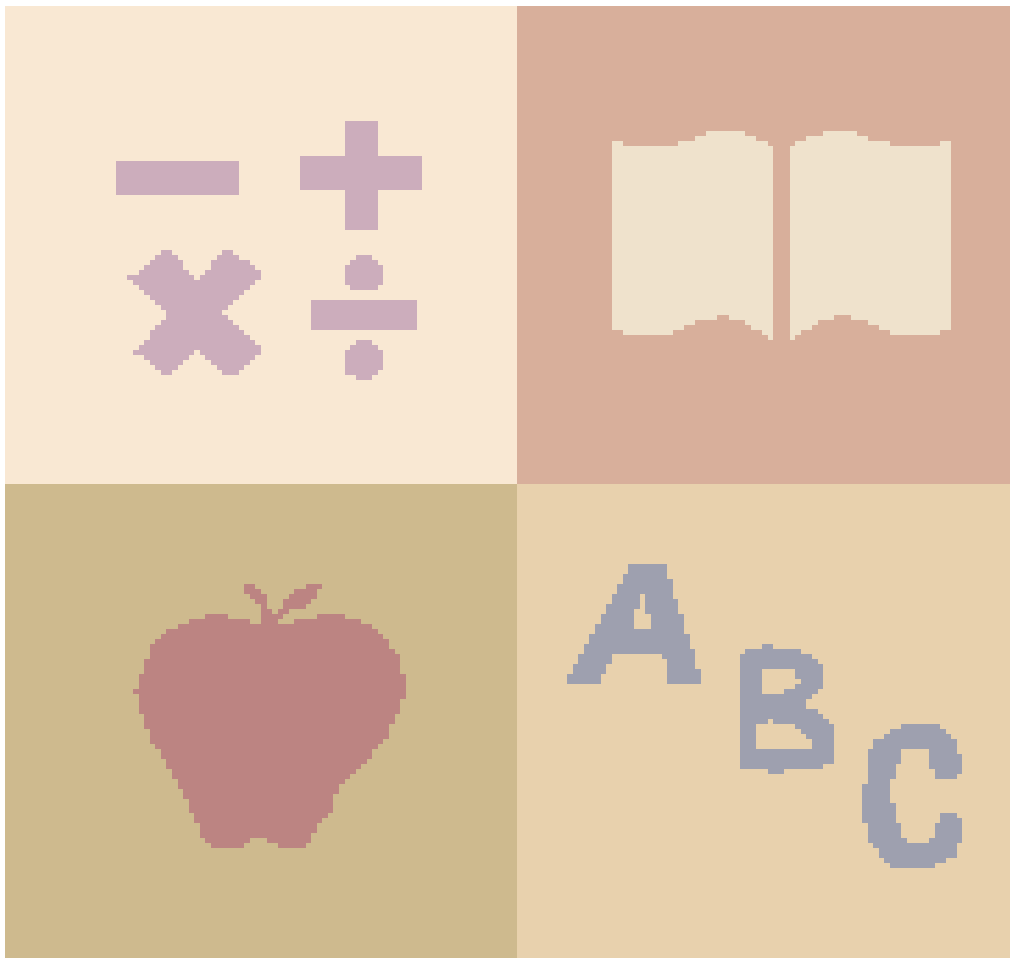


Procedural Safeguards Parental Rights



Maryland State Department of Education
Division of Special Education/Early Intervention Services

July 2005

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PART I – PROCEDURAL SAFEGUARDS

The protections included in this document are established by the Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), 20 U.S.C. §1400 et seq., and COMAR 13A.05.01.01-.16 that implement the IDEA 2004. Each public agency¹ shall establish, maintain, and implement procedural safeguards that meet the requirements of the IDEA 2004. A copy of the procedural safeguards shall be given to the parents² only one time a year, except that a copy also shall be given to the parents:

- Upon initial referral or parental request for evaluation;
- Upon the first occurrence of the filing of a complaint under Section 615(b)(6); and
- Upon request by a parent.

A public agency may place a current copy of the procedural safeguards notice on its internet web site if such web site exists.

The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner. If the native language or other mode of communication of the parents is not a written language, the public agency shall take steps to ensure that the procedural safeguards are translated orally or by other means in the parent's native language or other mode of communication. There is written evidence that documents that the notice was translated and the parents understood the content of the procedural safeguards.

The parents of a student with a disability must be afforded an opportunity inspect and review all education records with respect to the identification, evaluation, educational placement of the child, and the provision of a free appropriate public education (FAPE). *Please refer to Part IX - Procedures Regarding Educational Records for more specific information.* The parents of a student with a disability must also be afforded an opportunity to participate in meetings with respect to the identification, evaluation, educational placement of the child, and the provision of FAPE to the child. *Please refer to Part VII - Individualized Education Program (IEP) for more specific information.* For additional copies of this document, please contact the child's school.

PART II – PRIOR NOTICE

A public agency must give parents written notice each time it proposes or refuses to initiate or change the identification, evaluation, educational program, or educational placement of a child, or the provision of FAPE to a child. If the written notice relates to an action proposed by the public agency that also requires parental consent, the public agency may give written notice at the same time it requests parental consent. Written notice must include a:

- Description of the action(s) proposed or refused by the public agency;
- An explanation of why the public agency proposes or refuses to take the action(s);
- A description of any other options that the public agency considered and the reasons why those options were rejected;
- A description of each evaluation procedure, test, record, or report the public agency used as a basis for the proposed or refused action(s);
- A description of any other factors that are relevant to the public agency's proposal or refusal;
- A statement that the parents of a student with a disability have protections under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

The notice must be written in a language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parents is not a written language, the public agency shall take steps to ensure that:

¹ COMAR 13A.05.01.03B(52) defines "public agency" as a State or local governmental or quasi-governmental entity responsible for the provision of a free appropriate public education to students with disabilities. This term includes local school systems, MSDE, the Department of Health and Mental Hygiene, the Department of Juvenile Services, the Maryland School for the Blind, the Maryland School for the Deaf, and adult correctional facilities.

² Parent means a natural adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent); a guardian (but not the State if the child is a ward of the State); an individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or an individual assigned to be a surrogate parent. Although the statute includes a foster parent in the definition of "parent," the definition of parent in Education Article §8-412, Annotated Code of Maryland does not include a foster parent, unless the foster parent is a relative or stepparent. Therefore, individuals serving as foster parents who are not relatives or stepparents, must be appointed the student's parent surrogate in order to represent the child in the educational decision making process. *Please refer to Part XII - Parent Surrogate for more specific information.*

- The notice is translated orally or by other means to the parents in his or her native language or other mode of communication;
- The parents understand the content of the notice; and
- There is written evidence that documents that the notice was translated and the parents understood the content of the notice.

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the public agency makes such option available.

PART III – CONSENT

Consent means that the parents:

- Have been fully informed of all information relevant to the activity for which consent is sought, in the parents native language or other mode of communication;
- Understand and agree in writing to the carrying out of the activity for which their consent is sought and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- Understand that the granting of consent is voluntary on the part of the parents and may be revoked at anytime.

