

# UTAH STATE BOARD OF EDUCATION SPECIAL EDUCATION RIGHTS OF PARENTS AND CHILDREN

## PROCEDURAL SAFEGUARDS NOTICE

**December 2016**





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## INTRODUCTION

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability or adult students with disabilities with a notice containing a full explanation of the procedural safeguards available under the IDEA and U.S. Department of Education regulations. A copy of this notice must be given to parents or adult students only one time a school year, except that a copy must be given to parents or adult students: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent or adult student request (34 CFR §300.504(a)).

Both you and the school share in your child's education. If you or the school has issues or concerns about your child's education, you and your child's teacher should openly discuss the issues. If you are not satisfied with these discussions, you should contact the special education director for your school district/charter school. We urge you to be actively involved in your child's education.

As parents of children who are receiving special education services, or who may qualify for special education services, you have certain rights or procedural safeguards under federal and state laws. These rights are listed in this Procedural Safeguards Notice. This list of your rights must be given to you in your native language or in a communication method you can understand. If you would like a more detailed explanation of these rights, please contact the principal at your child's school, a school administrator, the special education director, or the Utah State Board of Education Special Education Services section. In addition, more information is available on the [Utah State Board of Education Special Education Services website](http://www.schools.utah.gov/sars) at <http://www.schools.utah.gov/sars>.

Explanations of abbreviations used in this notice:

FAPE	Free Appropriate Public Education
IDEA	Part B of the Individuals with Disabilities Education Act
IEP	Individualized Education Program
LEA	Local education agency—The 41 Utah school districts, the Utah Schools for the Deaf and the Blind, and all public charter schools that are established under State law that are not schools of an LEA within a school district.
USBE SER	Utah State Board of Education Special Education Rules
USBE	Utah State Board of Education

The term "day" means calendar day, unless otherwise indicated.

## **CONTACT INFORMATION**

### **The Utah State Board of Education, Special Education Services Section**

250 East 500 South

P.O. Box 144200

Salt Lake City, Utah 84114-4200

801-538-7587

[Laws, State Rules, and Policies Page](#)

<http://schools.utah.gov/sars/Laws.aspx>

### **The Utah Parent Center**

230 W. 200 S. Suite 1000 (Royal Wood Office Plaza)

Salt Lake City, UT 84101

801-272-1051 or 1-800-468-1160 (Toll-Free)

[Utah Parent Center Website](#)

<http://www.utahparentcenter.org>

### **The Disability Law Center**

205 North 400 West

Salt Lake City, Utah 84103

1-800-662-9080 (Voice) or 1-800-550-4182 (TTY)

[Disability Law Center](#)

<http://www.disabilitylawcenter.org>

### **Center for Parent Information and Resources**

[Parent Center Hub Website](#)

<http://www.parentcenterhub.org>

## **ANNUAL PARENT/GUARDIAN NOTICES**

### **Child Find**

Special education departments in schools throughout the state are attempting to contact persons with disabilities between the ages of birth and twenty-one in compliance with Federal law, which mandates the provision of free educational programs and/or services for such persons. If a child is having significant difficulty with vision, hearing, speech, behavior, is experiencing slow development which is not typical for his/her age, has physical impairments, or learning difficulties, he/she may be a child with a disability. If you know of any child whom you feel may qualify for these services, including students suspected of having a disability, even though they are advancing from grade to grade, in a private school, is homeless, or migrant, please contact the principal of your school or the special education office for the school district in which you reside.

### **Carson Smith Special Needs Scholarship**

The Carson Smith Special Needs Scholarship provides tuition assistance for qualified students with disabilities enrolled in eligible private schools. Prospective applicants may view detailed program information at the [Carson Smith page on the USBE website](https://www.schools.utah.gov/sars/Quick-Links/Carson-Smith-Scholarship.aspx) at <https://www.schools.utah.gov/sars/Quick-Links/Carson-Smith-Scholarship.aspx>.

