

# **Procedural Safeguards**

**For Students with Disabilities  
and Their Parents**

**Under the  
Individuals with Disabilities Education Act  
2004**

**July 2009**

Dear Parents,

This document provides you with the required notice of the procedural safeguards available under the Individuals with Disabilities Education Act (IDEA).

For your convenience, a brief summary of your procedural safeguards is followed by the full text of procedural safeguards taken from the IDEA 2004 regulations and the Utah State Board of Education Special Education Rules.

In this document the term "day" means calendar day, unless otherwise indicated.

Explanations of abbreviations used in this notice:

USOE Utah State Office of Education  
FAPE Free Appropriate Public Education  
IEP Individualized Education Program  
LEA Local Education Agency - The forty Utah school districts, the USDB, and all public charter schools that are established under State law that are not schools of an LEA.

If you have any questions about these procedural safeguards, please feel free to contact your student's special education teacher or the Special Education Department at the LEA Office. Further information may be obtained from the Utah Parent Center, 801-272-1051 or 1-800-468-1160.

#### **PROCEDURAL SAFEGUARDS (Brief Summary)**

##### **1. Confidentiality of Information**

- a. Your student's education records are kept in a confidential manner.
- b. Your student's educational records are not disclosed without your consent to anyone other than staff of the LEA involved with your student's education and to staff of another school or school district in which your student is seeking to enroll.
- c. You have the right to inspect and receive a copy of your student's education records.
- d. You have the right to request that information in your student's educational records be amended if you believe it is inaccurate or misleading.

##### **2. Discipline**

- a. School staff may order the removal of your student from school for disciplinary reasons to the extent the removal is applied to non-disabled students, as long as the removals do not constitute a change of placement. A change in placement occurs if the student is removed from school for disciplinary reasons for more than 10 consecutive school days or if the student is subjected to a series of removals that constitute a pattern of removal.
- b. After your student has been removed from their current placement for more than 10 days during a school year, the school staff will provide services to your student to the extent necessary for your student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in their IEP.
- c. School staff may order a change of placement to an appropriate alternative setting for not more than 45 days to the extent removal for disciplinary reasons is applied to non-disabled students if your student carries a weapon to school or to a school function or knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or causes serious bodily injury to another person while at school or a school function. The interim alternative setting must enable your student to continue to progress in the general curriculum and to continue to receive those services and modifications that will enable your student to progress on the goals set out in their IEP.
- d. If the school staff is considering a disciplinary action that involves changing your student's placement, you will be notified of that decision and a review will be conducted to determine the relationship between your student's disability and the behavior subject to the disciplinary action. If the result of this review is that the behavior was not a manifestation of your student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to your student in the same manner in which they would be applied to students without disabilities; however, the LEA must provide services to the extent necessary to enable your student to appropriately progress in the

general curriculum and appropriately advance toward achieving the goals set out in their IEP.

- e. After changing your student's placement for disciplinary reasons, school staff will conduct a functional behavioral assessment and convene the IEP team to develop a behavioral intervention plan; or if a behavior plan was in place it must be reviewed and modified as necessary by the IEP team.
- f. After your student's placement has been changed for disciplinary reasons, if your student continues to need to be removed for disciplinary reasons, the IEP team shall review your student's behavioral intervention plan and modify it to the extent the team feels is necessary.

### **3. Due Process**

- a. As parents of a student with a disability you have the opportunity to review your student's educational records and be included in meetings with respect to your student's evaluation, eligibility, IEP and placement
- b. You may request an independent educational evaluation if you disagree with the results of an evaluation obtained by the LEA.
- c. You will be given written notice before the LEA proposes or refuses to evaluate your student, identify (classify) or change the classification of your student, implement or change the implementation of your student's free appropriate public education in accordance with the IEP, or provide or change the educational placement of your student.
- d. Your consent will be obtained before an initial evaluation is conducted and before special education services are provided.
- e. Should any disagreement arise regarding the evaluation, eligibility, IEP or placement of your student, we will seek to resolve them in a mutually satisfactory manner. If we are unable to resolve a disagreement, we will offer to use a mediation process. If mediation is unsuccessful, a due process hearing may be necessary to resolve our disagreement.

### **4. Students with disabilities enrolled by their parents in private schools when free appropriate public education (FAPE) is an issue.**

- a. The LEA is not required to pay for the cost of education of your student in a private school if the district made FAPE available to your student and you elected to place your student in a private school.
- b. If you are considering rejecting the FAPE offered by the LEA and enrolling your student in a private school and you plan to seek reimbursement from the LEA, you need to inform the LEA of your concerns at least (10) business days (including any holidays that occur on a business day).