If parents revoke consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

General

A public agency must obtain parental consent before conducting an initial evaluation or reevaluation and before the initial provision of special education and related services to a student with a disability. Consent for initial evaluation may not be construed as consent for initial placement for the initial provision of special education and related services to a student with a disability. Parental consent is not required before reviewing existing data, as part of an evaluation or reevaluation, or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

Parental Refusal

If parents refuse to give consent for the initial assessments or reassessments, the public agency has the right to request mediation or a due process hearing and is required to notify the parents of the public agency's request for a due process hearing and the availability of mediation. *Please refer to Part XIV – Resolving Disagreements for more specific information.*

If parents refuse consent to the initial provision of services under IDEA or fails to respond to the request for the initial provision of services, the public agency **shall not** provide special education and related services to the child.

The public agency **shall not**:

- Use mediation or due process hearing procedures to provide special education and related services to a child;
- Be considered to be in violation of the requirement to make available FAPE for the failure to provide special education and related services; and
- Be required to convene an IEP meeting or develop an IEP.

Consent for Wards of the State

If the child is a ward of the State and is not residing with the child's parent, the agency shall make reasonable efforts to obtain the informed consent from the parent of the child for an initial evaluation to determine whether the child is a child with a disability.

The agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if:

- Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with State law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

Failure to Respond to Request for Reevaluation

The public agency must attempt to obtain informed parental consent before reassessing the child. Informed parental consent need not be obtained for reassessment if the public agency can demonstrate that it has taken reasonable measures to obtain

parental consent, and the child's parents have failed to respond. If parents fail to respond to the public agency's written notice of their proposal to reassess the child, and the public agency can demonstrate that they have taken reasonable measures to obtain parental consent, the public agency may proceed with the reassessment without parental consent. To demonstrate reasonable measures, the public agency must maintain a record of the agency's attempts to obtain parental consent, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to parents and any response received; and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Limitation

Except for the requirements relative to initial evaluation, reevaluation, or initial provision of special education and related services, a public agency may not use the parent's refusal to consent to one service or activity to deny the parents or the child of any other service, benefit, or activity of the public agency except as required by the IDEA.

PART IV – EDUCATIONAL EVALUATION PROCESS

Assessments

Assessments are procedures that are individualized for each student. A public agency may use a variety of assessment tools and strategies to gather sufficient relevant functional, developmental, and academic information about the child that may assist in determining if the child is a student with a disability and the content of the child's IEP, including information related to progress in the general curriculum, or for a preschool child, to participate in appropriate activities. Assessments include printed tests, observations, information from parents, and other sources of information that are:

- Selected and administered in a way that is not racially or culturally discriminatory;
- Administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is not feasible to do so, provide, or administer;
- Used for the purposes for which the assessments or measures are valid and reliable;
- Are administered by trained and knowledgeable personnel according to the instructions provided by the producer of the test;
- Tailored to identify specific areas of educational need, not merely to provide a single general intelligence quotient; and
- Selected to reflect a child's aptitude or achievement accurately, rather than reflect the impaired sensory, manual, or speaking skills, except where these skills are the factors that the test is to measure.

Each report of assessment procedures shall include:

- A description of the child's performance in each area of suspected disability;
- Relevant functional, cognitive, developmental, behavioral, and physical information;
- Instructional implications for the child's participation in the general curriculum or, for a preschool child, participation in appropriate activities; and
- For any assessments not administered under standard conditions, a description of how it varied from standard administration procedures.

Evaluation

Evaluation means procedures used in accordance with federal and State regulations concerning procedures for evaluation and determination of eligibility, to determine whether a child has a disability and the educational needs of the child. A full and individualized evaluation is conducted before the initial provision of special education and related services to a student with a disability under the IDEA. An evaluation occurs at a meeting of the IEP team and other qualified professionals, as appropriate, to review:

- Existing data and assessment results;
- Evaluations and information provided by parents;
- Current classroom-based assessments, including State and district-wide assessments and observations, and
- Observations by teachers and related services personnel to determine:
 - Whether the child is a student with a disability;
 - The child's educational needs;
 - Present levels of academic achievement and developmental needs;
 - The child's special education and related service needs whether or not commonly linked to the disability category in which the child has been classified; and
 - Any additions or modifications needed for the child to meet the goals of the IEP and to participate, if appropriate, in the general curriculum.

The initial evaluation shall be comprehensive enough to ensure a child is assessed in all areas related to the suspected disability, including, if appropriate:

- Academic performance;
- Communication;
- General intelligence;
- Health, including hearing and vision;
- Motor abilities; and
- Social, emotional, and behavioral status.
- No single procedure is used to determine if a child is a student with a disability and to determine an appropriate educational program for the child.

- A child may not be identified as a student with a disability in need of special education and related services if the determinant factor is a lack of appropriate instruction in reading, including the essential components of reading instruction:
 - phonemic awareness;
 - phonics;
 - vocabulary development;
 - reading fluency, including oral reading skills; and
 - reading comprehension strategies.

- lack of instruction in math, or because the child has limited English proficiency.

Timeframe for Completion of Initial Evaluation

A child's parents or the public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability. The initial evaluation must be completed no later than 60 days from the date of receiving parental consent to assess the child. The 60-day timeframe shall not apply to a local educational agency if:

- a child enrolls in a school served by the public agency after the parents provided consent for the initial assessment in another public agency and the child moved to the current public agency prior to a determination as to whether the child is a child with a disability, but only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed; or

- the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

If at the initial evaluation, the IEP team determines that the child has a disability and needs special education and related services, the IEP team must meet within 30 days of the initial evaluation to develop the child's IEP. The public agency will provide parents with a copy of the IEP team evaluation decision.

Reevaluation

A public agency must ensure that a reevaluation for each child with a disability is completed if:

- The public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or

- If the child's parent or teacher requests a reevaluation.

A reevaluation shall not occur more frequently than once a year, unless the parent and public agency agree otherwise; and at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

The IEP team will review existing evaluation data, including information from parents, classroom-based assessments, State and district-wide assessments, and observations to decide if any additional data are needed to determine:

- Whether the child continues to have a disability that requires the provision of special education and related services;
- The child's present levels of academic achievement and related developmental needs; and
- Whether there are any additions or modifications needed for the child to meet the measurable annual goals of the child's IEP and to participate, if appropriate, in the general curriculum.

If the IEP team determines that additional data are needed, those assessments will be conducted after parents are notified and parental consent has been requested. The IEP team will review the results of assessments within 90 days of the IEP team meeting. If the IEP team determines that no additional data is needed, the public agency will notify the parents of that fact, and the reasons for that determination. The public agency is not required to conduct assessments, unless requested to do so by the child's parents.

Termination of Services

A public agency must reevaluate a student with a disability in accordance with federal and State regulations before determining that the child is no longer a student with a disability. This reevaluation is not required before the termination of a child's eligibility under Part B of the IDEA due to graduation with a regular high school diploma, or exceeding the age eligibility for FAPE under State law.

PART V – INDEPENDENT EDUCATIONAL EVALUATION

Definitions

- Independent Educational Evaluation means tests and assessment procedures conducted by appropriately qualified personnel not employed by the public agency responsible for the education of the child.
- 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 parents.

Parents of a student with a disability have the right to obtain an independent educational evaluation of the child under the IDEA subject to the procedures provided below. The public agency shall provide parents, upon their request for an independent educational evaluation, information about where an independent educational evaluation may be obtained and the agency criteria applicable for an independent educational evaluation.

