

## PROCEDURAL SAFEGUARDS AVAILABLE TO PARENTS OF STUDENTS WITH DISABILITIES

### Procedural Safeguards' Notice

A Procedural Safeguards' Notice shall be provided to parents at least one time per year, except a copy also shall be given to the parents on:

1. An initial referral or parental request for evaluation;
2. The first occurrence of the filing of a due process hearing;
3. Parental request; or
4. The day on which the decision to take disciplinary action involving a change in placement is made.

### Parent Consent - "Consent" means that:

- (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) the parent understands and agrees, in writing, to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and
- (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. However, if a parent revokes consent, that revocation is not retroactive.

Parent consent is not required before reviewing existing data as part of an evaluation or reevaluation, or when administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students. Parent consent is not required for the screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation and shall not be considered to be an evaluation for eligibility for special education and related services. The public agency must obtain informed parental consent before conducting an initial evaluation, any reevaluation, or initially placing a student with disabilities in a program providing special education and related services. Consent for an initial evaluation may not be construed as consent

for initial placement. If a parent does not provide consent for an initial evaluation, or the parent fails to respond to a request, the local educational agency may pursue the initial evaluation of the student through a due process hearing. If a parent fails to respond to a request for a reevaluation, the public agency may conduct a reevaluation if it can demonstrate that reasonable measures to obtain parental consent have been taken. To conduct an initial evaluation, the district must seek parental consent and provide notice, which includes the following:

1. The reason(s) and nature for an evaluation; and
2. A description of the types of special education programs and services available within the intermediate school district (ISD).

A local school district shall not provide initial special education programs and services to a student if the parent refuses to consent to those programs or services.

### Limitation

A public agency may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the public agency, except as required by the IDEA.

### Prior Notice to Parents

The public agency must provide prior written notice to the parents of a child with disabilities each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student.

The notice must include:

1. A description of where a parent can obtain a copy of the Procedural Safeguards' document;
2. A description of the action proposed or refused by the public agency, an explanation of why the public agency proposes or refuses to take action, and a description of any options the public agency considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the public agency uses as a basis for the proposal or refusal;
4. A description of any other factors which are relevant to the public agency's proposal or refusal; and
5. A list of sources that the parent may contact to obtain assistance in understanding the content of the prior notice.

The notice must be written in language understandable to the general public, and be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency shall have the notice translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice. The public agency must maintain written evidence that these requirements have been met.

### Parent Involvement

Each public agency shall provide notice to ensure that parents of

children with disabilities have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of a FAPE.

### Meeting

A public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each individualized education program (IEP) meeting, or are given the opportunity to participate. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Each public agency shall ensure that the parents of each student with a disability are included as members of any group that makes decisions on the educational placement of their child. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency shall use other methods to ensure their participation. An initial placement may not be made without the consent of a parent. However, other placement decisions may be made by a group without the involvement of the parent(s) if the public agency is unable to obtain the parent's participation in the decision. The public agency must have a record of its attempt to ensure the parent(s) involvement.

The public agency shall make reasonable efforts to ensure that the parent understands and is able to participate in any group discussion relating to the educational placement of his or her child, including arranging for an interpreter for the parent with deafness or whose native language is other than English.

### Placement

The public agency shall ensure that:

1. To the maximum extent appropriate, a person who has a disability, including a person who is assigned to a public or private institution or other care facility, is educated with persons who do not have disabilities.
2. Placement of a person who has a disability in special classes, separate schools, or the removal of a person who has a disability from the general education environment occurs only when the nature or severity of the disability is such that education in a regular class using supplementary aids and services cannot be satisfactorily achieved.
3. The placement of the student is as close as possible to his or her home.
4. Unless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if non-disabled.
5. In selecting the least restrictive environment, consideration shall be given to any potentially harmful effects to the student or the quality of services that the student needs.
6. A child with a disability will not be removed from education in age-appropriate regular classrooms solely because of needed accommodations in the general curriculum.