### **5. State Complaint Procedures**

- a. The LEA is committed to fully complying with all requirements of the IDEA; however, if you believe the LEA has violated a requirement of the IDEA, you have the right to file a written complaint. You will file with the LEA Superintendent and the USOE, who will investigate, or appoint someone to investigate your complaints, and issue a written decision of findings to you within 30 days.
- b. If you disagree with the LEA findings, you have the right to appeal to the USOE State and Federal Compliance Officer, who will investigate and issue a final decision in writing.

## **PROCEDURAL SAFEGUARDS: DUE PROCESS PROCEDURES for PARENTS and STUDENTS (Subpart E)**

### **Parental opportunity to examine records; parent participation in meetings. (300.501)**

(a) The parents of a student with a disability must be afforded, in accordance with the State rules, an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the student; and the provision of FAPE to the student.

(b) The parents of a student with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a FAPE to the student. Each LEA must provide notice, consistent with State rules, to ensure that parents of students with disabilities have the opportunity to participate in meetings. A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of

service provision. A meeting also does not include preparatory activities that LEA personnel engage in to develop a proposal or a response to a parent proposal that will be discussed at a later meeting.

(c) Each LEA must ensure that a parent of each student with a disability is a member of any group that makes decisions on the educational placement of the parent's student, including notifying parents of the meeting 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 of meeting must indicate the purpose(s), time, and location of the meeting and who will be in attendance and inform the parents of their right to bring other individuals who have knowledge or special expertise about the student. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their student, the LEA must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of a parent, if the LEA is unable to obtain the parent's participation in the decision. In this case, the LEA must have a record of its attempt to ensure their involvement.

**Independent educational evaluation. (300.502)**

(a) The parents of a student with a disability have the right under this part to obtain an independent educational evaluation of the student at public expense if they disagree with an evaluation obtained by the LEA. The LEA must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the LEA criteria applicable for independent educational evaluations. Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the student; and public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(b) If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet LEA criteria. If the LEA files a due process complaint notice to request a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense. If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the LEA may not unreasonably delay either providing the independent educational evaluation at public expense or requesting a due process hearing to defend the public evaluation.

(c) A parent is entitled to only one independent educational evaluation at public expense each time the LEA conducts an evaluation with which the parent disagrees.

(d) If the parent obtains an independent educational evaluation at public expense or shares with the LEA an evaluation obtained at private expense, the results of the evaluation must be considered by the LEA, if it meets LEA criteria, in any decision made with respect to the provision of a FAPE to the student and may be presented by any party as evidence at a hearing on a due process complaint regarding that student.

(e) If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

(f) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation. An LEA may not impose additional conditions or timelines related to obtaining an independent educational evaluation at public expense becomes the property of the LEA, in its entirety.

**Consent. Consent means that:**

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication.
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
- (c) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. If a parent revokes 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).
- (d) If the parent revokes consent in writing for their student's receipt of special education and related services, the LEA is not required to amend the student's education records to remove any references to the student's receipt

of special education and related services because of the revocation of consent.

**Parental consent for services. (300.300)**

1. An LEA that is responsible for making a FAPE available to a student with a disability must obtain informed consent from the parent of the student before the initial provision of special education and related services to student.
2. An LEA must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the eligible student with disabilities.
3. If the parent of a student fails to respond to a request for, or refuses to consent to the initial provision of special education and related services, the LEA:
  - (a) May not use the procedures in Section IV. Of these Rules, including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student.
  - (b) Will not be considered to be in violation of the requirement to make available a FAPE to the student for the failure to provide the student with the special education and related services for which the LEA requests consent; and
  - (c) Is not required to convene an IEP team meeting or develop an IEP for the student for the special education and related services for which the LEA requests such consent.
4. If, at any time subsequent to the initial provision of special education and related services, the parent of a student revokes consent in writing for the continued provision of special education and related services, the public agency:
  - (a) May not continue to provide special education and related services to the student, but must provide prior written notice in accordance with Section IV. D. of these Rules before ceasing the provision of special education and related services.
  - (b) May not use the procedures in Section IV of these Rules, including the mediation procedures or the due process procedures, in order to obtain agreement or a ruling that the services may be provided to the student.
  - (c) Will not be considered to be in violation of the requirements to make available a FAPE to the student for the failure to provide the student with the special education and related services for which the LEA requests consent; and
  - (d) Is not required to convene an IEP team meeting or develop an IEP for the student for the special education and related services for which the LEA requests such consent.
5. An LEA may not use a parent's refusal to consent to one service or activity to deny the parent or student any other service, benefit, or activity of the LEA, or to fail to provide a student with a FAPE.
6. Consent means that the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time (300.9).
  - (a) If a parent revokes 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).

