JEFFCO PUBLIC SCHOOLS

Building Bright Futures

PARENT AND CHILD RIGHTS IN SPECIAL EDUCATION

PROCEDURAL SAFEGUARDS NOTICE

An Explanation of the Procedural Safeguards Available to Parents of Children with Disabilities under the Individuals with Disabilities Education Act ("IDEA") and the Colorado Exceptional Children's Educational Act ("ECEA")

The IDEA and the Colorado Rules for the Administration of the ECEA require schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA and applicable regulations. This notice will be provided to you once a school year. Additionally, a copy will be provided to you: (1) upon initial referral or request for an evaluation of your child; (2) upon receipt of the first State complaint and the first due process complaint in a school year; (3) if a decision is made to take disciplinary action that constitutes a change of placement for your child; and (4) upon your request.

Jefferson County Public Schools ("District") is the administrative unit responsible for providing special education services to your child. Special education staff are available to assist you in understanding these procedural safeguards. If you have any questions regarding the content of this notice or would like additional information, please contact the District's Special Education Department at Jefferson County Public Schools.

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I. GENERAL INFORMATION

Free Appropriate Public Education (34 C.F.R. § 300.17)

Under the IDEA, eligible children with disabilities are entitled to a free appropriate public education ("FAPE"). FAPE means special education and related services that meet the standards of the Colorado Department of Education ("CDE"), conform with your child's individualized education program ("IEP"), and are provided at public expense, under public supervision and direction, and without charge to you. You have a right to participate in meetings with respect to the identification, evaluation, educational placement, and provision of FAPE to your child.

Prior Written Notice (34 C.F.R. §§ 300.503)

You are entitled to receive written notice from the District a reasonable time before it: (1) proposes to initiate or change the identification, evaluation, educational placement, or provision of FAPE to your child; or (2) refuses to initiate or change the identification, evaluation, educational placement, or provision of FAPE to your child. This notice must be written in a language understandable to the general public and must include:

1. A description of the action proposed or refused;
2. An explanation of why the action was proposed or refused;
3. A description of each evaluation procedure, assessment, record, or report used as a basis for the proposed or refused action;
4. A statement that you have protections under the procedural safeguards of Part B of the IDEA, and if the action is not an initial referral for evaluation, the means by which a description of the procedural safeguards can be obtained;
5. Sources for you to contact to obtain assistance in understanding Part B of the IDEA;
6. A description of other options considered by the IEP team and the reasons why those options were rejected; and
7. A description of the other factors relevant to the proposed or refused action.

This notice will be provided to you in your native language (*i.e.*, the language/mode of communication that you normally use), unless it is clearly not feasible to do so. If your native language is not a written language, the District will ensure (and maintain written evidence) that the notice is translated for you orally (or by other appropriate means) and that you understand the content of the notice.

Notice By Electronic Mail (34 C.F.R. § 300.505)

If the District offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail: (1) prior written notice; (2) this procedural safeguards notice; and (3) any notices related to a due process complaint.

Parental Consent (34 C.F.R. §§ 300.9 & 300.300)

The District must make reasonable efforts to obtain your informed, written consent before conducting an initial evaluation to determine your child's eligibility for special education services, before the initial provision of special education and related services, and before any reevaluation of your child. "Informed written consent" means that:

1. You have been fully informed in your native language of all information relevant to the action for which consent is sought;
2. You agree in writing to the action on a form that describes the action and (if applicable) lists the records to be released and to whom; and
3. Your consent is voluntary and may be revoked at any time. Note, however, that your revocation of consent will not negate (undo) any action that occurred after you gave consent but before you revoked it.
4. If you revoke consent in writing after your child has begun receiving special education and related services, the administrative unit is not required to amend the child's education records to remove any references to the child's receipt of special education and related services.

Initial Evaluations: The District cannot conduct an initial evaluation without first providing you with prior written notice of the proposed evaluation and obtaining your consent. Your consent for an initial evaluation does not mean that you have also given consent for the District to start providing special education and related services to your child. If you refuse consent or fail to respond to a request for consent for an initial evaluation, the District may, but is not required to, pursue mediation or a due process hearing to conduct the evaluation. The District does not violate its obligation to locate, identify, and evaluate your child, if it declines to pursue an initial evaluation in this manner.[1]

Initial Provision of Services: The District must obtain and make reasonable efforts to obtain your consent before providing special education and related services to your child *for the first time*. If you do not respond or refuse to provide consent, the District may *not* pursue mediation or a due process hearing to compel the initial provision of services. If you do not respond or if you refuse to provide consent for the initial provision of services, the District is not required to convene an IEP meeting or develop an IEP for your child, nor is it required to make FAPE available to your child.