Public Agency Criteria

When an independent educational evaluation is at public expense, the criteria under which the independent educational evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that a public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria described above, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

A Parent's Right to Evaluation at Public Expense

Parents have the right to an independent educational evaluation at public expense if the parents disagree with an evaluation obtained by the public agency. If parents request an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either:

- Initiate a due process hearing to show that its evaluation is appropriate; or
- Ensure an independent educational evaluation is provided at public expense, unless the public agency demonstrates in a due process hearing that the evaluation obtained by the parents did not meet the public agency criteria.

If the public agency initiates a hearing and the final decision is that the agency evaluation is appropriate, parents still have the right to an independent educational evaluation, but not at public expense. If parents request an independent educational evaluation, a public agency may ask parents for the reason why the parents object to the public evaluation. However, the parent's explanation is not required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating the due process hearing to defend the public agency's evaluation.

Parent-Initiated Evaluation

Parents always have the right to obtain an independent educational evaluation from qualified professionals of their choice, at their own expense. The IEP team must consider the information from parent-initiated evaluation at private expense, if it meets public agency criteria, when making any decisions with respect to the provision of FAPE to the child. The results of parent-initiated private evaluation may also be presented as evidence at a due process hearing regarding the child.

Request for an Evaluation by a Hearing Officer

If an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH) requests an independent educational evaluation as a part of a due process hearing, the cost of the evaluation must be at public expense.

PART VI – INDIVIDUALIZED EDUCATION PROGRAM (IEP)

IEP Team Meetings

The public agency uses a team approach to decide whether a child is a student with a disability as defined by the IDEA and the educational needs of the child. Each public agency is responsible for initiating and conducting meetings for the purposes of developing, reviewing, and revising the IEP of a student with a disability, and determining the child's educational placement. The parents of each student with a disability must be notified and afforded the opportunity to participate in any IEP team meeting conducted for their child. Parents are members of the IEP team that makes decisions regarding their child's educational placement. The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is not English.

Once the IEP team determines the child requires special education and related services, the IEP team must meet within 30 days to develop the child's IEP. As a member of the IEP team, parents have the right to request a review of their child's IEP at any time.

Parent Participation in Meetings

Each public agency shall take steps to ensure that one or both of the parents of a student with a disability are present at each IEP team meeting, or are afforded the opportunity to participate. Parents are to be notified of meetings early enough to ensure that they will have an opportunity to attend, and scheduling the meeting at a mutually agreed on time and place. The notice must indicate the purpose, time, location of the meeting, and who will be in attendance. The notice must also inform parents that at the discretion of the parents or the public agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel, as appropriate, may participate on the IEP team. The determination of the knowledge or special expertise of any individual shall be made by the party (parents or public agency) who invited the individual to be a member of the IEP team.

For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student and that the agency will invite the student. For a student with a disability beginning at age 16, or younger, if appropriate, the notice must indicate that a purpose of the meeting is the consideration of needed transition services for the student, that the agency will invite the student, and identify any other agency that will be invited to send a representative.

Notice of any IEP team meeting to develop, review, or revise a child's IEP, including the determination of a child's educational placement must be given at least ten (10) calendar days before the meeting unless an expedited meeting is held to:

- Address disciplinary issues;
- Determine the placement of the child, if the child is a student with a disability and is not currently receiving educational services; or
- Meet other urgent needs of the child to ensure the provision of FAPE.

If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. The IEP team may make a placement decision without the involvement of the parents, if the public agency is unable to obtain the parental participation in the decision. In this case, the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parents and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits.

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 child'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's proposal that will be discussed at a later meeting.

The IEP Team

The IEP team includes:

- The child's parents, guardian, or parent surrogate;
- Not less than one of the child's general education teachers, if the child is or may be participating in the general education environment. If the child does not have a general education teacher or is younger than school age, an individual qualified to teach a child of that age;
- Not less than one of the child's special education teacher, or if appropriate, a service provider of the child;

- A representative of the public agency who is qualified to provide, or supervise the provision of specially designed instruction to meet the needs of students with disabilities and who knows the general curriculum and public agency resources available;
- An individual who can interpret the instructional implications of evaluations. This person can be one of the public agency team members listed above;
- If parents or the public agency choose, other individuals who have knowledge or special expertise regarding the child;
- To the extent appropriate, with the consent of the parents, the public agency must invite a representative of any participating public agency that may be responsible for providing or paying for transition services; and
- If appropriate, the child. The child shall be invited to, and is expected to attend and participate in the IEP team meeting if the purpose of the meeting is to consider postsecondary goals for the child and the transition services needed to assist the child in reaching those goals.

IEP Team Attendance

A member of the IEP team is not required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

A member of the IEP team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if—

- The parent, in writing, and the public agency consent to the excusal; and
- The member submits, in writing to the parent and the IEP team, input into the development of the IEP prior to the meeting.

IEP Content

The IEP is developed by the IEP team and includes:

- A statement of the child's present levels of academic achievement and functional performance, including—
 - How the child's disability affects the child's involvement and progress in the general education curriculum (*i.e.*, the same curriculum as for nondisabled children); or
 - For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
- A statement of measurable annual goals, including academic and functional goals designed to—
 - Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - Meet each of the child's other educational needs that result from the child's disability;
- A description of benchmarks or short-term objectives;
- A description of how the child's progress toward meeting the annual goals will be measured, and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;
- A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child—
 - To advance appropriately toward attaining the annual goals;
 - To be involved in and make progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and
 - To be educated and participate with other children with disabilities and nondisabled children;
- An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular education environment and in activities;
- A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments; and
- If the IEP team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why—
 - The child cannot participate in the regular assessment, and
 - The particular alternate assessment selected is appropriate for the child; and
- The projected date for the beginning of the services and modifications, and the anticipated frequency, location, and duration of those services and modifications.

A public agency shall provide special education and related services to a child in accordance with the child's IEP and make a good faith effort to assist the child to achieve the goals and objectives or benchmarks listed in the IEP. A public agency,

teacher, or another individual shall not be held accountable if a child does not achieve the growth projected in the annual goals and benchmarks or objectives.

Nothing in IDEA 2004 requires additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or the IEP team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.

If a child requires extended school year services, the IEP must include the specific special education and related services to be provided beyond the regular school year. *Please refer to Part VII - Extended School Year Services for more specific information.*

Transition Services

Transition services are a coordinated set of activities that will promote movement from school to post-school activities, including post-secondary education, career and technology education, integrated employment, adult services, independent living, or community participation. This set of activities is based on a child's needs taking into consideration the child's preferences and interests and includes the course of study, related services, and community activities.

- Beginning when a child is 14, or younger, if appropriate, and updated annually, the IEP must include a statement of the child's transition service needs that focuses on the child's course of study.
- Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include—
 - Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - The transition services (including courses of study) needed to assist the child in reaching those goals.
- The requirement to provide transition services does not apply to a student with a disability who is convicted as an adult under State law and incarcerated in an adult correctional facility and whose eligibility for special education and related services will end before the student is eligible for release.