**Note: Consent section is draft.**

**Written prior notice. (300.503)**

(a) Written prior notice must be given to the parents of a student with a disability a reasonable time before the LEA proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student; or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student.

(b) The notice required must include a description of the action proposed or refused by the LEA; an explanation of why the LEA proposes or refuses to take the action; a description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action; a statement that the parents of a student with a disability have protection under the procedural safeguards of part B of the IDEA and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; sources for parents to contact to obtain assistance in understanding the provisions of Part B of the IDEA; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the LEA's proposal or refusal.

(c) The notice must be written in language understandable to the general public; and provided in the native language of the parent or other mode of communication used

by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the LEA must take steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; the parent understands the content of the notice; and there is written evidence that the requirements have been met.

#### **Procedural safeguards notice. (300.504)**

(a) A copy of the procedural safeguards available to the parents of a student with a disability must be given to the parents only one time a year, except that a copy also must be given to the parents upon initial referral or parent request for evaluation; upon receipt of the first State complaint or a due process complaint in that school year; (1) and upon request by a parent in accordance with discipline procedures starting on pg.17.

(c) The procedural safeguards notice must include a full explanation of all of the procedural safeguards relating to independent educational evaluations; prior written notice; parental consent; access to educational records; opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including the time period in which to file a complaint; the opportunity for the LEA to resolve the complaint; and the difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures; the availability of mediation; the student's placement during pendency of hearings on due process complaints; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parents of students in private schools at public expense; hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations; state-level appeals; civil actions, including the time period in which to file those actions; and attorneys' fees.

(d) The notice required must be in language understandable to the parents.

(e) A parent of a child with a disability may elect to receive notices by an electronic mail communication, if the LEA makes that option available.

#### **STATE COMPLAINT PROCEDURES**

1. The Utah State Office of Education (USOE) has adopted procedures for resolving any complaint under Part B of the IDEA including a complaint filed by an organization or individual from another state. The complaint must be in writing to the superintendent or charter school administrator of the LEA in which the alleged violation has occurred, and the party filing the complaint must forward a copy to the State Director of Special Education at the same time the party files a complaint with the LEA. If the parents are unable to file in writing, they can contact the LEA or USOE for assistance. The complaint must include the following:
  - a. A statement that the LEA has violated a requirement of Part B of the IDEA or Utah State Board of Education Special Education Rules.
  - b. The facts on which the statement is based.
  - c. The signature and contact information for the complainant.
  - d. If alleging violations with respect to a specific student:
    - (1) The name and address of the residence of the student;
    - (2) The name of the school the student is attending;
    - (3) In the case of a homeless student, available contact information for the student and the name of the school the student is attending;
    - (4) A description of the nature of the problem of the student, including facts relating to the problem; and
    - (5) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is received as described in IV.E.1.
2. The complaint must allege a violation that occurred not more than 1 year prior to the date that the complaint is received by the LEA, unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services for a violation that occurred not more than two years prior to the date the complaint is received by the LEA.
3. The LEA shall resolve the complaint within thirty (30) days unless exceptional circumstances exist (e.g., delay by a complainant to provide necessary information). An extension of time shall not exceed ten (10) days. Within this time limit, the LEA shall:
  - a. Carry out an independent on-site investigation, if the LEA determines that such an investigation is necessary.
  - b. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
  - c. Review all relevant information and make a determination as to whether the LEA is violating a requirement of Part B of the IDEA or of the Utah State Board of Education Special Education Rules.

- d. Issue a written decision to the complainant, with a copy sent to the State Director of Special Education that addresses each allegation in the complaint and contains: (1) Findings of facts and conclusions and (2) the reasons for the LEA's final decisions.
  - e. Permit an extension of the time limit under IV.G.4.a only if: (1) Exceptional circumstances exist with respect to a particular complaint; or (2) The parent, individual, or organization and the LEA involved agree to extend the time to engage in mediation, or to engage in other alternative means of dispute resolution available in the State; and
  - f. Determine procedures for the effective implementation of the LEAs final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.
  - g. Inform the complainant, in writing of the right to appeal the decision for review to the USOE, and the procedures for doing so. The appeal request must be received by the State Director of Special Education within ten (10) calendar days of the receipt of the LEA's final decision.
4. The procedures for reviewing the LEA's final decision on appeal to the USOE shall be the same as those outlined above. Within the remaining days of the sixty (60) calendar day time period after receipt of a written request for review, the USOE shall issue a final, written decision on the complaint.
  5. In resolving a complaint in which it has found a failure to provide appropriate services, the USOE, pursuant to its general supervisory authority under Part B of the IDEA must address:
    - a. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the student.
    - b. Appropriate future provision of services for all students with disabilities.
  6. If a written state complaint is received that is also the subject of a due process hearing under the Due Process Hearing Procedures in Utah State Board of Education Special Education Rules, or contains multiple issues, of which one or more are part of that hearing, the LEA (or the USOE if the state complaint is an appeal of an LEA decision) must set aside any part of the complaint that is being addressed in the hearing until its conclusion. Any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and complaint procedures described in this section.
  7. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the hearing decision is binding on that issue. The USOE must inform both parties of this fact. A complaint alleging an LEA's failure to implement a due process decision, however, must be submitted directly to the State Director of Special Education and resolved by the USOE.
  8. Parents and other interested individuals, including parent training and information centers, independent living centers, representatives of protection and advocacy agencies, professional organizations, and other appropriate entities, shall be informed about these procedures through:
    - a. Procedural safeguards notice provided by LEA.
    - b. Presentations and other training events by USOE staff conducted throughout the state.