If at any time after the initial provision of special education and related services, you revoke consent in writing for the continued provision of special education and related services, the District:

1. Cannot continue to provide special education and related services to your child, but must provide you with prior written notice before discontinuing the provision of special education and related services;

[1] If your child is a ward of the State who is not living with you, and your right to make educational decisions and provide consent has been terminated or assigned to another individual, the District is not required to obtain your consent for an initial evaluation. Additionally, the District is not required to obtain parental consent for an initial evaluation of a ward of the State, if despite reasonable efforts to do so, it cannot locate the child's parents.

2 Cannot use the procedural safeguards (including mediation or due process procedures) to obtain agreement or a ruling that special education and related services may be provided to your child without your consent;

3. Will not be in violation of the requirement to make FAPE available to your child based on the failure to provide continued services to your child; and

4. Is not required to have an IEP meeting or to develop an IEP for your child.

Reevaluations: The District must obtain your consent before it reevaluates your child unless it can demonstrate that it took reasonable measures to obtain your consent, and you failed to respond. If you refuse to provide consent, the District may, but is not required to, pursue mediation or a due process hearing to conduct the reevaluation. As with an initial evaluation, the District does not violate its obligations under the IDEA if it declines to pursue a reevaluation via mediation or a due process hearing.

Consent for private or home-schooled children: If you have enrolled your child in a private school at your own expense or are home-schooling your child, and you fail to respond to a request to provide consent or you decline to provide consent for an initial evaluation or re-evaluation, the District may not pursue the evaluation through mediation or a due process hearing. In such circumstances, the District is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

Other Consent Provisions: Your consent is not required to review existing data as part of an initial evaluation or reevaluation, nor is it required to give your child a test or other evaluation that is given to all children unless consent for the test/evaluation is required from parents of all children. The District may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

Reasonable Efforts: The District must maintain documentation of its efforts to obtain your consent for initial evaluations, the initial provision of special education services, and reevaluations, and of its efforts to locate you, if your child is a ward of the State. Documentation must include a record of the District's efforts in these areas, such as: (1) detailed records of phone calls made or attempted and the results thereof; (2) copies of correspondence sent to you and any response received; and (3) detailed records of visits made to your home or place of employment and the results thereof.

Independent Educational Evaluations (34 C.F.R. § 300.502)

If you disagree with an evaluation obtained by the District, you have the right to request an independent educational evaluation ("IEE") at public expense. You are entitled to only one IEE at public expense each time the District conducts an evaluation with which you disagree.

An IEE is an evaluation conducted by a qualified examiner who is not employed by the District. Upon receipt of your request, the District has the option of providing the IEE at public expense or pursuing a due process hearing to show that its evaluation was appropriate. The District may also ask why you object to the evaluation it obtained. However, the District may not require an explanation and may not unreasonably delay either providing the IEE at public expense or filing a request for a due process hearing.

If the District does not request a hearing, it will provide you with information about where you may obtain an IEE and about any District criteria, including the location of the evaluation and qualifications of the examiner, applicable to the IEE. To the extent that such criteria are consistent with your right to obtain an IEE, you must follow them. Except for such criteria, the District cannot impose conditions or timelines related to obtaining an IEE at public expense.

If the District requests a hearing, and the final decision is that its evaluation was appropriate, you still have the right to an IEE, but not at public expense. Whether obtained at public or private expense, the District must consider the results of any IEE that meets District criteria in any decision made with respect to the provision of FAPE. IEEs may also be presented as evidence at due process hearings, and if an administrative law judge officer requests an IEE as part of a hearing, the cost of the evaluation must be at public expense.

Transfer of Rights at Age of Majority (34 C.F.R. § 300.520)

Unless your child is determined legally "incompetent," all rights accorded to you under the IDEA will transfer to your child when he/she reaches 21 years of age. These rights include, but are not limited to: consent for evaluation or reevaluation, decisions about services and placement, and rights to special education due process procedures. The District must notify you and your child of this transfer of rights, and, beginning at least one year before your child reaches the age of 21, it must include in your child's IEP a statement that the student has been informed of the rights that will transfer to the student upon reaching the age of 21.

II. STUDENT RECORDS

Access to Student Records (34 C.F.R. §§ 300.613-300.617)

You have a right to inspect and review your child's "education records" as that term is defined under the Family and Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA). This right includes records that are collected, maintained, or used by the District under the IDEA, including records related to the identification, evaluation, educational placement, and provision of a FAPE to your child. The District must comply with a request to inspect/review records without unnecessary delay, and before any IEP meeting or any due process hearing, and in no case more than 45 calendar days after your request has been made. Your right to inspect and review education records includes the right to:

- receive, on request, a list of the types and locations of education records collected, maintained, or used by the District;
- receive a response from the District to reasonable requests for explanations and interpretations of records;
- have your representative inspect/review the records; and
- receive copies of the records if failure to provide copies would effectively prevent you from exercising your right to inspect and review the records.