Summary of Performance

For a child whose eligibility terminates, a public agency shall provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

IEP Development, Review, and Revision

In developing, reviewing, or revising a child's IEP, the IEP team will consider and document:

- The child's strengths and parental concerns for enhancing their child's education;
- Results of the initial or most recent evaluation of the child;
- The academic, developmental, and functional needs of the child;
- Results of the child's performance on State or district-wide assessment programs, as appropriate;
- Communication needs; and
- Assistive technology devices and services needs of the child.
- Consideration of special factors, specific to the child, such as:
 - As in the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavior interventions and supports and other strategies to address that behavior;
 - As in the case of a child with limited English proficiency, consider the language needs of the child as they relate to the child's IEP;
 - In the case of a child who is blind or visually impaired, provide for instruction in Braille, including textbooks in Braille, and the use of Braille unless the IEP team determines after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child, including textbooks in Braille; and
 - In the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communication with peers and professional personnel in the child's language and communication mode, academic level and full range of needs, including opportunities for direct instruction in the child's language and communication mode.

If in considering the special factors above, an IEP team determines the child needs a particular device, service, intervention, accommodation, or program modification in order for the child to receive FAPE, the IEP team must include a statement to that effect in the child's IEP.

As a member of the IEP team, a general education teacher of the child shall, to the extent appropriate, participate in the development of the child's IEP. Participation includes assisting in the determination of appropriate positive behavioral interventions and supports and other strategies for the child, and supplementary aids and services, program modifications, and supports for school personnel.

The IEP team reviews the child's IEP periodically, but not less than annually, to:

- Determine whether the annual goals for the child are being achieved; and
- Revise the IEP, as appropriate, to address—
 - Any lack of expected progress toward the annual goals and in the general education curriculum, if appropriate;
 - The results of any reevaluation;
 - Information about the child provided to, or by, the parents;
 - The child's anticipated needs; or
 - Other matters relevant matters to the child's program.

Amendments

The child's parents and the public agency may agree not to convene an IEP team meeting to make changes to the IEP. 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 public agency may agree to develop a written document to amend or modify the child's current IEP. Upon request, a parent shall be provided a revised copy of the IEP with the amendments incorporated.

Placement

As a member of the IEP team, parents are included in decisions regarding placement of their child. To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities, are educated with students who are not disabled.

- The educational placement for the child is determined annually, based on the child's IEP.
- Unless the child's IEP requires some other arrangement, the child is educated in the school the child would attend if not disabled.
- The IEP team may modify the child's IEP or placement if the child, convicted as an adult under State law, is incarcerated in an adult correctional facility, and the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.

IEP Implementation

- The IEP must be implemented as soon as possible after it is developed, except if the meeting is held over the summer or a vacation period, or when there are circumstances that require a short delay, such as arranging transportation.
- The public agency must have an IEP in effect for the child at the beginning of the school year.
- The IEP must be accessible to every teacher, related services provider, and other service provider who is responsible for implementing the child's IEP. Each individual identified above must be informed of their responsibilities related to implementing the child's IEP and the accommodations, modifications, and supports that must be provided.
- The public agency shall give parents a copy of their child's IEP at no cost to the parents.

Children Who Transfer to Another Public Agency

Transfer within the same state

In the case of a child with a disability who transfers public agencies within the same academic year, who enrolls in a new public agency with an IEP that was in effect in the same state, the public agency shall:

- Provide the child with a free appropriate public education that includes services comparable to those described in the previously held IEP, in consultation with the parents until the public agency adopts the previously held IEP; or
- Develops, adopts, and implements a new IEP that is consistent with federal and state law.

To facilitate the transition for a child who transfers within the same state, the new public agency in which the student enrolls shall take reasonable steps to promptly obtain the student's records from the previous public agency including:

- The IEP and supporting documents; and
- Any other records relating to the provision of special education or related services to the child

Transfer outside the state:

In the case of child with a disability who transfers public agencies within the same academic year, who enrolls in a new public agency with an IEP that was in effect in another state, the public agency shall:

- provide the child with a free appropriate public education that includes services comparable to those described in the previously held IEP, in consultation with the parents until the public agency conducts an evaluation, if determined necessary by the public agency; and
- develop a new IEP if appropriate, that is consistent with federal and state law.

To facilitate the transition for a child who transfers outside the state, the previous public agency in which the child was enrolled shall take reasonable steps to promptly respond to such requests from the new public agency.

Graduation Requirements

The public agency shall inform parents of the State and local graduation requirements and their child's progress toward meeting those requirements. When a student with a disability graduates from high school with a regular high school diploma, the public agency is to provide the parents notification of their child's pending graduation. Graduation with a regular high school diploma constitutes a change in placement and terminates the child's right to FAPE.

PART VII – EXTENDED SCHOOL YEAR SERVICES

Extended school year services (ESY) means the individualized extension of specific special education and related services that are provided to a student with a disability beyond the normal school year of the public agency, in accordance with the IEP, at no cost to the parents, and that meets the standards of the Maryland State Department of Education (MSDE). ESY services are only necessary to a FAPE when the benefits a disabled child gains during a regular school year will be significantly jeopardized if he is not provided with an educational program during the summer months. A public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

ESY services are provided if the child's IEP team determines, on an individual basis, that the services are necessary for the provision of FAPE. Parents are to be notified of the availability of extended school year services that may be necessary to meet the unique needs of a student with a disability. At least annually, the IEP team shall determine whether the student requires ESY services. This determination should be made early enough in the school year to allow the parent sufficient time to exercise their procedural safeguard rights if they disagree with the proposal made by the public agency. However, it should not be made so early as to not have sufficient information in order to make an informed decision.

The IEP team shall consider the following factors to determine whether the benefits a disabled child gains during a regular school year will be significantly jeopardized if he/she is not provided with an educational program during the summer months.

- Whether the child's IEP includes annual goals related to critical life skills;
- Whether it is likely that the child would suffer a substantial regression of critical life skills caused by the normal school break and would fail to recover those lost skills in a reasonable time;
- The child's progress toward mastery of IEP goals and objectives;
- The presence of emerging skills or breakthrough opportunities;
- Interfering behaviors;
- The nature and/or severity of the disability; and
- Special circumstances.

The IEP team is to consider each factor independently to determine the impact on the student's ability to receive educational benefit from the program. In the consideration of the need for extended school year services, this standard must be individually applied for each student. The IEP team is to document the consideration of factors and the outcome of those considerations in determining whether or not the benefits and gains made during the regular school year will be significantly jeopardized if the student is not provided extended school year services.

PART VIII – TRANSITION FROM AN INFANTS & TODDLERS PROGRAM

A public agency shall convene an IEP team meeting to determine if a child in transition from a local infants and toddlers program has a disability that requires the provision of special education and related services. If the child was previously served under Part C, an invitation to the initial IEP meeting shall, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. If the IEP team

determines the child is a student with a disability or developmental delay, the IEP Team shall develop an IEP for the child. The child's IEP must be in effect on the child's third birthday.

PART IX – PROCEDURES REGARDING EDUCATIONAL RECORDS

Definitions

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act [FERPA] of 1974).