**Mediation. (300.506)**

(a) Each LEA must ensure that procedures are established and implemented to allow parties to disputes involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) The procedures must ensure that the mediation process is voluntary on the part of the parties; is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the IDEA; and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. An LEA may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; and who would explain the benefits of, and encourage the use of, the mediation process to the parent. The USOE maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. The USOE selects mediators on a random, rotational, or other impartial basis. The USOE bears the cost of the mediation process, including the costs

of meetings described in this section. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that states that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and is signed by both the parent and a representative of the LEA who has the authority to bind such agency. A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings or any Federal Court or State Court.

(c) An individual who serves as a mediator may not be an employee of the USOE or the LEA that is involved in the education or care of the student; and must not have a personal or professional interest that conflicts with the person's objectivity. A person who otherwise qualifies as a mediator is not an employee of an LEA or USOE solely because he or she is paid by the agency to serve as a mediator.

#### **Filing a due process complaint. (300.507)**

(a) A parent or an LEA may file a due process complaint on any of the matters relating to the identification, evaluation or educational placement of a student with a disability, or the provision of FAPE to the student. The due process complaint must allege a violation that occurred not more than (2) years before the date the parent or LEA knew or should have known about the alleged action that forms the basis of the due process complaint, except if the parent was prevented from filing a due process complaint due to specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or the LEA's withholding of information from the parent that was required under this Part B of the IDEA to be provided to the parent.

(b) The LEA must inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information; or the parent or the LEA requests a hearing under this section.

#### **Due process complaint. (300.508)**

(a) The LEA must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential). The party filing a due process complaint must forward a copy of the due process complaint to the USOE.

(b) The due process complaint must include the name of the student; the address of the residence of the student; the name of the school the student is attending; in the case of a homeless student or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the student, and the name of the school the student is attending; a description of the nature 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.

(c) A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements listed above.

(d) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within fifteen (15) calendar days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements. Within five (5) calendar days of receipt of notification, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements, and must immediately notify the parties in writing of that determination. A party may amend its due process complaint only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting; or the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five (5) calendar days before the due process hearing begins. If a party files an amended due process complaint, the timelines for the resolution meeting and the time period to resolve the complaint begin again with the filing of the amended due process complaint.

(e) If the LEA has not sent a written prior notice to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten (10) calendar days of receiving the due process complaint, send to the parent a response that includes an explanation of why the LEA proposed or refused to take the action raised in the due process 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 the LEA used as the basis for the proposed or refused action; and a

description of the other factors that are relevant to the LEA's proposed or refused action. If an LEA has not sent written prior notice to the parent regarding the subject matter of the parent's due process complaint until after the due process complaint is received, the LEA may still assert that the parent's due process complaint was insufficient, where appropriate.

- (f) The party receiving a due process complaint must, within (10) calendar days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

**Model forms. (300.509)**

The USOE has developed model forms to assist parents in filing a State complaint, a due process hearing complaint, and requesting mediation. These forms are available on the Utah State Office of Education web site at [www.schools.utah.gov](http://www.schools.utah.gov). Parties are not required to use the State's model forms. Parents, public agencies, and other parties may use the appropriate State model form or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements for filing a due process complaint or the requirements for filing a State complaint.

**Resolution process. (300.510)**

(a) Within fifteen (15) calendar days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that includes a representative of the LEA who has decision-making authority on behalf of that agency; and may not include an attorney of the LEA unless the parent is accompanied by an attorney. The purpose of the meeting is for the parents of the student to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint. The resolution meeting need not be held if the parents and the LEA agree in writing to waive the meeting; or the parents and the LEA agree to use the mediation process. The parents and the LEA determine the relevant members of the IEP Team to attend the meeting.