The District may presume that you have the legal authority to inspect and review records relating to your child, unless it has been advised that you do not have such authority under applicable State law. If any record includes information on more than one child, you have the right to inspect and review only the information pertaining to your child or to be informed of that specific information. The District may not charge a fee to search for or retrieve information in your child's records; however, it may charge a fee for copies of records if the fee does not effectively prevent you from exercising your right to inspect/review such records.

The District must keep a record of persons and organizations that access your child's education records, including the name of the person/organization, date of access, and the purpose for which the person/organization is authorized to use the records. The District does not have to keep a record of access by eligible parents or authorized employees.

Amendment of Records/Opportunity for a Hearing (34 C.F.R. §§ 300.618-300.621)

If you believe that information in your child's education records is inaccurate, misleading or violates the privacy or other rights of your child, you may request that the District amend the information. The District has a reasonable period of time to respond to your request. If the District decides not to amend the information, it must inform you of its decision and your right to a hearing to challenge the District's decision not to amend the record(s) in question.

If you request a hearing, a hearing must be conducted in accordance with the procedures for such hearings under FERPA. If, as a result of the hearing, the District decides that the information is inaccurate, misleading, or violates the privacy or other rights of the student, it must amend the information and so inform you in writing.

If, however, as a result of the hearing, the District decides that the information is not inaccurate, misleading, or violates the privacy or other rights of your child, it must inform you of your right to place a statement in your student's records commenting on the information and/or providing your reasons for disagreement with the content of the record. The District must maintain such a statement as long as the contested record (or portion thereof) is maintained. If the contested record (or portion thereof) is disclosed by the District to any third party, your statement must also be disclosed.

Disclosure of Personally-Identifiable Information (34 C.F.R. §§ 300.622-300.623)

The District must take steps to protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages, including appointing an individual to ensure the confidentiality of such information and ensure that all persons collecting or using such information understand all applicable laws, policies and procedures regarding confidentiality of such information. The District shall maintain, for public inspection, a current list of the names and positions of those District employees who may have access to personally identifiable information.

"Personally identifiable" means information that has your child's name, your name as the parent, or the name of another family member; your child's address; a personal identifier such as a social security number or student number; or a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Your consent must be obtained before personally identifiable information contained in education records is disclosed, unless the disclosure is authorized without parental consent under FERPA. Except in the two circumstances described below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting the requirements of the IDEA:

1. Your consent, or the consent of a child who has reached the age of 21, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.
2. If your child is enrolled in, or going to enroll in, a private school that is not located in the school district in which you reside, your consent must be obtained before any personally identifiable information is released between the officials in your school district and those in the district in which the private school is located.

Destruction of Personally-Identifiable Information (34 C.F.R. § 300.624)

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

III. MEDIATION

Applicable Provisions (34 C.F.R. § 300.508)

Mediation services are available to you at no cost to resolve any disagreements involving matters arising under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Mediation is available whether or not you have filed a due process complaint, and it cannot be used to delay or deny your right to a due process hearing or deny any other rights afforded under the IDEA. Both you and the District must agree to mediation as it is voluntary.

If you are invited, but opt not to participate in mediation, the District may offer you an opportunity to meet, at a time and location convenient to you, with someone from a parent training and information center, community parent resource center, or appropriate alternative dispute entity, who can explain the benefits of mediation to you. The District may not deny or delay your right to a due process hearing if you decline to participate in such a meeting.

Mediations will be conducted by qualified, impartial mediators trained in effective mediation techniques and knowledgeable with respect to the laws and regulations pertaining to the provision of special education and related services. CDE maintains a list of qualified mediators who are assigned to mediations on an impartial basis. The assigned mediator may not be an employee of CDE or the District and may not have any personal or professional interests that conflict with his/her objectivity. Assigned mediators are not employees of CDE solely because their services are paid by CDE.

Mediation sessions must be scheduled in a timely manner and held at a location that is convenient to the parties. Discussions that happen during the mediation process must be kept confidential and cannot be used as evidence in any subsequent litigation. If resolution is reached, the parties must execute a legally binding agreement that sets forth all agreements reached and states that all discussions during the mediation will remain confidential and may not be used as evidence in any subsequent due process hearings or civil proceeding. The agreement must be signed by both you and a representative with authority to bind the District. Such an agreement is enforceable in any State court of competent jurisdiction or in a federal district court.

IV. STATE COMPLAINT PROCEDURES

State Complaints vs. Due Process Complaints

The IDEA's regulations set forth separate procedures for State complaints and for due process complaints. Any individual or organization may file a written State complaint alleging a violation of any requirement of the IDEA by an administrative unit or CDE. Only you or the District may file a request for a due process hearing, and hearings are limited to matters related to the proposal or refusal to initiate or change the identification, evaluation, educational placement, or provision of FAPE to your child. Unless the timeline is properly extended, CDE must resolve State complaints within 60 calendar days. By comparison, an administrative law judge (ALJ) generally has 45 calendar days after the end of a 30-day resolution period (see below) to conduct a hearing and issue a written decision. However, at the request of one of the parties, an ALJ may grant a specific extension of the due process complaint timeline. The State complaint and due process complaint procedures are described more fully below.