**Evaluation Procedures** - "Evaluation" means procedures used in accordance with 34 CFR §§300.530 to 300.536. An evaluation will determine whether a student is a student with a disability, the nature and extent of the special education and related services that the student needs, and provide information relating to the student's involvement and progress in the general curriculum. Preschool children must also be assessed to determine participation in appropriate activities. The term also means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

The parent has the right to:

1. Have an interpreter/translator present if the primary language is not English or if the student is deaf/hearing impaired or visually impaired, unless it is clearly not feasible to do so;
2. Be assured that testing does not discriminate on the basis of race, language, or cultural background;
3. Be assured that the assessments and other evaluation materials used to assess a student are provided and administered in the language and form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is not feasible to provide or administer;
4. Have evaluation instruments validated for the specific purpose(s) for which they were intended and administered by trained personnel in conformance with the instructions provided by their producer;
5. Have the student assessed in all areas of suspected disability using instruments that assess specific areas of educational need and do not produce merely a single intelligent quotient score.

No single measure or assessment is to be used as the sole criterion for determining an appropriate special education program for the student;

6. Be assured that if a test is administered to a student with impaired sensory, physical, or speaking skills, the test results accurately reflect what the test intends to measure rather than the student's disability;
7. Have the initial evaluation made by a multidisciplinary evaluation team (MET), which includes a teacher or person knowledgeable in the area of the suspected disability;
8. Be assured that the student is assessed in all areas related to the suspected disability including, if appropriate, health, vision, hearing, social and emotional status, behavioral factors, general intelligence, academic performance, communicative status, and motor ability;
9. Have an evaluation that is sufficiently comprehensive to identify all of the student's special education and related services' needs, whether or not commonly linked to the disability category in which the student has been classified;
10. Provide the MET with information about the student's suspected disability, along with any evaluation the parent may have obtained for the student;
11. Be assured that a variety of assessment tools and strategies are used to

12. Have an initial evaluation conducted by a MET and convene an IEP meeting within 30 school days after the school has received the written permission to evaluate. This timeline may be extended by agreement between the parents and the agency;
13. Expect a reevaluation every three years, unless the parent and the local school district agree that a reevaluation is unnecessary;
14. Request a reevaluation not more frequently than once a year, unless the parent and local educational agency agree otherwise;
15. Be notified of each evaluation procedure, test, record, or report the IEP Team used in determining eligibility and the need for special education programs or services; and
16. Be assured that a local district will coordinate prior assessments of students with disabilities who transfer from one school district to another in the same academic year as necessary and expeditiously as possible to ensure prompt completion of full evaluations.

**Independent Educational Evaluation**

An "independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. An "IEE at public expense" means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

The parent of a student with a disability or suspected disability has the right to obtain an IEE of the child. A parent has the right to an IEE at public expense if the parent disagrees with any evaluation obtained by the public agency. However, the public agency may initiate a due process hearing to show that its evaluation is appropriate. The public agency shall respond, in writing, to the parent's request for an IEE within seven calendar days of the parent's written request. If the final decision is that the evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. If the parent obtains an IEE at his/her own expense, the results of the evaluation must be considered by the public agency in any decision made with respect to the provision of a FAPE to the student, and may be presented as evidence at a due process hearing regarding the student.

If a hearing officer requests an IEE as part of a hearing, the cost of the evaluation must be at public expense. Each public agency shall provide to the parent, on request, information about where an IEE may be obtained. When 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, shall be the same as the criteria which the public agency uses when it initiates an evaluation to the extent those criteria are consistent with the parent's right to an IEE.

**Mediation**

Mediation is available to all parties whenever a dispute arises with respect to special education, including but not limited to when a hearing is requested or when a complaint is made. The IDEA mediation requirements are:

1. Mediation is free and voluntary, including costs of meeting to encourage mediation;
2. Mediation cannot be used to deny a parent's right to a due process hearing;
3. Mediation must be conducted by a qualified and impartial mediator;
4. The state must maintain a list of individuals who are qualified mediators who are knowledgeable about the laws and regulations on special education;
5. Mediation shall be scheduled in a timely manner in a convenient location;
6. Both parties must agree with the selection of the mediator;
7. Parties who resolve the complaint through the mediation process shall execute a legally binding agreement;
8. Discussions occurring during mediation must be confidential and may not be used as evidence in subsequent due process or civil proceedings; and
9. Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins.

**Impartiality of Mediator**

An individual who serves as a mediator:

1. May not be an employee of any local educational agency or any state agency;
2. May not be an employee of a state educational agency that is providing direct services to a student who is the subject of the mediation process; and
3. Must not have a personal or professional conflict of interest.