(b) If the LEA has not resolved the due process complaint to the satisfaction of the parents within thirty (30) calendar days of the receipt of the due process complaint, the due process hearing may occur. The timeline for issuing a final decision begins at the expiration of this 30-day period. Except where the parties have jointly agreed to waive the resolution process or to use mediation, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented) the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parents' due process complaint. If the LEA fails to hold the resolution meeting within fifteen (15) days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) The 45-day timeline for the due process hearing starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;  
(2) After either the mediation or resolution meeting starts, but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later the parent or LEA withdraws from the mediation process.

(d) If a resolution to the dispute is reached at the meeting, the parties must execute a legally binding agreement that is signed by both the parent and a representative of the LEA who has the authority to bind the LEA and that is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(e) If the parties execute an agreement, a party may void the agreement within three (3) business days of the agreement's execution.

**Impartial due process hearing. (300.511)**

(a) Whenever a due process complaint is filed, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing.

(b) The impartial due process hearing shall be conducted by the USOE. The USOE Director of Special Education or designee shall assign an impartial hearing officer on a random (rotation) basis, and in accordance with USOE procedures.

(c) At a minimum, a hearing officer must not be an employee of the USOE or the LEA that is involved in the education or care of the student; or not be a person

having a personal or professional interest that conflicts with the person's objectivity in the hearing; must possess knowledge of, and the ability to understand, the provisions of Part B of the IDEA, Federal and State regulations pertaining to Part B of the IDEA, and legal interpretations of Part B of the IDEA by Federal and State courts; must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(d) The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint, unless the other party agrees otherwise.

(e) A parent or LEA must request an impartial hearing on their due process complaint within two (2) years of the date the parent or LEA knew or should have known about the alleged action that forms the basis of the due process complaint.

(f) Exceptions to the timeline. The timeline described in IV.M.6 does not apply to a parent if the parent was prevented from filing a due process complaint due to: (1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) The LEA's withholding of information from the parent that was required to be provided to the parent.

(g) The USOE shall monitor all due process hearings to ensure adherence to required procedures.

#### **Hearing rights. (300.512)**

(a) Any party to a hearing or an appeal 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, electronic, verbatim record of the hearing; and obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) At least five (5) business days prior to a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party from introducing the relevant evaluation or recommendation not disclosed at least five (5) business days prior to the hearing without the consent of the other party.

(c) Parents involved in hearings must be given the right to have the student who is the subject of the hearing present; open the hearing to the public; and have the record of the hearing and the findings of fact and decisions provided at no cost to parents.

#### **Hearing decisions. (300.513)**

(a) A hearing officer's determination of whether the student received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a student did not receive a FAPE only if the procedural inadequacies impeded the student's right to a FAPE; significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' student; or caused a deprivation of educational benefit. Nothing in paragraph (a) shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements.

(b) A parent has the right to file a separate due process complaint on an issue separate from a due process complaint already filed.

(c) The USOE, after deleting any personally identifiable information, must transmit the findings and decisions on the due process complaint to the Utah Special Education Advisory Panel; and make those findings and decisions available to the public.

#### **Finality of decision. (300.514)**

(a) A decision made in a hearing conducted is final unless a party to a hearing appeals the decision to a civil action.

(b) Notwithstanding the provisions for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing that would prevent the USOE from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.

#### **Timelines and convenience of hearings. (300.515)**

(a) The USOE must ensure that not later than forty-five (45) calendar days after the expiration of the thirty (30) calendar day resolution period, or the adjusted time periods resulting from the resolution process, (1) a final decision is

reached in the hearing, and (2) a copy of the decision is mailed to each of the parties.

(b) A hearing officer may grant specific extensions of time at the request of either party.

(c) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and student involved.

#### **Civil action. (300.516)**

(a) Any party aggrieved by the findings and decision who does not have the right to an appeal, and any party aggrieved by the findings and decision, has the right to bring a civil action with respect to the complaint notice requesting a due process hearing. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. A civil action may be filed in either state or federal court; if appealed to (a) state court, the appeal must be filed within thirty (30) days of the date of the due process hearing decision. A federal court may apply a similar time limit.

(b) In any civil action, the court receives the records of the administrative proceedings; hears additional evidence at the request of a party; and basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(c) The district courts of the United States have jurisdiction of actions brought under the Procedural Safeguards of Part B of the IDEA without regard to the amount in controversy.

(d) 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 the filing of a civil action under these laws seeking relief that is also available under the Procedural Safeguards of Part B of the IDEA, the procedures must be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA.