### **Notification of Rights under FERPA**

The Family Educational Rights and Privacy Act (FERPA) affords parents and students who are 18 years of age or older certain rights with respect to the student's education records. These rights are:

1. The right to inspect and review the student's education records within 45 days after the day the LEA receives a request for access.
2. The right to request the amendment of the student's education records that the parent or eligible student believes are inaccurate, misleading, or otherwise in violation of the student's privacy rights under FERPA.
3. The right to provide written consent before the LEA discloses personally identifiable information from the student's education records, except to the extent that FERPA authorizes disclosure without consent.
4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by the LEA to comply with the requirements of FERPA. The contact name and address to file this complaint is:

Family Policy Compliance Office  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202



## **Medicaid Annual Notification under 34 CFR § 300.154(d)(2)(iv)**

The regulations implementing the Individuals With Disabilities Education Act (IDEA), afford parents eligible students certain rights with respect to a school district's ability to access private insurance or public benefits, such as Medicaid, to help pay for certain services that are provided at school. These rights are as follows:

1. **You have the right to receive notice in an understandable language.** The school district must give you an annual written notice of your rights, which must be written in language understandable to the general public; and also 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.
2. **Your child's confidential information cannot be disclosed without your consent.** Parental consent must be obtained under the Family Educational Rights and Privacy Act (FERPA) regulations at 34 CFR part 99 and the IDEA regulations at §300.622 before the school district discloses, for claiming purposes, your child's personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid).
3. **Your child has a right to special education and related services at no cost to you.** This means that, with regard to services required to provide a Free Appropriate Public Education (FAPE) to an eligible child under IDEA, the school district:
  - a. May not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive FAPE;
  - b. May not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services provided pursuant to this part, but may pay the cost that the parents otherwise would be required to pay;
  - c. May not use a child's benefits under a public benefits or insurance program if that use would:
    - i. Decrease available lifetime coverage or any other insured benefit;
    - ii. Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
    - iii. Increase premiums or lead to the discontinuation of benefits or insurance; or
    - iv. Risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.
4. **You may withdraw consent at any time.** Once you've given consent for disclosure of confidential information about your child to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid), you have a legal right under the FERPA regulations to withdraw that consent whenever you wish.

5. **If you refuse consent, or withdraw consent, the school district still has to provide required services at no cost to you.** If you refuse to provide consent for the disclosure of personally identifiable information to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid), or, if you give consent but then later withdraw consent, that does not relieve the school district of its responsibility to ensure that all required services are provided at no cost to the parents.

## **GENERAL INFORMATION**

### **WRITTEN PRIOR NOTICE (34 CFR §300.503).**

#### **Notice**

Written prior notice must be given to the parents of a student with a disability or adult student a reasonable time before the LEA:

1. Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student; or
2. Refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a FAPE to the student.

#### **Content of Notice**

The notice required must include:

1. A description of the action proposed or refused by the LEA;
2. An explanation of why the LEA proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the LEA used as a basis for the proposed or refused action;
4. A statement that the parents of a student with a disability or adult student have protection under the procedural safeguards 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;
5. Sources for parents or adult students to contact to obtain assistance in understanding the provisions of the IDEA;
6. A description of other options that the IEP Team considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the LEA's proposal or refusal.

#### **Notice in Understandable Language**

The notice must be:

1. Written in language understandable to the general public; and
2. Provided in the native language of the parent or adult student or other mode of communication used by the parent or adult student, unless it is clearly not feasible to do so.

If the native language or other mode of communication of the parent or adult student is not a written language, the LEA must take steps to ensure that:

1. The notice is translated orally or by other means to the parent or adult student in his/her native language or other mode of communication;
2. The parent or adult student understands the content of the notice; and
3. There is written evidence that the requirements have been met.

**NATIVE LANGUAGE (34 CFR §300.29).**

*Native language*, when used regarding an individual who has limited English proficiency, means the following:

1. The language normally used by that individual, or, in the case of a student, the language normally used by the parents of the student or the adult student in all direct contact with a student (including evaluation of the student), the language normally used by the student in the home or learning environment.
2. For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

**ELECTRONIC MAIL (34 CFR §300.505).**

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.