### Written Agreement

A legally binding agreement executed as the result of the parties resolving the complaint through mediation shall:

1. State that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
2. Be signed by both the parent and a representative of the agency who has the authority to bind such agency; and
3. Be enforceable in any state court of competent jurisdiction or in a district court of the United States.

### Impartial Due Process Hearing

A parent or a public agency may initiate a hearing regarding the public agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student. The alleged violation shall not have occurred more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process hearing.

The two-year timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to:

1. Specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the due process hearing; and
2. The local educational agency's withholding of information from the parent that was required to be provided to the parent.

When a due process hearing is initiated, the public agency shall inform the parent of the availability of mediation.

A parent must give notice to the public agency, as appropriate, when filing a request for a due process hearing. The notice request must contain the following information:

1. The name of the student, address of residence of the student (or available contact information in the case of a homeless child or youth), and the name of the school the student attends;
2. A description of the nature of the problem, including related facts; and
3. A proposed resolution of the problem to the extent known and available to the parent at that time.

A parent may not have a due process hearing until the parent, or the attorney representing a parent, provides a due process hearing notice that includes the above information to the other party and forwards a copy of such notice to the state educational agency.

This notice must remain confidential.

A model form is available at the ISD to assist the parent in filing due process hearing requests.

A hearing will be conducted by the public agency directly responsible for the education of the student.

The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the public agency initiates a due process hearing.

### Subject Matter of Hearing

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the filed due process notice unless the other party agrees otherwise.

### Resolution Session

Prior to the opportunity for an impartial due process hearing, the local educational agency shall convene a meeting with the parents and the relevant member(s) of the IEP Team who have specific knowledge of the facts identified in the complaint. The meeting shall:

1. Occur within 15 calendar days of receiving notice of the parent's complaint;
2. Include a representative of the agency who has decision-making authority on behalf of the agency;
3. Not include an attorney of the local educational agency unless the parent is accompanied by an attorney;
4. Be a place where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local educational agency is provided the opportunity to resolve the complaint, unless the parents and the local educational agency agree in writing to waive such meeting or agree to use the mediation process.

If the local educational agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur and all of the applicable timelines for a due process hearing shall commence.

In the case that a resolution is reached to resolve the complaint at a resolution session, the parties shall execute a legally binding agreement that is:

1. Signed by both the parent and a representative of the agency who has the authority to bind such agency; and
2. Enforceable in any state court of competent jurisdiction or in a district court of the United States.

If the parties execute an agreement as a result of the resolution session, a party may void such agreement within three business days of the agreement's execution.

### NOTE: Please see page 7 for EMERGENCY RULES regarding this section.

#### Hearing Officer

A due process hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of the student, or by any person having a personal or professional interest which would conflict with his or her objectivity in the due process hearing. A person who otherwise qualifies to conduct a due process hearing is not an employee of the public agency solely because he or she is paid by the public agency to serve as a hearing officer.

A person who qualifies to conduct a due process hearing, at a minimum, possesses:

1. Knowledge of and the ability to understand the provisions of the IDEA, federal and state regulations pertaining to the IDEA, legal interpretations of the IDEA by federal and state courts;
2. The knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
3. The knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

Each public agency shall keep a current list of persons who serve as hearing officers; this list is developed and distributed by the Michigan Department of Education (MDE). This list shall be provided to the parent upon any request for a hearing. The list must include a statement of the qualifications of each of those persons.

#### Decision of Hearing Officer

The public agency shall ensure that a final hearing decision is reached and mailed to the parties within 45 calendar days after the receipt of a request for a hearing, unless the hearing officer grants a

specific extension at the request of either party.

The decision made in a due process hearing is final unless a party to the hearing appeals the decision under the procedures for impartial administrative appeal described below.

A decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the student received a FAPE.

In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies:

1. Impeded the student's right to a FAPE;
2. Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
3. Caused a deprivation of educational benefits.

#### Due Process Hearing Rights

Any party to a hearing has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence (including evaluations and recommendations based on those evaluations) that has not been disclosed to that party at least five business days before the hearing; and
4. Obtain written or, at the option of the parent, an electronic findings-of-fact and decisions at no cost to the parent. After deleting any personally identifiable information, the public agency shall transmit those findings and decisions to the state advisory panel and make them available to the public.

A parent involved in hearings must be given the right to have the student who is the subject of the hearing present and to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to the parent and student involved.