#### **Attorneys' fees. (300.517)**

(a) In any action or proceeding brought under Procedural Safeguards of Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the prevailing party who is the parent of a student with a disability; to a prevailing party who is an SEA or LEA 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 USOE or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing 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.

(b) Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to any action or proceeding. An LEA may use funds under Part B of the IDEA for conducting an action or proceeding under the Procedural Safeguards of Part B of the IDEA.

(c) A court awards reasonable attorneys' fees consistent with the following: fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten (10) calendar days before the proceeding begins; the offer is not accepted within ten (10) calendar days; and the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for mediation under 300.506. A resolution meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action; or an administrative hearing or judicial action for purposes of attorney's fees in this section. An award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. The court reduces, accordingly, the amount of the attorneys' fees awarded, if the court finds that the parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or the attorney representing the parent did not provide to the LEA the appropriate

information in the due process request notice. The above regulations regarding attorney's fees do not apply in any action or proceeding if the court finds that the LEA unreasonably protracted the final resolution of the action or proceeding or there was a violation of the Procedural Safeguards of Part B of the IDEA.

**Student's status during proceedings. (300.518)**

(a) During the pendency of any administrative or judicial proceeding regarding a request for a due process hearing, unless the LEA and the parents of the student agree otherwise, the student involved in the complaint must remain in his or her current educational placement.

(b) If the complaint involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.

(c) If the decision of a hearing officer in a due process hearing conducted by the USOE agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the LEA and the parents.

**Surrogate parents. (300.519)**

(a) Each LEA must ensure that the rights of a student are protected when no parent can be identified; the LEA, after reasonable efforts, cannot locate a parent; the student is a ward of the State under the laws of that State; or the student is an unaccompanied homeless youth.

(b) The duties of an LEA include the assignment of an individual to act as a surrogate for the parents. This must include a method for determining whether a student needs a surrogate parent and for assigning a surrogate parent to the student.

(c) In the case of a student who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the requirements.

(d) The LEA may select a surrogate parent in any way permitted under State law. LEA must ensure that a person selected as a surrogate parent is not an employee of the USOE, the LEA, or any other agency that is involved in the education or care of the student; has no personal or professional interest that conflicts with the interest of the student he or she represents; and has knowledge and skills that ensure adequate representation of the student.

(e) A person otherwise qualified to be a surrogate parent is not an employee of the LEA solely because he or she is paid by the LEA to serve as a surrogate parent.

(f) In the case of a student who is an 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.

(g) The surrogate parent may represent the student in all matters relating to the identification, evaluation, and educational placement of the student; and the provision of FAPE to the student.

(h) The USOE must make reasonable efforts to ensure the assignment of a surrogate parent not more than thirty (30) calendar days after an LEA determines that the student needs a surrogate.

**Transfer of parental rights at age of majority. (300.520)**

The USOE requires that when a student with a disability reaches the age of majority under State law (age 18) that applies to all students (except for a student with a disability who has been determined to be incompetent under State law) the LEA must provide any notice required by Part B of the IDEA to both the individual and the parents; and all other rights accorded to parents under Part B of the IDEA transfer to the student; all rights accorded to parents under Part B of the IDEA transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution; and whenever a State transfers rights, the LEA must notify the individual and the parents of the transfer of rights.

**CONFIDENTIALITY (300.610)**

The USOE and LEA's take appropriate steps to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the USOE and LEA's pursuant to Part B of the IDEA.

Definitions. (300.611) As used in these safeguards:

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

**Education records** mean the type of records covered under the definition of "education records" in 34CFR Part 99, implementing regulations of the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g (FERPA).

**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.

The USOE and LEA must give notice that is adequate to fully inform parents including a description of the extent that the notice is given in the native languages of the various population groups in the state; a description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the USOE intends to use in gathering the information (including sources from whom information is gathered), and the uses to be made of the information; a summary of the policies and procedures that LEA's must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and a description of all of the rights of parents and students regarding this information, including the rights under the Family Education Rights and Privacy Act of 1974 (FERPA).

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 LEA's of the activity.

Each LEA must permit parents to inspect staff and review any education records relating to their students that are collected, maintained, or used by the LEA. The LEA must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing, or resolution session, and in no case more than forty five (45) calendar days after the request has been made.

The right to inspect and review education records under this section includes the right to a response from the LEA to reasonable requests for explanations and interpretations of the records; the right to request that the LEA provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and the right to have a representative of the parent inspect and review the records. An LEA may presume that the parent has authority to inspect and review records relating to his or her student unless the LEA has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

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

**Records on more than one student.** If any education record includes information on more than one student, the parents of those students shall have the right to inspect and review only the information relating to their student or to be informed of that specific information.

**List of types and locations of information.** On request, the LEA must provide parents with a list of the types and locations of education records collected, maintained, or used by the LEA.