Filing a State Complaint (34 C.F.R. § 300.153)

If you file a State complaint, your complaint must describe how the relevant entity (*i.e.*, the District) violated the IDEA or its implementing regulations and include the facts on which the statement is based; as well as your signature and contact information. If your allegation involves a specific child, the complaint also must include: (1) the name and address of residence of the child (2) the school the child is attending (in the case of a homeless child, available contact information for the child and the name of the school the child is attending); (3) a description of the nature of the problem, including facts relating to the problem; and (4) a proposed resolution of the problem to the extent known and available at the time you file your complaint.

Your complaint must allege a violation that occurred not more than one (1) year prior to the date that the complaint is received by CDE, and you must forward a copy of your complaint to the entity alleged to have violated the IDEA. You may obtain additional information regarding CDE's State Complaint procedures and forms by calling CDE's Exceptional Student Leadership Unit at: (303) 866-6694 or going to CDE's Dispute Resolution Web Page: http://www.cde.state.co.us/spedlaw/info.htm (click on "State Complaint Procedures").

State Complaint Investigation/Resolution Procedures (34 C.F.R. §§ 300.151-300.152)

CDE has 60 calendar days after the complaint is filed to:

1. conduct an independent on-site investigation, if deemed necessary by CDE;

2. give you an opportunity to submit additional information about the allegations in the complaint;
3. give the District an opportunity to respond to complaint, including an opportunity to propose a resolution to the complaint and, with your consent, engage in mediation;
4. review all relevant information and make an independent determination as to whether a violation of the IDEA has occurred; and
5. issue a written decision to the parties which addresses each allegation raised in the complaint and contains the findings of fact and conclusions and the reasons for the final decision.

CDE will extend the 60-day time limit only if exceptional circumstances exist or the parties voluntarily agree to an extension to resolve the matter through mediation or other alternative means of dispute resolution. In resolving a State complaint in which CDE finds a failure to provide appropriate services, CDE will issue a decision addressing: (1) the failure to provide appropriate services, including corrective action to address the needs of the child; and (2) appropriate future provision of services for all children with disabilities.

State Complaints Related to Due Process Hearings (34 C.F.R. § 300.152(c))

If a State complaint is received that is also the subject of a due process hearing or contains multiple issues, of which one or more are part of a hearing, CDE must set aside any part of the complaint that is being addressed in the due process hearing, until the conclusion of the hearing. If an issue raised in a State complaint has already been decided in a due process hearing involving the same parties (*i.e.*, you and the District), the hearing decision is binding and CDE must inform the complainant that the decision is binding. Finally, complaints alleging a failure to implement a due process hearing decision must be resolved by CDE.

V. DUE PROCESS PROCEDURES

Due Process Complaints (34 C.F.R. §§ 300.507, 300.509 & 300.511(e)-(f))

You or the District may file a due process complaint with respect to any matter relating to the identification, evaluation, educational placement, or provision of FAPE to your child. The due process complaint must set forth an alleged violation that occurred not more than two (2) years before the date you or the District knew, or should have known, about the alleged action that forms the basis of the complaint. This 2 year limitation does not apply if you could not file a due process complaint because the District withheld information that was required to be provided to you or specifically misrepresented that it had resolved the issue identified in the complaint.

Due process complaints must be submitted to CDE and to the Director of Special Education for the District, and they must include: (1) the name and address of residence of the child; (2) the name of the school attended by the child (or, in the case of a homeless child, available contact information for the child and the name of the school the child is attending); (3) a description of the problem(s), including facts related to the problem; and (4) a proposed resolution of the problem to the extent known and available at the time. If the District files a complaint, a copy will be provided to you.

Model Forms: CDE has developed model forms to assist parents, school districts, and other public agency in filing due process complaints, State Complaints, and requests for mediation. These forms are available on-line at: http://www.cde.state.co.us/spedlaw/info.htm.

Notice of Insufficiency: A due process complaint shall be deemed to be sufficient unless the party receiving the complaint notifies the administrative law judge and the complaining party in writing that it believes the complaint does not meet the above-stated requirements. This notice of insufficiency shall be provided to the administrative law judge within 15 days of receiving the complaint. Within 5 days of receipt of a notice of insufficiency, the administrative law judge shall make a determination on the face of the complaint of whether the complaint meets the above-stated requirements and shall immediately notify the parties in writing of such determination.

District Response: If the District has not sent a prior written notice to you regarding the subject matter contained in your due process complaint, the District shall, within 10 days of receiving the complaint, send you a response that includes: an explanation of why the District proposed or refused to take the action raised in your complaint; a description of other options that the IEP team considered and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report used as the basis for the proposed or refused action; and a description of the factors that were relevant to the District's proposed or refused action. Providing this information does not prevent the District from asserting that your due process complaint was insufficient.