#### **Administrative Appeal: Impartial Review**

Any party aggrieved by the findings and decision in the hearing may appeal to the MDE within 25 calendar days of receipt of the decision. If there is an appeal, the MDE shall conduct an impartial review of the hearing not later than 30 calendar days after the receipt of a request for a review. The official conducting the review shall:

1. Examine the entire hearing record;
2. Ensure that the procedures at the hearing were consistent with the requirements of due process;
3. Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, the hearing rights described above apply;
4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
5. Make an independent decision on completion of the review;
6. Give a copy of written or, at the option of the parent, electronic findings-of-fact and the decision to the parties;
7. Conduct reviews involving oral arguments at a time and place which is reasonably convenient to the parent and student involved; and
8. A hearing officer may grant specific extensions of time at the request of either party.

#### **Civil Action**

Any party aggrieved by the findings and decision made in an administrative review has the right to bring a civil action in state or federal court. The party bringing the action shall have 60 days from the date of the decision of the hearing officer to bring such an action.

#### **Student's Status During Proceedings**

During pendency of any hearing or judicial proceeding, the student involved in the hearing must remain in his or her present educational placement unless the public agency and the parent of the student agree otherwise. Any IEP after the initial IEP will go into effect unless the parent disagrees and requests a due process hearing.

If the decision of a hearing officer in a due process hearing or an appeal agrees with the student's parent that a change of placement is appropriate, that placement must be treated as an agreement between the public agency and the parent.

If the hearing involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the public school program until the completion of all the proceedings.

#### **Award of Attorneys' Fees**

A court may award attorneys' fees to the parent of a student with a disability who prevails in court or a due process hearing. The fees must be consistent with those for similar legal services in the community.

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

1. To a prevailing party who is the parent of a child with a disability;

2. To a prevailing party who is a state educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
3. To a prevailing state educational agency or local educational agency against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Reimbursement of attorneys' fees and related costs are prohibited if:

1. The district makes a written offer of settlement more than ten days before the proceeding begins;
2. The offer is not accepted within ten days; or
3. The relief granted to the parent in a hearing or by the court is not more favorable than the offer of settlement.

If the court finds that the parent was substantially justified in rejecting a settlement offer, and the parent prevails in the hearing or court case, then attorneys' fees may be awarded.

A resolution session shall not be considered a meeting convened as a result of an administrative hearing or judicial action or an administrative hearing or judicial action for purposes of attorneys' fees.

The court may reduce attorneys' fees if it finds that:

1. The parent or the parent's attorney has unreasonably delayed the final resolution of the controversy;
2. The attorneys' fees exceed the prevailing hourly rate in the community for similar services;
3. The time spent and legal services furnished were excessive considering the nature of the case; or
4. The attorney representing the parent did not provide the public agency with the appropriate information in a due process hearing notice.

The reduction of attorneys' fees listed above does not apply if the court finds that the state or public agency:

1. Unreasonably delayed the final resolution of the dispute; or
2. Otherwise violated the procedural safeguards of the parent.

Attorneys' fees will not be awarded to the parent for any meeting of the IEP Team unless:

1. The meeting is directed by the court or by an administrative proceeding; or
2. At the discretion of the state, the meeting is for mediation conducted prior to the filing for a request for a due process hearing.

#### **Discipline**

##### **Placement in Alternative Educational Setting**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether to order a change in placement for a student with a disability who violates a code of student conduct.

##### **School Personnel Authority**

School personnel may remove a student with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten school days (to the extent such alternatives are applied to students without disabilities).

If school personnel seek to order a change in placement that would exceed ten school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner and for the same duration in which the procedures would be applied to students without disabilities, except as provided in Section 612(a)(1) of the IDEA, although it may be provided in an interim alternative educational setting.

Section 612(a)(1) of the IDEA states that a FAPE is available to all students with disabilities residing in the state, including students with disabilities who have been suspended or expelled from school.

A student with a disability who is removed from his or her current placement under "special circumstances" (irrespective of whether the behavior is determined to be a manifestation of the student's disability) or removed under "school personnel authority" shall continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

#### **Manifestation Determination**

Except as provided under "school personnel authority," within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
2. If the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

If the local educational agency, the parent, and relevant members of the IEP Team determine that either the conduct in question was caused by, or had a direct and substantial relationship to the student's

disability, or the conduct in question was the direct result of the local educational agency's failure to implement the IEP, then the conduct shall be determined to be a manifestation of the student's disability.