**Fees.** The USOE and each LEA may charge a fee for copies of records that are made for parents under Part B of the IDEA if the fee does not effectively prevent parents from exercising their right to inspect and review those records. The USOE and an LEA may not charge a fee to search for or to retrieve information under Part B of the IDEA.

**Amendment of records at parent's request.** A parent who believes that information in the education records collected, maintained, or used under Part B of the IDEA is inaccurate or misleading or violates the privacy or other rights of the student may request the LEA that maintains the information to amend the information. The LEA must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the LEA decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing on the matter.

**Opportunity for a hearing.** The LEA must, 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 student.

Result of the hearing, the LEA decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must inform the parent of the right to place in the records it maintains on the student a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the LEA. Any explanation placed in the records of the student under this section must be maintained by the LEA as part of the records of the

student as long as the record or contested portion is maintained by the LEA; and if the records of the student or the contested portion is disclosed by the LEA to any party, the explanation must also be disclosed to the party.

**Hearing procedures.** A hearing, that challenges education records must be held according to the procedures under 34 CFR 99, as described below. At a minimum, the LEA's hearing procedures must adhere to the following requirements: the hearing shall be held within a reasonable period of time after the LEA receives the request, and the parent of the student or student age 18 or older shall be given notice of the date, place, and time reasonably in advance of the hearing. The hearing may be conducted by any party, including an official of the LEA, that does not have a direct interest in the outcome of the hearing. The parent of the student or student age 18 or older shall be afforded a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or be represented by individuals of his or her choice at his or her own expense, including an attorney. The LEA shall make its decision in writing within a reasonable period of time after the conclusion of the hearing. The decision of the LEA shall be based solely upon the evidence presented at the hearing, and shall include a summary of the evidence and the reasons for the decision.

**Parental consent.** Except as to disclosures addressed in referral to and action by law enforcement and judicial authorities for which parental consent is not required by 34CFR99, 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 Part B of the IDEA, or used for any purpose other than meeting a requirement of Part B of the IDEA. An LEA may not release information from education records to participating agencies without parental consent unless authorized to do so by 34 CFR 99.31 and 99.34 (FERPA). Regulation 34 CFR 99.31 allows an LEA to disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the student age 18 or older if the disclosure is to other school officials, including teachers within the LEA who have been determined by the LEA to have legitimate educational interests, or to officials of another school or school site in which the student seeks or intends to enroll, subject to the requirements set forth in 34 CFR 99.34, below. Regulation 34 CFR 99.34 requires that an LEA transferring the education records of a student pursuant to 34 CFR 99.34 above shall make a reasonable attempt to notify the parent of the student or the student age 18 or older of the transfer of the records at the last known address of the parent or student age 18 or older, except that the LEA does not have to provide any further notice or the transfer of records is initiated by the parent or student age 18 or older at the sending LEA or when the LEA includes in its annual notice of procedural safeguards, that it is the policy of the LEA to forward education records on request to a school in which the student seeks or intends to enroll.

An LEA receiving personally identifiable information from another educational agency or institution may make further disclosure of the information on behalf of the LEA without the prior written consent of the parent or student age 18 or older if the conditions of 34 CFR 99.31 and 99.34 noted above are met, and if the educational agency informs the party to whom disclosure is made of these requirements. If the parents refuse consent for the release of personally identifiable information to a third party, then that party may proceed with statutory procedures in an effort to obtain the desired information.

**Special note:** *Please be informed that as authorized in 34CFR99.31, your student's records can and will be forwarded without your consent to officials of another school or school district in which your student seeks or intends to enroll.*

**Safeguards.** Each LEA must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each LEA must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures in this section and 34 CFR Part 99. Each LEA must maintain, for public inspection, a current listing of the names and positions of those employees within the LEA who may have access to personally identifiable information for students with disabilities.

**Destruction of records.** The LEA must inform parents or students age 18 or older when personally identifiable information collected, maintained, or used under Part B of the IDEA is no longer needed to provide educational services to the student. The information no longer needed must be destroyed at the request of the parents or student age 18 or older. However, a permanent record of the student's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

**Special note:** *Each student's records may be considered "no longer needed to provide educational services" and will be destroyed three (3) years after the student graduates or three (3) years after the student turns 22.*

**Student's rights.** The rights of privacy afforded to parents are transferred to the student who reaches the age of 18, provided the student has been declared incompetent by a court order. Under the regulations for FERPA at 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18. Because the rights accorded to parents under Part B of the IDEA are transferred to a student who reaches the age of 18, the rights regarding educational records must also be transferred to the student. However, the LEA must provide any notice required under Section 615 of Part B of the IDEA to the student and the parents.