Other party response to a due process complaint: Except as stated under the sub-heading immediately above, District Response, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses each of the issues in the complaint.

Amending a Complaint: A due process complaint may be amended by the party that files it, but only if: (a) the other party consents in writing to such amendment and is given the chance to resolve the complaint through a resolution session, or (b) no later than 5 days before the hearing begins, the ALJ grants permission to amend the complaint. If a party files an amended complaint, the timeline for a due process hearing shall recommence at the time the amended complaint is filed.

Availability of Free/Low Cost Legal Services: When a due process hearing is initiated, the District shall inform you of any free or low-cost legal or other relevant services available in the area. The District should also provide this information to you upon your request.

Resolution Process (34 C.F.R. §§ 300.510)

Resolution Meeting: Within 15 calendar days of receiving notice of your due process complaint, the District must convene a resolution meeting with you and the relevant member(s) of your child's IEP team who have specific knowledge of the facts identified in your due process complaint. You and the District will determine who from the IEP team should attend. This meeting must include an individual with decision-making authority on behalf of the District. It may not include an attorney of the District unless you are accompanied by an attorney.

The purpose of this resolution meeting is for you to discuss your due process complaint and the facts that form the basis of the complaint so that the District has the opportunity to resolve the dispute. The resolution meeting is not necessary if you and the District agree in writing to waive the meeting, or if you and the District agree to use the mediation process, as described under the heading **Mediation** above (see Section III).

Written Agreement and Review Period: If resolution is reached, you and the District must enter into a legally binding agreement that is signed by both you and a District representative with authority to bind the District and is enforceable in any State court of competent jurisdiction or a district court of the United States. Either party may void an agreement reached as a result of a resolution meeting within three (3) business days of the agreement's execution.

Resolution Period and Adjustments Thereto: If the District does not resolve the matter within 30 calendar days of its receipt of your due process complaint, the due process hearing may occur. There is a 45-calendar-day timeline for conducting a hearing and issuing a final decision. This 45-day timeline begins at the expiration of the 30-day day resolution period. However, adjustments may be made to the 30-day resolution period as follows:

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

- If the District fails to hold the resolution meeting within 15 calendar days of receiving your due process complaint or fails to participate in the resolution meeting, you may ask that the administrative law judge order the 45-day due process hearing timeline to begin.

- If you and the District agree in writing to waive the resolution meeting, then the 45-day due process hearing timeline starts the next day.

- If during the 30-day resolution period, you and the District agree in writing that no agreement is possible, the 45-day due process hearing timeline starts the next day.

- If the mediation process is used, the parties can agree in writing to continue the mediation at the end of the 30-day resolution period. However, if either you or the District withdraw from mediation, then the 45-day due process hearing timeline starts on the next day.

Finally, if after making reasonable efforts and documenting such efforts, the District is unable to obtain your participation in the resolution meeting, it may, at the end of the 30-day resolution period, request that your complaint be dismissed. Such documentation must include a record of the District's attempts to arrange a mutually agreed-upon time and place, such as detailed records of phone calls made/attempted and the results thereof, copies of correspondence sent and any responses received, and detailed records of visits made to your home or place of employment and the results thereof.

Hearing Procedures (34 C.F.R. §§ 300.511-300.515)

Due process hearings are to be conducted by impartial administrative law judges ("ALJs"), who are not employees of CDE or the District and who do not have any personal or professional

interest that conflict with their objectivity. ALJs must possess knowledge of, and the ability to understand, the provisions of the IDEA, applicable federal and State regulations, and case law. ALJs must also possess the knowledge and ability to conduct hearings and render and write decisions in accordance with appropriate, standard legal practice. CDE maintains a list of ALJs and statements of their qualifications, and it assigns ALJs on a rotating basis.

The party that requests a due process hearing shall not be allowed to raise issues at the hearing that were not raised in the complaint, unless the other party agrees otherwise. Any party to a due process hearing (or an appeal of such a hearing), has the right to:

1. Be accompanied and advised by an attorney and/or individuals with special knowledge or training with respect to the problems of children with disabilities (however, only attorneys licensed by the Colorado Supreme Court may *represent* parties at a due process hearing);
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. 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;
4. Obtain a written or electronic verbatim record of the hearing; and
5. Obtain a copy of written or electronic findings of fact and decisions.

You have the right to have the child who is the subject of the hearing present at the hearing, and you have the right to open the hearing to the public. Each hearing must be conducted at a time and place which is reasonably convenient to you and your child. Finally, the record of the hearing, findings of fact, and hearing decision must be provided to you at no cost.