**PARENTAL CONSENT—DEFINITION (34 CFR §300.9).**

*Consent* means that:

1. The parent or adult student has been fully informed of all information relevant to the activity for which consent is sought, in his/her native language or other mode of communication.
2. The parent or adult student understands and agrees in writing to the carrying out of the activity for which his/her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom.
3. The parent or adult student understands that the granting of consent is voluntary on the part of the parent or adult student and may be revoked at any time. If a parent or adult student 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).

If the parent or adult student revokes consent in writing for the student's receipt of special education and related services, the public agency 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 (34 CFR §300.300).**

### **Consent for Initial Evaluation**

The LEA proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability must obtain informed consent from the parent of the student or the adult student before conducting the evaluation.

Parental or adult student consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

An LEA must make reasonable efforts to obtain informed consent from the parent(s) or adult student for the initial provision of special education and related services to the eligible student with disabilities.

When conducting psychological evaluations, the LEA must implement the parental or adult student consent requirements of UCA 53A-13-302 (Utah FERPA).

If the parent of the child does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the LEA may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards, including mediation and due process.

### **Special Rules for Initial Evaluation of Wards of the State**

For initial evaluations only, if the student is a ward of the State and is not residing with the student's parents, the LEA is not required to obtain informed consent from the parent, if:

1. Despite reasonable efforts, the LEA cannot determine the whereabouts of the parent(s) of the student; or
2. The rights of the parent(s) of the student have been terminated in accordance with State law; or
3. The rights of the parent(s) to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

### **Parental Consent for Services**

An LEA that is responsible for making a FAPE available to a student with a disability must obtain informed consent from the parent(s) of the student or adult student before the initial provision of special education and related services to student.

An LEA must make reasonable efforts to obtain informed consent from the parent(s) or adult student for the initial provision of special education and related services to the eligible student with disabilities.

1. If the parent(s) of a student or adult student fails to respond to a request for, or refuses to consent to the initial provision of special education and related services, the LEA may not use the procedures in Section IV of the USBE SER, 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.

2. 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
3. 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.

If, at any time subsequent to the initial provision of special education and related services, the parent(s) of a student or adult student revokes consent in writing for the continued provision of special education and related services, the LEA:

1. 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 the USBE SER before ceasing the provision of special education and related services:
2. May not use the procedures in Section IV of the USBE SER, 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:
3. 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
4. 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 (§300.300).

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.

### **Parental Consent for Reevaluations**

Each LEA must obtain informed parental or adult student consent prior to conducting any reevaluation of a student with a disability.

If the parent or adult student refuses to consent to the reevaluation, the LEA may, but is not required to, pursue the reevaluation by using the consent dispute resolution procedures provided in the Procedural Safeguards, and including mediation or due process procedures.

The LEA does not violate its obligation under Child Find if it declines to pursue the reevaluation.

The informed parental or adult student consent need not be obtained if the LEA can demonstrate that:

1. It made reasonable efforts to obtain such consent; and
2. The student's parent or the adult student has failed to respond.

## **Documentation of Reasonable Efforts to Obtain Parent Consent**

To meet the reasonable efforts requirement to obtain informed parental or adult student consent, such efforts must be documented and may include detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to parents or adult student and any responses received, and detailed records of visits made to the parent's or adult student's home or place of employment and the results of those visits.

## **Other Consent Requirements**

Parental or adult student consent is not required before:

1. Reviewing existing data as part of an evaluation or a reevaluation; or
2. Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required for all students.

If a parent of a student or an adult student who is homeschooled or placed in a private school by the parents or adult student at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent or adult student fails to respond to a request to provide consent, the LEA may not use the Procedural Safeguards, including mediation and due process procedures, and the LEA is not required to consider the student as eligible for special education and related services.

## **PARENTAL OPPORTUNITY TO EXAMINE RECORDS; PARENT PARTICIPATION IN MEETINGS (34 CFR §300.501).**

The parents of a student with a disability or adult student 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.