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

Personally identifiable information includes:

- Name of the child, child's parents, or other family member;
- Address of the child;
- A personal identifier, such as the child's social security number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Safeguards

Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official of a public agency is responsible for protecting the confidentiality of personally identifiable information. In addition to the requirements of these procedural safeguards, federal and State laws and regulations also govern the protection of educational records. All public agency personnel who collect or use personally identifiable information must receive training regarding the State's policies and procedures on the confidentiality of personally identifiable information. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Consent

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under the IDEA, or for any purpose other than meeting the requirements of providing a student with a disability FAPE under the IDEA. Disclosures addressed in referral to and action by law enforcement and judicial authorities regarding reporting a crime committed by a student with a disability does not require parental consent to the extent that the transmission is permitted by FERPA.

An educational agency or institution may not release information from education records to participating agencies without parental consent unless authorized to do so under FERPA. MSDE has developed policies and procedures for public agencies, including sanctions, which the State uses to ensure that its policies and procedures are followed, and that the requirements for confidentiality, in accordance with IDEA and FERPA are met.

Each public agency is required to have procedures in place for how adequate notice is provided to fully inform parents about the requirements of confidentiality of personally identifiable information including a:

- Description of the extent that the notice is given in the native languages of the various population groups in the State;
- Description of the children on whom personally identifiable information is maintained, and the types of information sought;
- Summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- Description of policies and procedures used in the event that a parent refuses to provide consent; and
- Description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR §99.

Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the jurisdiction of the activity.

Access Rights

Each public agency shall permit parents of a student with a disability to inspect and review any education records relating to the child that are collected, maintained, or used by the agency with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child under the IDEA. The agency shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any due process hearing, and in no case more than 45 days after the request has been made.

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

- A response from the participating agency to reasonable requests for explanations and interpretations of the records;
- Request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parents from exercising the right to inspect and review the records; and
- Have a representative of the parents inspect and review the records.

A public agency may presume that parents have the authority to inspect and review records relating to their child unless the public agency has been advised that parents do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

Record of Access

Each public agency shall keep a record of individuals, other than parents and authorized employees of the public agency, obtaining access to education records collected, maintained, or used under Part B of the IDEA, including the name of the individual, the date access was given, and the purpose for which the individual is authorized to use the records. If any education record includes information on more than one child, the parents of those children 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 education records collected, maintained, or used by the agency. Each public agency may charge a fee for copies of education records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. A public agency may not charge a fee to search for or retrieve information from education records.

Amendment of Records at Parent's Request

Parents who believe that information in the education records collected, maintained, or used under the IDEA is inaccurate or misleading or violates the privacy or other rights of the child may request the public agency that maintains the information, to amend the information. The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parents of the refusal and advise the parents of the right to a hearing to challenge the information in educational records. A hearing conducted to challenge information in educational records must be conducted in accordance with FERPA procedures as found in 34 CFR §99.22.

The agency shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. If, as a result of the hearing, the public agency decides that the information is inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, it shall amend the information accordingly and so inform the parents in writing. If, as a result of the hearing, the public agency decides that the information is not inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, it shall inform the parents of the right to place in the records it maintains on the child, 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 child must:

- Be maintained by the public agency as part of the records of the child as long as the record or contested portion is maintained by the public agency; and
- If the records of the child or the contested portion are disclosed by the public agency to any party, the explanation must also be disclosed to the party.

Procedures for the Destruction of Information

The public agency is required to inform parents when personally identifiable information collected, maintained, or used under the IDEA is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, the student's grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Children's Rights

MSDE has policies and procedures that afford students a right to privacy similar to that which is given to their parents and suitable to the students ages and disabilities. Under the regulations for FERPA, the parent's rights regarding their child's education records are transferred to the child once the child reaches the age of 18, unless the child's disability makes the child

incompetent under State law. If the rights accorded to parents under Part B of IDEA are transferred to a student who reaches the age of majority, consistent with §300.517, the rights regarding educational records in §§300.562-300.573 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of IDEA to the student and the parents. *Please refer to Part XIII - Transfer of Parental Rights at Age of Majority for more specific information.*

Disciplinary Information

A public agency may include in the records of a student with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement, to the same extent that disciplinary information is included in, and transmitted with the records of nondisabled students. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If a child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action that has been taken against the child.

PART X – DISCIPLINE OF STUDENTS WITH DISABILITIES

Definitions

For purposes of this part, the following definitions apply:

- 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 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 the IDEA or under any other provision of federal law.
- 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.
- Serious bodily injury means a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ, or mental faculty. (18 USC 13645(h)(3))

School personnel may remove a student with a disability who violates the code of conduct from the current educational placement to an interim alternative educational setting, another setting or suspension, for not more than 10 school days at a time for a violation of school rules in accordance with the discipline policy used for all students, unless it is determined that the removal constitutes a change of placement. When these removals (10 days or less at one time) accumulate to more than 10 days in a school year, school personnel, including the student's special education teacher, determine the extent of services needed to enable the student to progress in the general curriculum and toward the IEP goals.

School personnel may consider unique circumstances on a case-by-case basis whether a change in placement is appropriate for a student with a disability who violates the code of conduct. Change of placement includes removal for more than 10 consecutive days or a series of removals that constitute a pattern. When disciplinary action results in a change of placement, notice is provided the day the decision is made and must include procedural safeguards.

Within 10 school days of any decision to change the placement because of a violation of the code of conduct, the public agency, the parent and relevant members of the IEP team (as determined by the parent and the public agency) must review all relevant information in the student's file, including the IEP, any teacher observations and any relevant information provided by the parents to determine:

- if the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or
- if the conduct in question was the direct result of the public agency's failure to implement the IEP.

If the public agency, the parent and relevant members of the IEP team determine that either of the above statements is applicable for the student, the conduct shall be determined to be a manifestation of the student's disability.

If the conduct was a manifestation of the student's disability, the IEP team must:

- conduct a functional behavioral assessment and implement a behavioral intervention plan for the student, if the public agency had not previously done so;
- in the situation where a behavioral intervention plan has been developed, review the behavior intervention plan if

- the student already has such a behavioral intervention plan and modify it, as necessary to address the behavior; and
- return the student to the placement from which the student was removed, unless the parent and the public agency agree to a change of placement as part of the modification of the behavioral intervention plan, except when the student has been removed to an interim alternative educational setting for drugs, weapons or serious bodily injury.

If the behavior is not a manifestation of the student's disability, relevant disciplinary procedures applicable to students without disabilities may be applied in the same manner as they would be applied to other students, except that appropriate educational services must continue.

When a student is removed for more than 10 days that results in a change in placement, whether or not the behavior is a manifestation of the disability, or when the student is removed to interim alternative educational setting (IAES) for drugs, weapons or serious bodily injury, the student continues to receive services 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 the student's IEP. The student must also receive, as appropriate, a functional behavioral assessment and behavior intervention services and modifications that are designed to address the behavior violation so that it does not recur. The IEP team determines appropriate services and the location in which the services will be provided.

School personnel may remove a student to an IAES up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, in cases where the student:

- 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 public agency;
- 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 public agency; or
- has inflicted serious bodily injury upon another person while at a school, on school premises, or at school function under the jurisdiction of a State or local public agency.

Disciplinary Appeal

The parent of a student with a disability who disagrees with a decision regarding a manifestation determination or with any decision regarding placement for disciplinary reasons or the public agency believes that maintaining the current placement of the student is substantially likely to result in injury to the student or others, may request a hearing by filing a due process hearing notice with the Office of Administrative Hearings (OAH). The due process hearing will be conducted by an Administrative Law Judge (ALJ) following the procedures described in *Part XIV, Resolving Disagreements*, with the following exception. The hearing shall occur within 20 school days of the date the hearing is requested and shall result in a determination in 10 school days after the hearing.