Additional Disclosure of Information: At least 5 business days prior to a hearing, each party must disclose to the other party all evaluations and any recommendations based on such evaluations, that the party intends to use at the hearing. An ALJ may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

ALJ Hearing Decisions: An ALJ's decision as to whether your child received FAPE must be based on substantive grounds. In disputes alleging procedural violations, an ALJ may find that your child did not receive FAPE only if the alleged procedural violation interfered with your child's right to FAPE, significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. These provisions, however, do not preclude ALJ from ordering the District to comply with the procedural requirements of 34 C.F.R. §§ 300.500 – 300.536.

The District must ensure that no later than 45 calendar days after the expiration of the 30-day resolution period (or 45 days after the expiration of the adjusted time period, if the resolution period is adjusted as described in the section **Resolution Period** above), a final decision is reached and a copy of the decision is mailed to each of the parties. ALJ decisions (including hearings related to disciplinary procedures) are final, except that any party (you or the District) may appeal the decision by bringing a civil action as described in the section **Appealing a Due Process Hearing Decision** (below).

Separate requests for due process hearings: Nothing in the Procedural Safeguards Section of Part B of the IDEA precludes you from filing separate due process complaints on issues separate from due process complaints already filed.

CDE Provision and Publication of ALJ Findings and Decisions: After deleting personally identifiable information, CDE provides the findings and decisions of ALJs to the State special education advisory committee and makes those finding and the decision available to the public.

Child's Status During Proceedings (34 C.F.R. § 300.518)

Except as provided in the section **Procedures for Disciplining Students with Disabilities** (below), during the pendency of any administrative or judicial proceeding regarding a due process complaint, your child must remain in his or her current educational placement unless you and the District agree otherwise. If your complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all proceedings.

If your complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from Part C to Part B of the IDEA and is no longer eligible for Part C services because he/she has turned 3, the District is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B, and you consent to the initial provision of special education and related services, then the District must provide those services that are not in dispute (i.e., those which you and the District agree upon).

If an ALJ in a due process hearing conducted by CDE agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement for purposes of any subsequent administrative or judicial proceedings.

VI. APPEALING A DUE PROCESS HEARING DECISION

Civil Actions (34 C.F.R. § 300.516)

Either party (you or the District) has the right to appeal an ALJ's decision by filing a civil action in any State court of competent jurisdiction or in a district court of the United States. The party bringing the action shall have 90 calendar days from the date of the ALJ's decision to bring such an action. In any civil action, the court shall receive the records of the administrative proceedings; hear additional evidence at the request of a party; and, basing its decision on the preponderance of the evidence, grant the relief that the court deems appropriate.

Nothing in the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act, Title V of the Rehabilitation Act of 1973, or any other federal laws protecting the rights of children with disabilities. However, if a party files a civil action under one or more of these laws that seeks relief also available under part B of the IDEA, that party must exhaust the IDEA due process procedures described above (*i.e.*, the resolution meeting and due process hearing procedures) just as if he/she had brought an action under the IDEA.

Attorneys' Fees (34 C.F.R. § 300.517)

In any action under Part B of the IDEA, a court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing parent of a child with a disability. A court may also award fees to a prevailing State or local educational agency (*e.g.*, the District) and against the attorney of a parent who files a hearing request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or continues to litigate after litigation clearly has become frivolous, unreasonable, or without foundation. Finally, a court may award attorneys' fees to a prevailing State or local educational agency and against a parent or the attorney of a parent, if the parent's hearing request or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Award of Fees: A court may award reasonable attorneys' fees based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded. The court may also reduce, as appropriate, the amount of attorneys' fees awarded, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide to the school district the appropriate information in the due process request notice as described under the heading **Due Process Complaint.**

The court, however, may not reduce fees if it finds that the State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation of the Procedural Safeguards provisions of Part B the IDEA.

Attorneys' fees may not be awarded for attendance at resolution meetings or mediation sessions. Additionally, fees related to IEP meetings may not be awarded unless such meetings were held as a result of an administrative proceeding or court action. Finally, fees may not be awarded and related costs may not be reimbursed in any action or proceeding under the IDEA for services performed after a written offer of settlement, so long as:

1. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
2. The offer is not accepted within 10 calendar days; and
3. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

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

VII. DISCIPLINING CHILDREN WITH DISABILITIES

Applicable Procedures (34 C.F.R. §§ 300.530 -300.531)

Authority of School Personnel: FAPE must be made available to all eligible children with disabilities who have been removed from school for disciplinary reasons (*e.g.*, suspended or expelled) if such removal constitutes a "change in placement" (defined below). Not later than the date on which the decision to take action that constitutes a change in placement is made, you must be notified of the decision and of the procedural safeguards contained in this handout.

Change in Placement: A disciplinary change in placement occurs if: (1) your child is removed for more than 10 consecutive school days in a school year; or (2) your child is subjected to a series of removals that total more than 10 school days in a school year, and the series of removals constitutes a pattern because the behavior which resulted in the removals is substantially similar and because of such additional factors as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the District, and, if challenged, is subject to review as described in the **Disciplinary Appeals** section below.