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the student's disability, the IEP Team shall:

1. Conduct a functional behavioral assessment and implement a behavioral intervention plan for such student, provided the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement;
2. Review the behavioral intervention plan if the student already has such a behavioral intervention plan and modify it, as necessary, to address the behavior; and
3. Except as provided under "special circumstances," return the student to the placement from which the student was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

#### **Special Circumstances**

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability in cases where a student:

1. Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a state or local educational agency;
2. 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 under the jurisdiction of a state or local educational agency; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a state or local educational agency.

#### **Notification**

Not later than the date on which the decision to take disciplinary action is made, the local educational agency shall notify the parents of that decision and of all procedural safeguards accorded under this section.

#### **Determination of Setting**

The interim alternative educational setting shall be determined by the IEP Team.

#### **Appeal**

The parent of a child with a disability who disagrees with any decision regarding placement or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the student is substantially likely to result in injury to the student or to others, may request a hearing.

#### **Authority of a Hearing Officer**

A hearing officer shall hear and make a determination regarding an appeal. In making the determination, the hearing officer

may order a change in placement of a student with a disability. In such situations, the hearing officer may:

1. Return a student with a disability to the placement from which the student was removed; or
2. Order a change in placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of such student is substantially likely to result in injury to the student or to others.

#### **Placement During Appeals**

When an appeal has been requested by either the parent or the local educational agency:

1. The student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period as applied to students without disabilities, whichever occurs first, unless the parent and the state or local educational agency agree otherwise; and
2. The state or local educational agency shall arrange for an expedited hearing which shall occur within 20 school days of the date the hearing is requested and shall result in a determination within 10 school days after the hearing.

#### **Protections for Students Not Yet Eligible for Special Education and Related Services**

A student who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in the IDEA if the local educational agency had "knowledge" (see below) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

#### **Basis of Knowledge**

A local educational agency shall be deemed to have knowledge that a student is a student with a disability if, before the behavior that precipitated the disciplinary action occurred:

1. The parent of the student has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the student, that the student is in need of special education and related services;
2. The parent of the student has requested an evaluation of the student; or
3. The teacher of the student or other personnel of the local educational agency has expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of such agency or to other supervisory personnel of the agency.

#### **Exception**

A local educational agency shall not be deemed to have knowledge that the student is a student with a disability if the parent of the student has not allowed an evaluation of the student or has refused services under this part or the student has been evaluated and it was determined that the student was not a student with a disability.

#### **Conditions That Apply if No Basis of Knowledge**

If a local educational agency does not have knowledge that a student is a student with a disability prior to taking disciplinary

measures against the student, the student may be subjected to disciplinary measures applied to students without disabilities who engaged in comparable behaviors.

#### **Limitations**

If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation shall be conducted in an expedited manner. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services except that, pending the results of the evaluation, the student shall remain in the educational placement determined by school authorities.

#### **Referral to An Action by Law Enforcement and Judicial Authorities**

Nothing in the IDEA shall be construed to prohibit an agency from reporting a crime committed by a student with a disability to appropriate authorities or to prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

#### **Transmittal of Records**

An agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.

#### **Students Enrolled in Private Schools**

A public agency may not be required to pay for the cost of education (including special education and related services) if:

1. The parent does not inform the IEP Team before removing his or her child from the public school that he or she is rejecting the proposed placement of the IEP Team;
2. The parent does not make the student available for evaluation; or
3. The action is determined to be "unreasonable" by the judicial system.

The parent must inform the IEP Team, in writing, of his or her concerns and intent to enroll his or her child in a private school at public expense. This notice must be received by the public agency ten business days prior to the removal of the student and enrollment in a private school.

#### **Transfer of Parental Rights at Age of Majority**

When a student with a disability reaches the age of majority (age 18 in Michigan if a legal guardian has not been appointed by the court), the public agency shall provide notice to both the student and the parent that all rights accorded to the parent transfer to the student. All rights accorded to the parent transfer to students who have reached the age of majority and who are incarcerated in an adult or juvenile federal, state, or local correctional institution.

#### **Surrogate Parents**

Each public agency shall assign an individual to act as a surrogate for the parent to protect the education rights of a student when:

1. No parent can be identified;
2. The public agency, after reasonable efforts, cannot discover the whereabouts of a parent;

3. The student is a ward of the state under the laws of the state; or
4. The student is an unaccompanied homeless child or youth.