In making a determination in a disciplinary appeal, the ALJ may:

- return the student to the placement from which the student was removed; or
- order a change in placement of a student with a disability to an appropriate IAES 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 others.

When an appeal is requested by either the parent or the public agency, the student remains in the IAES pending the decision of the ALJ or until the expiration of the time period provided (no more than 45 days), whichever comes first, unless the parents and school personnel agree otherwise.

Students Not Yet Determined Eligible

Students who have not been determined eligible for special education who have engaged in behavior that violated any rule or code of conduct may assert any of the protections provided, if the public agency had knowledge that the student had a disability before the behavior occurred. The public agency has knowledge if, before the behavior resulting in the disciplinary action occurred:

- the parent has expressed concern in writing to supervisory or administrative personnel of the district, or a teacher of the student, that the student needs special education and related services;
- the parent has requested an evaluation; or
- the student's teacher or other school personnel have expressed specific concern about a pattern of behavior demonstrated by the student, directly to the director of special education or other supervisory personnel of the public agency.

The public agency does not have knowledge if the parent of the child with a disability:

- has not allowed an evaluation of the student;
- has refused special education services;
- or the student has been evaluated and it was determined that the student was not a student with a disability.

If the public agency does not have knowledge that a student has a disability prior to taking disciplinary action, the student may be subjected to the same disciplinary measures as a student without disabilities who engages in comparable behaviors.

If a request for evaluation is made during the time period in which the student is subjected to disciplinary measures, the evaluation must be expedited. Pending the results, the student remains in the educational placement determined by school authorities. If, based on the public agency's evaluation and information provided by parents, the student is determined eligible for special education, special education and related services will be provided and all procedural safeguards regarding discipline will be followed.

Referral to and Action by Law Enforcement and Judicial Authorities

Public agencies are not prohibited from reporting a crime to appropriate authorities, and law enforcement and judicial authorities may exercise their responsibilities in applying federal and State law to crimes committed by a student. Any agency reporting a crime shall supply copies of the special education and disciplinary records to the appropriate authorities to the extent allowed by COMAR 13A.08.02 Student Records, with parent consent, or in accordance with exceptions to parent consent specified in the policy.

PART XI – PLACEMENT OF STUDENTS IN PRIVATE SCHOOLS BY THEIR PARENTS

Placement of Children by Parents when FAPE is at Issue

The IDEA does not require a public agency to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if that public agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include the child in the population whose needs are addressed with regards to services provided to students with disabilities placed in private schools by their parents, in accordance with the federal regulations. Disagreements between parents and public agencies regarding the availability of FAPE and financial responsibility are subject to due process hearing procedures under the IDEA. *Please refer to Part XIV – Resolving Disagreements for more specific information.*

If the parents of a student with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent or referral of the public agency, an ALJ or a court, may require the public agency to reimburse parents for the cost of that enrollment if an ALJ or a court finds that the public agency had not made FAPE available to the child in a timely manner prior to that enrollment, and that the private placement is appropriate. A parental placement may be found to be appropriate by an ALJ or a court even if it does not meet the State standards that apply to education provided by public agencies.

Limitation on Reimbursement

Reimbursement may be reduced or denied by an ALJ or a court if:

- At the most recent IEP team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- Ten (10) business days (including any business days that occur on a holiday) prior to the removal of the child from the public school, the parents did not give the public agency written notice of their intent to remove the child, including their concerns regarding their child's public placement; or
- If prior to the parent's removal of the child from the public school, the public agency informed the parents, through the prior notice requirements of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Notwithstanding the notice requirements described above, the cost of reimbursement:

- Shall not be reduced or denied for failure of the parents to provide such notice, if:
 - The school prevented the parent from providing the notice,

- The parents had not received notice, under the IDEA notice requirements described above,
 - Compliance with the notice as described above would likely result in physical harm to the child, and
- May, at the discretion of a court or a hearing officer, not be reduced or denied for failure to provide such notice if:
 - The parent is illiterate and cannot write in English, or
 - Compliance with the notice as described above would likely result in serious emotional harm to the child.

Parentally Placed Private School Students with Disabilities

A local school system shall make special education and related services available to a child in accordance with the federal regulations for children with disabilities enrolled by their parents in private elementary and secondary schools located within the jurisdiction of a local school system. Each local school system is responsible for child find for any eligible student who attends a private school located within the jurisdiction of the local school system. No private school student with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school. Child find is the procedure that public agencies use to identify, locate, and evaluate all students with disabilities, residing within the jurisdiction of the public agency, including children attending private and religiously affiliated schools.

Decisions regarding which students receive services, what services are provided, how and where services will be provided, and how services will be evaluated are made by the local school system after consultation with appropriate representatives of private school children. If a student with a disability attending a private elementary or private secondary school will receive special education and related services, the local school system responsible for education in the jurisdiction in which the private school is located will initiate and conduct meetings to develop, review, and revise a service plan for the child

If the parents that enroll their child in a private elementary or secondary school, the parents' rights to file for a due process hearing applies only to child find issues. An individual may file a written complaint with MSDE concerning students with disabilities enrolled by their parents in private schools when the individual believes a public agency has failed to meet the federal regulations for child find under IDEA. A private school official shall have the right to submit a complaint with MSDE that a local school system did not engage in consultation that was meaningful and timely, or did not give due consideration to the views of the private school official.

PART XII – PARENT SURROGATE

The public agency shall ensure an individual is assigned to act as a surrogate for the parents of a child when:

- No parent can be identified;
- The whereabouts of the parents cannot be located, after reasonable efforts;
- The child is a Ward of the State; or
- The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act.

The public agency has a procedure for determining whether a child needs a parent surrogate and for assigning a parent surrogate to the child. A parent surrogate is a person appointed by the local school superintendent to represent the child as parents would in the educational decision making process. The parent surrogate may represent the child in all matters relating to the identification, evaluation, and the educational placement of the child, and the provision of FAPE, including the appeal process.

For a child who is a ward of the State, the parent surrogate alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements below. For unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates until a surrogate can be appointed that meets all of the requirements listed below.

A person selected as a surrogate:

- Cannot be an employee of any public agency that is involved in the education or care of the child;
- Must have no interest that conflicts with the interest of the child that the individual represents; and
- Is to have knowledge and skills that ensure adequate representation of the child.

A public agency may select as a surrogate an individual who is an employee of a nonpublic agency that only provides non-educational care for the child, and who has no interest that conflicts with the interest of the child the individual represents, and who has knowledge and skills that ensure adequate representation of the child. An individual is not considered an agency employee solely because that individual may be paid by an agency to serve as a foster parent or a parent surrogate.

MSDE must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate.