Manifestation Determination: Not later than 10 school days after any decision to change the placement of your child due to a violation of the code of student conduct, you and relevant members of the IEP team (as determined by you and the District) shall review all relevant information in your child's file, including your child's IEP, any teacher observations, and any relevant information provided by you to determine if the conduct in question: (1) was caused by, or had a direct and substantial relationship to, your child's disability; or (2) was the direct result of a failure to implement your child's IEP. If you and the relevant members of the IEP team determine that the answer to either of these is "yes," them the conduct shall be determined to be a manifestation of your child's disability.

Determination that Behavior was a Manifestation: If it is determined that the conduct in question was a manifestation of your child's disability, the IEP team shall either: (1) conduct a functional behavioral assessment and implement a behavioral intervention plan ("BIP") for your child, provided that the District has not previously conducted such assessment; or (2) review the BIP and modify it, as necessary, to address the behavior at issue. Additionally, if it is determined that the conduct in question was a direct result of a failure to implement your child's IEP, the District must take immediate steps to remedy the deficiencies. Finally, unless the interim alternative education setting provisions apply (see below), or you agree to a change in placement, your child shall be returned to the placement from which he/she was removed.

Interim Alternative Educational Setting: Your child may be removed to an interim alternative educational setting chosen by the IEP team for not more than 45 school days without regard to whether the conduct in question is a manifestation of his or her disability, if your child: (1) carries or possesses a weapon to/at school, on school premises, or to/at a school function; (2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function; or 3) inflicts serious bodily injury upon another person while at school, on school premises, or at a school function. "School functions" are those under the jurisdiction of CDE or a public school.

- *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V of Section 202(c) of the Controlled Substances Act. *See* 21 U.S.C. § 812(c).
- *Illegal drug* means a controlled substance; but does not include those legally-possessed or used under the supervision of a licensed healthcare professional, under a provision of the Controlled Substances Act or other federal law.
- *Serious bodily injury* means injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- *Weapon* means a device, instrument, material, or substance, animate or inanimate, used for, or readily capable of, causing death or serious bodily injury; it does not include a pocket knife with a blade of less than 2 ½ inches in length.

Disciplinary Appeals (34 C.F.R. §§ 300.532-300.533)

If you disagree with a decision regarding disciplinary placement or a manifestation determination, you may request an expedited due process hearing. Likewise, if the District believes that maintaining the current placement of your child is substantially likely to result in injury to the child or others, it may request an expedited due process hearing. Any such hearing shall occur within 20 school days of the date the complaint is filed, and a determination shall be issued within 10 school days after the hearing.

When a complaint is filed in a disciplinary appeal, a resolution meeting must occur within 7 days of the District's receipt of the complaint. The resolution meeting may be waived if both parties agree to do so in writing. If not waived, the parties have 15 calendar days from the date the District received the complaint to resolve the matter, or the hearing may proceed.

A hearing officer (ALJ) who meets the requirements set forth in the **Hearing Procedures** section (see above) must conduct the due process hearing in accordance with the requirements set forth in that section. The hearing officer's decision may either:

1. return your child to the placement from which he/she was removed, if it is determined that the removal was a violation of the requirements described under the **Disciplining Children with Disabilities** section, or that your child's behavior was a manifestation of his/her disability; or

2. order a change of placement to an appropriate interim alternative educational setting for not more than 45 school days if it is determined that maintaining the current placement of your child is substantially likely to result in injury to your child or others.

Unless you and the District agree otherwise, your child must remain in the interim alternative educational setting chosen by the IEP team pending the decision of the ALJ or until the expiration of the contested disciplinary removal**,** whichever occurs first. Either party may appeal the decision of the ALJ in the same manner as it may appeal decisions in other due process hearings. *See* **Appeals** section, above.

Protections for Children Not Eligible Under The IDEA (34 C.F.R. § 300.534)

If your child has violated a student code of conduct, but has not been determined eligible for special education services under the IDEA, he/she will be entitled to the protections of the IDEA if, prior to the disciplinary infraction at issue, the District "had knowledge" that your child is a child with a disability. The District will be deemed to have such "knowledge" if, before the conduct that brought about the disciplinary action occurred:

1. You expressed concern in writing that your child needed special education and related services to supervisory or administrative personnel or a teacher of your child;
2. You requested an evaluation related to eligibility for special education and related services under the IDEA; or
3. Your child's teacher, or other school district personnel, expressed specific concerns about a pattern of behavior demonstrated by your child directly to the District's director of special education or other supervisory personnel.

The District will not be deemed to "have knowledge" if you refused to allow it to evaluate your child, you refused special education services, or your child was evaluated and determined not to be a child with a disability under the IDEA.

If prior to taking disciplinary measures against a child, the District did not "have knowledge" that your child is a child with a disability, your child may be subjected to the same disciplinary measures applied to non-disabled children who engaged in comparable behavior. If, however, you make a request for an evaluation during the period in which your child has been removed for disciplinary reasons, the District must evaluate your child in an expedited manner. Until the evaluation is completed, your child will remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If your child is determined to be a child with a disability, the District must provide special education and related services in accordance with the IDEA and follow the disciplinary procedures described in this handout.

