the provisions of IDEA, and federal and New York State regulations pertaining to IDEA, and legal interpretations of IDEA by federal and State courts; and
4. have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Each school district must keep a list of those persons who serve as IHOs.

Subject matter of due process hearing

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint notice, unless the other party agrees.

Timeline for requesting a hearing

You or the school district must request an impartial hearing on a due process complaint within two years of the date you or the school district knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if you could not file a due process complaint because:

1. the school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or

HEARING DECISIONS

34 CFR section 300.513; 8 NYCRR section 200.5(j)

Decision of hearing officer

An IHO's decision on whether your child received FAPE must be based on substantive grounds.

In matters alleging a procedural violation, an IHO may find that your child did not receive FAPE only if the procedural inadequacies:

1. interfered with your child's right to FAPE;
2. significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; or
3. caused a deprivation of an educational benefit.

Construction clause

None of the provisions described above can be interpreted to prevent an IHO from ordering a school district to comply with the requirements in the procedural safeguards section of the federal regulations under Part B of IDEA (34 CFR sections 300.500 through 300.536).

None of the provisions under the headings: ***Filing a Due Process Complaint; Due Process Complaint; Model Forms; Resolution Process; Impartial Due Process Hearing; Hearing Rights; and Hearing Decisions*** (34 CFR sections 300.507 through 300.513), can affect your right to file an appeal of the due process hearing decision with the State Review Officer (SRO) (see heading **Appeals - Finality of Decision**).

Separate request for a due process hearing

Nothing in the procedural safeguards section of the federal regulations under Part B of IDEA (34 CFR sections 300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Finality of review decision

The decision made by the SRO is final unless you or the school district brings a civil action, as described below.

TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS**34 CFR section 300.515; 8 NYCRR sections 200.5(j) and 200.16(h)**

The school district must ensure that, not later than 45 calendar days for school-age students or 30 calendar days for preschool students, after the expiration of the 30 calendar day period for resolution meetings or, as described under the sub-heading ***Adjustments to the 30-calendar-day resolution period***, not later than 45 calendar days for school-age students or 30 calendar days for preschool students after the expiration of the adjusted time period:

1. a final decision is reached in the hearing; **and**
2. a copy of the decision is mailed to you and the school district.

The SRO must ensure that not later than 30 calendar days after the receipt of a request for review or such time as extended by the SRO:

1. a final decision is reached in the review; **and**
2. a copy of the decision is mailed to you and the school district.

An IHO or a SRO may grant specific extensions of time beyond the periods described above (45-calendar-day for school-age or 30-calendar-day for preschool hearing decision timeline and 30-calendar-day SRO decision timeline) if you or the school district make a request for a specific extension of the timeline.

Each hearing and review involving oral arguments must be conducted at a time and place that is reasonably convenient to you and your child.

CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS**34 CFR section 300.516; 8 NYCRR section 200.5(k)****General**

Any party (you or the school district) who does not agree with the findings and decision in the State-level review has the right to bring a civil action with respect to the matter that was the subject of the due process hearing (including a hearing relating to disciplinary procedures). The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

Time limitation

The party (you or the school district) bringing the action have four months from the date of the decision of the SRO to file a civil action.

Award of fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing began for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement to you if:
 - a. the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
 - b. the offer is not accepted within 10 calendar days; **and**
 - c. the court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the CSE or CPSE unless the meeting is held as a result of an administrative proceeding or court action. *Fees also may not be awarded for a mediation as described under the heading Mediation.*

A resolution meeting, as described under the heading **Resolution meeting**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of IDEA, if the court finds that:

1. you, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
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 similar 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 you did not provide to the school district the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA.

Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the school district must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**.

Additional authority

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see **Manifestation determination**, below) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services**. The child's CSE or CPSE determines the IAES for such services.

Services

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an IAES.

A school district is only required to provide services to a child with a disability who has been removed from his or her current placement for **10 school days or less** in that school year, if it provides services to a child without disabilities who has been similarly removed.