PART XIII – TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

Under IDEA, the parents of a student with a disability have certain rights in the special education decision making process. Under Maryland law, in certain limited circumstances, all rights accorded to the parents under IDEA shall transfer to a student with a disability. This transfer occurs when the student reaches the age of 18 years, if the student has not been adjudged incompetent under State law and there is documentation that:

- The parents are unavailable or unknown, and the child requests that the parental rights be transferred to the child rather than have a parent surrogate appointed;
- The parents have not participated in the special education decision making process for the child after repeated attempts by the public agency to involve the parents over the previous year;
- The parents have affirmatively rejected participation in the special education decision making process;
- The parents cannot participate in the special education decision making process due to prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of the parents and the parents have consented to the transfer of rights to the child;
- The parents cannot participate in the special education decision making process due to extraordinary circumstances beyond their control, and the parents have consented to the transfer of rights to the child; or
- The child is living outside of the parents' home and is not in the care or custody of another public agency.

If the parents of a student with a disability, with whom the child resides, do not consent to the transfer of rights to the child at the age of 18, and the student has not been adjudged incompetent under State law, either party may file for due process to determine whether the rights should be transferred.

If a student with a disability has been represented by a parent surrogate in accordance with federal and State laws and regulations, the public agency shall provide any written notice required under federal and State laws and regulations to both the student and parent surrogate. All other rights afforded the parent surrogate under IDEA shall transfer to the student if the student has not been adjudged incompetent under State law and the student requests that the rights transfer to the student.

PART XIV – RESOLVING DISAGREEMENTS

Written Complaint Procedures

The MSDE has adopted written complaint procedures for resolving complaints filed by an individual or organization. MSDE disseminates the State's procedures for resolving complaints to parents and other interested individuals including Parents' Place of Maryland, advocacy agencies, independent living centers, and other appropriate entities. Individuals may obtain a copy of the State complaint procedures by sending a written request addressed to the Division of Special Education/Early Intervention Services, MSDE, 200 West Baltimore Street, Baltimore, Maryland 21201. The procedures are also available on the MSDE web-site: www.msde.state.md.us.

Filing a Written Complaint with MSDE

If an individual or an organization believes that a federal or State law or regulation concerning the identification, evaluation, the educational placement of the child, and the provision of FAPE, including the appeal process is not being followed, an individual or organization has the right to file a written and signed complaint with the Assistant State Superintendent, Division of Special Education/Early Intervention Services, MSDE, 200 West Baltimore Street, Baltimore, Maryland 21201.

The written complaint shall include:

- A statement that the public agency has violated a requirement of federal or State law or regulation; and
- The facts upon which the statement is based.

This must include any documentation supporting the allegation(s). Complaints must be filed within one (1) year of the date that the alleged violation occurred, unless a longer period is reasonable because the violation is continuing. If the complainant is requesting compensatory services, the complaint must be received within three (3) years of the date of the alleged violation. The MSDE is to investigate and issue their findings within 60 calendar days of receipt of the written complaint. MSDE may permit an extension of the 60-day timeline only if exceptional circumstances exist regarding a particular complaint.

At a minimum, MSDE shall:

- Conduct an independent on-site investigation if MSDE determines an investigation is necessary;

- Provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- Review all relevant information and make an independent determination as to whether a public agency has violated requirements of federal and State laws or regulations concerning the identification, evaluation, the educational placement of the child, and the provision of FAPE; and
- Issue a written decision to the complainant that addresses all allegations in the complaint and contains findings of fact and conclusions, and the reasons for the final decision of MSDE. The final decision shall include procedures for the effective implementation of the final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

Resolving a Complaint

In accordance with MSDE's general supervisory authority under the IDEA, if MSDE determines a public agency has failed to provide appropriate services, the final written decision shall include how a public agency is to remediate the denial of those services, appropriate to the needs of the child and provide appropriate future services for all students with disabilities.

Complaints and Due Process Hearings

If MSDE receives a written complaint that is also part of a due process hearing, or if a written complaint contains multiple issues of which one or more are part of a hearing, MSDE must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of that due process hearing. However, any issue in the complaint that is not part of the due process hearing must be resolved using the timeline and procedures described above. If an issue is raised in a complaint that has previously been decided in a due process hearing, involving the same parties, the hearing decision is binding, and MSDE shall inform the complainant to that effect.

Mediation Procedures

Each public agency must ensure that procedures are established and implemented to allow parties (parents or public agencies) to appropriately resolve disputes involving any matter concerning the proposal, refusal, or consent for identification, evaluation, educational placement, the provision of a FAPE, or disciplinary procedures through a mediation process. At a minimum, mediation must be available whenever a due process hearing is requested. The procedures must ensure that the mediation process is a voluntary process available to either parents or the public agency. The request for mediation may not be used to deny or delay either party's rights under federal or State laws or regulations.

An employee of the Office of Administrative Hearings (OAH), selected on a rotating basis, who is qualified, impartial, and trained in effective mediation techniques, conducts mediation. An individual who serves as a mediator is not an employee of a public agency or State agency responsible for the provision of services to students with disabilities, or MSDE. A mediator must not have a personal or professional conflict of interest. A person who otherwise qualifies as a mediator is not an employee of a public agency or State agency responsible for the provision of services to students with disabilities, or MSDE, solely because that individual is paid by the State to serve as a mediator.

- MSDE pays for the costs of the mediation process, including the cost of a meeting with parents to encourage mediation.
- MSDE maintains a list of qualified mediators who are knowledgeable of the laws and regulations related to the provision of special education and related services.
- A request for mediation is made in writing to the public agency responsible for the education of the child. The Mediation/Due Process Request Form, developed by MSDE and OAH, is available from the public agency where the child attends school. For assistance contact the public agency's special education office.
- Within three (3) days of receipt of the written request for mediation it is the responsibility of the public agency to send a facsimile (fax) of the written request to the OAH.
- Parents or the public agency may be accompanied and advised by counsel during mediation.
- A mediation session will be scheduled to occur within 20 days of the receipt of a written request at a location convenient to parents and the public agency.
- Mediation sessions are closed proceedings. Discussions that occur during mediation must be confidential and cannot be used as evidence in any subsequent due process hearing or civil action. Parents or the public agency may be asked to sign a confidentiality pledge before the start of the mediation.
- An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

Meeting to Encourage Mediation

A public agency may establish procedures to require parents who elect not to use the mediation process to meet at a time and location convenient to the parents, with a disinterested party, who is under contract with the Parents' Place of Maryland, Inc., Families Involved Together, Inc., or an appropriate alternative dispute resolution entity who would explain the benefits of the

mediation process and encourage parents to use the process. A public agency may not deny or delay the parents' right to a due process hearing if parents fail to participate in the meeting to encourage the use of mediation.

Requesting a Due Process Hearing

The parent or a public agency may request a due process 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 FAPE by submitting a written due process hearing request notice to the public agency and OAH. The due process hearing request notice, which must remain confidential, is submitted by the parent, public agency or the party's attorney. The due process request form must include:

- the name of the student;
- address of the student's residence (or, for a homeless student, available contact information);
- name of the school
- name of the public agency responsible for the education of the student (i.e. local school system);
- a description of the problem of the student relating to the proposed or refused initiation or change, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time of the notice.

A party may not have a due process hearing until the party, or the attorney representing the party, files a due process hearing request notice that meets the content requirements. A model form to assist parents that includes the required information may be obtained from the public agency or accessed on the MSDE website. 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 due process hearing request notice, unless the other party agrees otherwise.