The method for determining whether a student needs a surrogate for the parent, and for assigning a surrogate for the parent to a student, is the responsibility of the public agency. The Policy for the Appointment of Surrogate Parents is available on the MDE website at [www.michigan.gov/mde](http://www.michigan.gov/mde).

Public agencies appointing a surrogate for the parent to a student ensures that the person:

1. Has no interest that conflicts with the interests of the student that he/she represents;
2. Has knowledge and skills to adequately represent the student;
3. Is not an employee of the public agency which is involved in the education or care of the student;
4. Who otherwise qualifies to be a surrogate parent is not an employee of the public agency solely because he or she is paid by the public agency to serve as a surrogate parent; and
5. Is assigned not more than 30 days after there is a determination by the agency that the student needs a surrogate.

The surrogate for the parent may represent the student in all matters relating to:

1. The identification, evaluation, and educational placement of the student; or
2. The provision of a FAPE to the student.

#### **Access to Records**

Each public agency shall permit the parent to inspect and review all records relating to his or her child with respect to the

identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student, which are collected, maintained, or used by the public agency under this part. The public agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the student, and in no case more than 45 days after the request has been made. A parent requesting records for use at an IEP Team meeting, a hearing, or an appeal shall be given access to the requested records immediately.

The right to inspect and review educational records under this section includes:

1. The right to a response from the participating public agency to reasonable requests for explanations and interpretations of the records;
2. The right to have a representative of the parent inspect and review the records; and
3. The right to request that the public agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

A public agency may presume that the parent has authority to inspect and review records relating to his or her child unless the public agency has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

If any educational record includes information on more than one student, the parents of each of those children shall have the right to inspect and review only the information relating to their child, or to be informed of that specific information. Each public agency shall provide parents, on request, a list of the types and locations of educational records collected, maintained, or used by the public agency.

#### **Record of Access**

Each public agency shall keep a record of parties obtaining access to educational records collected or maintained, except access by the parent and authorized employees of the participating public agency. Records of access shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

#### **Fees for Searching, Retrieving, and Copying Records**

A participating public agency may not charge a fee to search for or to retrieve information from the student's educational record. A public agency may charge a fee for copies of records which are made for the parent if the fee does not effectively prevent the parent from exercising his or her right to inspect and review those records.

#### **Amendment of Records at Parent's Request**

A parent who believes that information in educational records collected, maintained, or used is inaccurate or misleading, or violates the privacy or other rights of his or her child, may request the participating public agency which maintains the information to amend the information.

The public agency shall decide whether to amend the information in accordance with the request within a reasonable period of time upon receipt of the request. If the public agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR §300.568 of the federal regulations implementing the IDEA.

The public agency shall, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

If, as a result of the hearing, the public agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the public agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall inform the parent of the right to place in the educational records maintained on the student, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the public agency. Any explanation placed in the records of the student under this section must be maintained by the public agency as part of the records of the student as long as the record or contested portion is maintained by the public agency. If the records of the student or the contested portion are disclosed by the public agency to any party, the explanation must also be disclosed to the party.

Revised August 2006

### **Confidentiality**

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using this information. Parental consent need not be obtained if the information is to be used to meet a requirement under the IDEA. An educational agency subject to the Family Educational Rights and Privacy Act (FERPA) may not release information from education records to participating agencies without parental consent unless authorized to do so under the FERPA.

### **Destruction of Information**

The public agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the student.

The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

### **Complaints**

"Complaint" means a written and signed allegation that includes the facts on which the allegation is based, by an individual or an organization, that there is a violation of any of the following:

1. Any current provision of the Rules;
2. 1976 PA 451, MCL 380.1 et seq., as it pertains to special education programs and services;

3. The IDEA of 1997, 20 U.S.C., Chapter 33, §1400 et seq., and the regulations implementing the Act, 34 CFR. Part 300;
4. An ISD plan for the delivery of special education programs and services;
5. An IEP Team report, hearing officer decision, or court decision regarding special education programs or services; or
6. The state application for federal funds under the IDEA.

Should the parent suspect a violation, the parent should contact the ISD's director of special education or the superintendent's designee. This person may attempt to resolve the concerns informally, but the parent must be told of his/her right to file a formal complaint. The parent must also be given a copy of the Administrative Rules for Special Education (Rules) dealing with complaints (Part 8 of the Rules) and a copy of the Complaint Procedures for Special Education. The complainant may request assistance in writing a formal complaint.