In New York State, the school district must provide alternative instruction to a student with a disability who has been suspended for less than 10 days in a school year if the student is of compulsory school age. If the student is not of compulsory school age, alternative instruction must be provided if these services are provided to nondisabled students.

The education service requirements for students with disabilities during the first 10 days of suspension in a school year are the same as they are for nondisabled students. In New York State, alternative instruction must be provided for a minimum of one hour daily for an elementary student and two hours daily for a secondary student. If a student who is not of compulsory school age is suspended, the school district is not required to provide the student with the alternative instruction unless they provide this instruction to nondisabled students.

A child with a disability who is removed from the child's current placement for **more than 10 school days** must:

1. continue to receive educational services, 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 IEP; **and**
2. receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in

Special circumstances

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an IAES (determined by the child's CSE or CPSE) for up to 45 school days, if the child:

1. carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of NYSED or a school district;
2. knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of NYSED or a school district;
or
3. has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of NYSED or a school district.

Definitions

Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of federal law.

Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

Notification

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

34 CFR section 300.536; 8 NYCRR section 201.2

A removal of a child with a disability from the child's current educational placement is a **change of placement** if:

1. the removal is for more than 10 school days in a row; or
2. the child has been subjected to a series of removals that constitute a pattern because:
 - a. the series of removals total more than 10 school days in a school year;

Whenever a parent or a school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Complaint Procedures, Hearings on Due Process Complaints, and Appeal of decisions; impartial review*** except as follows:

1. The school district must arrange for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless the parents and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see ***Appeals***, above).

PLACEMENT DURING APPEALS

34 CFR section 300.533; 8 NYCRR section 201.10

When, as described above, the parent or school district has filed a due process complaint related to disciplinary matters, the child must (unless the parent and NYSED or school district agree otherwise) remain in IAES pending the decision of the IHO, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

34 CFR section 300.534; 8 NYCRR section 201.5

General

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice.

Basis of knowledge for disciplinary matters

A school district must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. the parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;

REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

34 CFR section 300.535

Part B of IDEA does not:

1. prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. 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

If a school district reports a crime committed by a child with a disability, the school district:

1. must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
2. may transmit copies of the child's special education and disciplinary records only to the extent permitted by FERPA.

CHILDREN WITH DISABILITIES COVERED BY PRIVATE INSURANCE**34 CFR section 300.154(e); 8 NYCRR sections 200.5(b)(9)**

With regard to services required to provide FAPE to your child, the school district may access your private insurance proceeds only if you provide consent consistent with the section under the heading ***Parental Consent - Definition***

Each time the school district proposes to access your private insurance proceeds, it must:

- obtain your consent; and
- inform you that your refusal to permit the school district to access your private insurance does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to you.

The school district may use its Part B IDEA funds to pay the costs that you might otherwise have to pay to use your benefits or insurance (e.g., the deductible or co-pay).

However, the cost of reimbursement:

1. must not be reduced or denied for failure to provide the notice if: (a) the school prevented you from providing the notice; (b) you had not received notice of your responsibility to provide the notice described above; or (c) compliance with the requirements above would likely result in physical harm to your child; **and**
2. may, in the discretion of the court or an IHO, not be reduced or denied for the parents' failure to provide the required notice if: (a) the parent is not literate or cannot write in English; or (b) compliance with the above requirement would likely result in serious emotional harm to the child.

RESOURCES

USDOE - IDEA Site - (includes Part 300 of the Code of Federal Regulations)
<http://idea.ed.gov/>

New York State Education Department - <http://www.nysed.gov/home.html>

Office of Special Education - <http://www.p12.nysed.gov/specialed/>

Parts 200 and 201 of the Regulations of the Commissioner of Education -
<http://www.p12.nysed.gov/specialed/lawsregs/part200.htm>

Office of Special Education updates - <http://www.p12.nysed.gov/specialed/timely.htm>

Special Education Quality Assurance Regional Offices –
General Information - <http://www.p12.nysed.gov/specialed/quality/home.html>
Location of Offices - <http://www.p12.nysed.gov/specialed/quality/qaoffices.htm>
(also listed on next page)