**Enforcement.** The confidentiality requirements of Part B of the IDEA are reviewed and approved as part of the LEA eligibility process.

**U.S. Department of Education use of personally identifiable information.** If the U.S. Department of Education or its authorized representatives collect any personally identifiable information regarding students with disabilities that is not subject to the Privacy Act of 1974, 5 USC 5529, the Secretary applies the applicable Federal statute, and the regulations implementing those provisions in 34 CFR 5b.

## **DISCIPLINE PROCEDURES**

### **Authority of school personnel. (300.530)**

(a) School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a student with a disability who violates a code of student conduct.

(b) School personnel may remove a student with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than ten (10) consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement. After a student with a disability has been removed from his or her current placement for ten (10) school days in the same school year, during any subsequent days of removal the LEA must provide services to the extent required.

(c) For disciplinary changes in placement that would exceed ten (10) consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school personnel may apply the relevant disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities, except after the 10<sup>th</sup> day of removal that constitutes a change in placement, the LEA must provide services to the student.

(d) A student with a disability who is removed from the student's current placement must continue to receive educational services and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. The services may be provided in an interim alternative educational setting. A public agency need not provide services during periods of removal to a student with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed. After a student with a disability has been removed from his or her current placement for ten (10) school days in the same school year, if the current removal is for not more than ten (10) consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, if any, and the location in which services, if any, will be provided. If the removal is a change of placement the student's IEP Team determines appropriate services.

(e) Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the student's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine 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 LEA's failure to implement the IEP. The conduct must be determined to be a manifestation of the student's disability if the LEA, the parent, and relevant members of the student's IEP Team determine that either of the above conditions was met.

(f) If the LEA, the parent and relevant members of the IEP team determine that the misconduct was a direct result of the LEA's failure to implement the IEP, the LEA must take immediate steps to remedy those deficiencies.

(g) If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the student's disability, the IEP Team must either conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the

change of placement occurred, and implement a behavioral intervention plan for the student; or if a behavioral intervention plan already has been developed, review the 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 LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

(h) School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA; 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 an SEA or an LEA; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.

(i) On the date which the decision is made to make a removal that constituted a change of placement, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice.

(j) For purposes of this section, 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 drug that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. *Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. *Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.

#### **Determination of setting. (300.531)**

The interim alternative educational setting is determined by the IEP Team if the student's behavior is not a manifestation of the student's disability, the removal constitutes a change of placement, or the behavior falls under the special circumstance described in (b) above.

#### **Appeal. (300.532)**

(a) The parent of a student with a disability who disagrees with any decision regarding placement, or the manifestation determination, or an LEA that 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 complaint.

(b) A hearing officer hears, and makes a determination regarding, an appeal. The hearing officer may return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of disciplinary procedures or that the student's behavior was a manifestation of the student's disability; or order a change of placement of the student with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the student is substantially likely to result in injury to the student or to others. The above procedures may be repeated, if the LEA believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

(c) Whenever a hearing is requested under disciplinary procedures, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing. The LEA must arrange for an expedited hearing with the USOE which must occur within 20 school days of the date the complaint request. Unless parents waive the meeting in writing or agree to mediation, a resolution meeting must occur within seven days of the date the hearing is requested, and the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request. The decisions on expedited due process hearings are appealable.

#### **Placement during appeals. (300.533)**

When an appeal has been requested by either the parent or the LEA, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period of the removal, whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

#### **Protections for students not yet eligible for special education and related services. (300.534)**

(a) A student who has not been determined to be eligible for special education and related services under Part B of the IDEA and who has engaged in behavior that

violated a code of student conduct, may assert any of the protections provided for in this part if the LEA had knowledge that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

(b) An LEA must be deemed to have knowledge that a student is a student with a disability if before the behavior that precipitated the disciplinary action occurred the parent of the student expressed concern in writing to supervisory or administrative personnel of the appropriate LEA or a teacher of the student, that the student is in need of special education and related services; the parent of the student requested an evaluation of the student; or the teacher of the student, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the LEA or to other supervisory personnel of the LEA.

(c) A public agency would not be deemed to have knowledge if the parent of the student has not allowed an evaluation of the student; or has refused services under this part; or the student has been evaluated and determined to not be a student with a disability under Part B of the IDEA.

(d) If an LEA does not have knowledge that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the disciplinary measures applied to students without disabilities who engaged in comparable behaviors. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA must provide special education and related services.

**Referral to and action by law enforcement and judicial authorities. (300.535)**

(a) Nothing in this part prohibits an LEA from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

(b) An LEA reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the LEA reports the crime. An LEA reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.