If the parent files a formal complaint, the ISD must investigate the complaint and give the parent a copy of the findings within 21 calendar days. If, after reviewing the public agency's report, the parent disagrees with the findings, the parent may appeal to the MDE. If the ISD does not act in a timely manner to investigate the parent's concerns, the parent may request the MDE to investigate the concerns. A written report shall be completed within 60 calendar days from the ISD's or the MDE's receipt of the complaint, unless the timeline is extended for exceptional circumstances relative to the complaint. A denial of an extension request is final.

### **Rule of Construction**

Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans

with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

### **IEP Amendment**

In making changes to a child's IEP after the annual IEP meeting for a school year, the parent of a child with a disability and the local educational agency may agree not to convene an IEP meeting for the purpose of make such changes, and instead may develop a written document to amend or modify the child's current IEP.

Upon request, a parent shall be provided with a revised copy of the IEP with the amendments incorporated.

### **EMERGENCY RULES**

#### **Finding of Emergency**

Rule 1. State due process hearings; application; effective date. Effective July 1, 2006, these rules apply to special education due process hearings and state level reviews of local due process hearing decisions. These rules also apply to any proceeding required by a judicial order of remand.

Rule 2. State due process hearings; procedures.

(1) Due process hearings under this rule shall be administered by the Department of Education.

(2) A parent, a public agency, or the Department of Education may initiate a hearing by filing a written due process hearing complaint with the Department of Education as required by 20 U.S.C. § 1415(b) and by providing a copy of the due process hearing complaint to the other parties.

(3) A hearing may be initiated on matters related to any of the following:

- (a) Identification.
- (b) Evaluation.
- (c) Educational placement.
- (d) Provision of a free appropriate public education.
- (e) Provision of appropriate Part C services to the child or the child's family.
- (f) Assignment of financial obligations for Part C services to the parents.

(g) Determination that behavior was not a manifestation of the student's disability.

(h) Determination of an appropriate interim alternative education setting by the individualized education program team.

(i) Placement in an interim alternative setting for not more than 45 school days, because maintaining the current placement is substantially likely to result in injury to the student or others.

(4) Upon receipt of a due process hearing complaint filed under subsection 2 on or after July 1, 2006, the Department of Education will forward the request to the State Office of Administrative Hearings and Rules (SOAHR) who will appoint an Administrative Law Judge to conduct a hearing in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1401 *et. seq.*, the Michigan Mandatory Special Education Act, MCL 380.1701 *et. seq.* and R 340.1883 to R 340.1885.

(5) Any party who is aggrieved by the final decision in a hearing conducted under this rule may not request a state level review under R 340.1724(6). Any party who is aggrieved by the final decision in a hearing conducted under this rule may appeal to a court of competent jurisdiction

within 60 days after the mailing date of the final decision.

(6) In the absence of an appeal, unless otherwise specified in the Administrative Law

Judge's decision, the decision shall be implemented by the public agency within 15 school days of the agency's receipt of the decision.

Rule 3. State review procedures.

(1) State reviews authorized by 2000 AACRS, R 340.1724(6) and originating from a due process hearing complaint filed before July 1, 2006 shall be administered by the Department of Education.

(2) Upon receipt of a request for a state review filed under subrule (1) of this rule, the Department of Education will forward the request to the State Office of Administrative Hearings and Rules (SOAHR) who will appoint an Administrative Law Judge to conduct the review in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1401 *et. seq.*, the Michigan Mandatory Special Education Act, MCL 380.1701 *et. seq.* and R 340.1883 to R 340.1885.

(3) Any party who is aggrieved by the final decision in a state review conducted under this rule may appeal to a court of competent jurisdiction within 60 days after the mailing date of the final decision.

(4) In the absence of an appeal, unless otherwise specified in the Administrative Law Judge's state review decision, the decision shall be implemented by the public agency within 15 school days of the agency's receipt of the decision.

(5) To the extent consistent with these rules, the state review process is governed by R 340.1724(6).

Rule 4. Administrative Law Judge training.

The Department of Education, in conjunction with the State Office of Administrative Hearings and Rules, will assure that Administrative Law Judge's conducting hearings under these rules will be trained, as needed, regarding administrative law, administrative procedure, special education law, special education rules, special education policy, and special education practice.