Sufficiency of Notice

The due process hearing request notice is deemed to be sufficient unless the party receiving the notice notifies the OAH and the other party in writing within 15 days of receiving it that the receiving party believes the notice does not meet the content requirements. Within 5 days of receiving notice of the deficiency, the OAH will determine whether the due process hearing request notice meets the content requirements and immediately notify the parties in writing.

A party may amend its due process hearing request notice only if the other party consents in writing and is given the opportunity to resolve the issues through a resolution meeting as noted below; or the OAH grants permission not later than 5 days before a due process hearing occurs. The timeline for the resolution meeting and the due process hearing begin again with the filing of the amended due process hearing request notice.

Response to Due Process Hearing Request

If the public agency has not sent a prior written notice to the parents regarding the issues raised by the parent in the due process hearing request notice, the public agency shall, within 10 days of receiving the notice, send the parent a response containing:

- An explanation of why the public agency proposes or refuses to take the action(s);
- A description of any other options that the public agency considered and the reasons why those options were rejected;
- A statement that the parents of a student with a disability have protections under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

This response does not preclude the public agency from asserting that the parent's due process hearing request notice was insufficient, where appropriate.

When the non-complaining party receives the due process hearing request notice, that party (e.g., parent, advocate, parent attorney, student, public agency, public agency attorney) must, within 10 days of receiving the notice, send to the complaining party a response that specifically addresses the issues raised in the due process hearing request notice.

Resolution Session

Within 15 days of receiving the parent's due process hearing request notice and prior to initiation of a hearing the public agency must convene a meeting with the parents and the relevant IEP team member(s) who have specific knowledge of the facts identified in the notice as determined by the parents and the district. The parents and the school district may agree in writing to waive the resolution meeting, or agree to use the mediation process.

The resolution meeting must include a representative of the public agency who has decision-making authority on behalf of the public agency and may not include a public agency attorney, unless the parent is accompanied by an attorney. The purpose of the meeting is for parent(s) of the student to discuss the issues in their due process hearing request notice, so the public agency has the opportunity to resolve the issues. If the issues are not resolved to the satisfaction of the parties within 30 days of the receipt of the notice, the due process hearing may occur. The timeline for the due process hearing begins at the expiration of the 30-day period.

If resolution is reached, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the public agency who has the authority to bind the public agency and is enforceable in any State court of competent jurisdiction or in a district court of the United States. If the parties execute an agreement, a party may void such agreement within three business days of the agreement's execution.

If a party requests both mediation and a due process hearing within the same request, and the non-complaining party agrees to mediate, the issue will proceed directly to mediation.

Due Process Hearing Rights

Any party to a due process hearing has the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
- Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing, that has not been disclosed to that party at least five (5) business days before the hearing;
- Obtain a written, or at the option of the parents, an electronic verbatim record of the hearing; and
- Obtain a written, or at the option of the parents, an electronic findings of fact and decisions.

At least five (5) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date, and recommendations based on the party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendations at the due process hearing without the consent of the other party.

The parent has the right to have the student present and to open the hearing to the public. Each hearing must be conducted at a time and place that is reasonably convenient to the parent and student. The verbatim record of the hearing, when requested, and the written decision are provided to the parent at no cost.

An ALJ must make a decision on substantive grounds based on a determination of whether the student received FAPE. In matters alleging a procedural violation, an ALJ may find that a student did not receive FAPE:

- Only if the procedural inadequacies impeded the student's right to FAPE;
- If the public agency significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
- The public agency caused a deprivation of education benefits.

Nothing in these requirements precludes an ALJ from ordering the public agency to comply with procedural requirements under the law and regulations governing special education.

Student's Status During Proceedings

During the pendency of any administrative or judicial proceeding (except as provided under the discipline section), unless the parent and public agency agree otherwise, the student must remain in his or her current educational placement. If the proceeding involves an initial application for initial admission to public school, the student, with parent consent, must be placed in the public program until the completion of all proceedings. If the decision of a hearing officer in a due process hearing agrees with the parents that a change of placement is appropriate, that placement becomes the student's current placement during the pendency of subsequent appeals.

Timelines

A parent or public agency shall request an impartial due process hearing within two years of the date the parents or public agency knew or should have known about the alleged action that is the reason for the due process hearing request. The timeline does not apply if the parent was prevented from requesting the hearing because of specific misrepresentations by the public agency that it had resolved the problem forming the basis of the complaint or the public agency's withholding of information from the parent that was required to be provided to the parent.

The OAH must ensure that a final hearing decision is reached and mailed to the parties within forty-five days of the parties' agreement to waive the resolution process or within forty-five days of the expiration of the resolution period timelines.

Expedited Timelines

Student Not Currently Enrolled and Attending School

If a hearing is requested on behalf of a student with a disability who is not currently enrolled and attending school, the hearing must be held within twenty calendar days of receipt of the request and a written decision must be issued no later than fifteen calendar days after the hearing.

Disciplinary Actions

If a hearing is requested on behalf of a student with a disability regarding placement in an interim alternative educational setting or regarding a manifestation determination, the hearing must be conducted within 20 school days of the date the hearing is requested and a written decision must be issued within 10 school days after the hearing.

Civil Action

An ALJ decision is final unless appealed by either the parents or the public agency. Any party aggrieved by the findings and decisions has the right to bring a civil action with respect to the complaint presented in the due process hearing. Parents may file for civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within 180 days of the issuance of the final decision pursuant to Maryland law. Nothing in this part restricts or limits 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 filing for civil action under these laws the parents or a public agency must have exhausted the procedures for a due process hearing with OAH.

In any action, the court will:

- Receive the record of the due process hearing;
- Hear additional evidence at the request of either the parents or the public agency;
- Base its decision on the preponderance of evidence; and
- Grant the relief it determines to be appropriate.

PART XV – ATTORNEYS' FEES

In any action or proceeding brought under IDEA 2004, the court may award reasonable attorneys' fees to:

- The parents or guardians of a student with a disability who is the prevailing party;
- To a prevailing party who is MSDE or any other public 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
- To a prevailing party who is MSDE or any other public 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.

Fees awarded must be based on rates prevailing in the community in which the action arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

Fees may not be awarded under the following circumstances:

- For any Individualized Education Program (IEP) Team meeting unless it is convened as a result of a due process hearing or judicial action;
- For mediation conducted prior to filing for a due process hearing;
- For resolution meetings; and
- For services following a written settlement offer to the parent if:

- The offer is made within the timelines under Rule 68, Federal Rules of Civil Procedure, or in an administrative proceeding, more than ten days before the proceeding begins;
- The offer is not accepted within ten days; and
- The court finds the relief obtained by the parent in the hearing is not more favorable to the parent than the offer of settlement. Fees and costs may be awarded if the parent was substantially justified in rejecting the settlement offer.

Fees may be reduced under the following circumstances:

- The parent or the parent's attorney unreasonably prolonged resolving the dispute;
- The amount of fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;
- The time and services were excessive considering the nature of the proceeding; or
- The attorney did not provide the appropriate information in filing the due process hearing request notice.

Fees will not be reduced if:

- The public agency prolonged the resolution; or
- There was a violation of the procedural safeguard requirements.

Because the parent's right to recover attorneys' fees depends upon meeting certain conditions set out in the IDEA, parents should discuss this matter with their attorneys.