Referral to and Action by Law Enforcement or Judicial Authorities (34 C.F.R. § 300.535)

The IDEA does not prohibit school districts or the District from reporting a crime committed by a child with a disability to appropriate authorities, nor does it prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

If the District reports a crime committed by a child with a disability, it must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom it reports the crime. The District may transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act.

VIII. UNILATERAL PLACEMENT OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

Applicable Provisions (34 C.F.R. § 300.148)

The IDEA does not require local education agencies to pay for the cost of education, including special education and related services, at a private schools or facilities if they can make FAPE available to the child in a public school. However, the local educational agency where a private school is located must include a child with a disability in the population whose needs are addressed under the IDEA provisions related to children who have been placed by their parents in a private school under 34 CFR §§ 300.131 through 300.144.

If you choose to enroll a child with a disability who previously received special education and related services under the authority of a public agency in a private school without the consent of or referral by the District, the District will not be required to pay for the cost of the private school unless a court or administrative law judge finds that: (a) the District failed to make FAPE available to your child in a timely manner prior to that enrollment and (b) the private placement is appropriate. A private placement may be deemed appropriate even if it does not meet the standards that apply to education provided by CDE and local educational agencies.

Disagreements regarding the availability of FAPE and the question of financial reimbursement are subject to the IDEA's due process procedures. The cost of reimbursement may be reduced or denied if:

1. at the most recent IEP meeting you attended prior to removing your child from public school, you did not inform the IEP team that you were rejecting the public school placement proposed, including stating your concerns and your intent to enroll your child in a private school at public expense; or
2. at least 10 business days (including any holidays that occur on a business day) prior to removing your child from public school, you did not give notice to the District of the information listed in item (1) above.

The cost of reimbursement also may be reduced or denied upon a finding of unreasonableness with respect to your actions. Additionally, it may be reduced or denied if, prior to removing your child from public school, the District informed you, via prior written notice, of its intent to evaluate your child (including an appropriate and reasonable statement of the purpose of the evaluation), but you did not make your child available for the evaluation.

The cost of reimbursement shall not be reduced or denied if the District prevented you from providing notice of your intent to remove your child from public school; if it did not notify you of the requirement to provide such notice; or compliance with the notice requirement would likely result in physical harm to your child. A court or administrative law judge also has the discretion to waive the notice requirement if you are illiterate or cannot write in English; or if compliance with the requirement would likely result in serious emotional harm to your child.

PARENT RESOURCES

IDEA 2004

The Individuals with Disabilities Education Act (IDEA) is a law ensuring services to children with disabilities throughout the nation. IDEA governs how states and public agencies provide early intervention, special education and related services to more than 6.5 million eligible infants, toddlers, children and youth with disabilities. Infants and toddlers with disabilities (birth-2) and their families receive early intervention services under IDEA Part C. Children and youth (ages 3-21) receive special education and related services under IDEA Part B. Information pertaining to the IDEA, as well as a complete copy of the Act and implementing federal regulations can be found at: http://idea.ed.gov/

Colorado Department of Education

The Exceptional Student Leadership Unit Website is a resource to teachers, administrators, and parents of students with exceptional educational needs due to disability, giftedness, unique talents, or English language learners who also have special needs. www.cde.state.co.us/cdesped/index.asp; 303-866-6694

The Special Education Law Web Page is designed to give you access to Colorado Special Education Law information. From this site you will be able to locate and download special education law brochures and decisions for Due Process Hearings and Federal Complaints. You can also download a copy of the Rules for the Administration of the Exceptional Children's Educational Act at: http://www.cde.state.co.us/spedlaw/index.htm

Early Childhood Connections

Early Childhood Connections is Colorado's infant and toddler initiative under the Individuals with Disabilities Education Act. Early Childhood Connections is an interagency initiative. The lead agency for implementation is the Colorado Department of Human Services. http://www.eicolorado.org; 1-877-777-4041

PEAK Parent Center

PEAK Parent Center is Colorado's federally designated Parent Training and Information Center (PTI). PEAK assists families and others through services like its telephone hotline, workshops, conferences, website, and publications. As a PTI, PEAK offers parent-to-parent support, but it does not hold support group meetings. It works one-on-one with families and also collaborates with state government and the education, rehabilitation, and medical communities to make system changes that improve outcomes for children. http://www.peakparent.org; 1-800-284-0251

The Legal Center for People with Disabilities & Older People

The Legal Center is an independent public interest non-profit specializing in civil rights and discrimination issues. The Legal Center protects the human, civil and legal rights of people with mental and physical disabilities, people with HIV, and older people throughout Colorado. http://www.thelegalcenter.org; 1-800-288-1376