The parents of a student with a disability or adult student 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 or adult students 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 or adult student proposal that will be discussed at a later meeting.

Each LEA must ensure that a parent of each student with a disability or adult student is a member of any group that makes decisions on the educational placement of the parent's student, including notifying parents or adult student 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 or adult student of their right to bring other individuals who have knowledge or special expertise about the student (§300.322(b)).

If neither parent or the adult student 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 or adult student if the LEA is unable to obtain the parent(s) or adult student's participation in the decision. In this case, the LEA must have a record of its attempt to ensure their involvement.

## **INDEPENDENT EDUCATIONAL EVALUATION (34 CFR §300.502).**

### **Definitions**

*Independent educational evaluation (IEE)* means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the student.

*Public expense* means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

### **Right to Evaluation at Public Expense**

The parents of a student with a disability or adult student have the right 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 or adult student, 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.

If a parent or adult student 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 or adult student 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 or adult student still has the right to an independent educational evaluation, but not at public expense.

If a parent or adult student requests an independent educational evaluation, the LEA may ask for the parent's or adult student's reason why he or she objects to the public evaluation. However, the explanation by the parent or adult student 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.



A parent or adult student is entitled to only one independent educational evaluation at public expense each time the LEA conducts an evaluation with which the parent or adult student disagrees.

### **Parent-Initiated Evaluations**

If the parent or adult student 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.

### **Requests for Evaluations by Hearing Officers**

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.

### **LEA Criteria**

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 or adult student'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.

An independent educational evaluation conducted at public expense becomes the property of the LEA, in its entirety.

### **SURROGATE PARENTS (34 CFR §300.519).**

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

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

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.

The LEA may select a surrogate parent in any way permitted under State law. The LEA must ensure that a person selected as a surrogate parent:

1. Is not an employee of the USBE, the LEA, or any other agency that is involved in the education or care of the student;

2. Has no personal or professional interest that conflicts with the interest of the student he/she represents; and
3. Has knowledge and skills that ensure adequate representation of the student.

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.

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.

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.

The USBE and LEA staff must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 calendar days after an LEA determines that the student needs a surrogate.

#### **TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY (34 CFR §300.520).**

When a student with a disability reaches the age of majority under State law (i.e., age 18) that applies to all students (except for a student with a disability who has been determined to be incompetent under State law) or the student with a disability marries or becomes emancipated:

1. The LEA must provide any notice required by the IDEA to both the individual and the parents; and
2. All other rights accorded to parents under the IDEA transfer to the student;
3. All rights accorded to parents under the IDEA transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution; and
4. Whenever a state transfers rights, the LEA must notify the individual and the parents of the transfer of rights within a reasonable time frame.

# **CONFIDENTIALITY OF INFORMATION**

## **CONFIDENTIALITY OF INFORMATION (34 CFR §300.610).**

The USBE staff and LEAs take appropriate steps to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the USBE staff and LEAs pursuant to the IDEA.

## **DEFINITIONS (34 CFR §300.611).**

*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 34 CFR §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 the IDEA.

## **PERSONALLY IDENTIFIABLE (34 CFR §300.32).**

*Personally identifiable information* means information which must be maintained securely and which includes:

1. The name of the student, the student’s parent, or other family member.
2. The address of the student.
3. A personal identifier, such as the student’s social security number or student number.
4. A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

## **NOTICE TO PARENTS OR ADULT STUDENT (34 CFR §300.612).**

The USBE and LEA must give notice that is adequate to fully inform parents or adult students, including:

1. A description of the extent that the notice is given in the native languages of the various population groups in the state;
2. A description of the students on whom personally identifiable information is maintained, the types of information sought, the methods the USBE intends to use in gathering the information (including sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that LEAs must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

4. A description of all of the rights of parents and students regarding this information, including the rights under 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 or adult students throughout the State and LEAs of the activity.

#### **ACCESS RIGHTS (34 CFR §300.613, 34 CFR §99.10).**

Each LEA must permit parents or adult students 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 45 calendar days after the request has been made.

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

1. The right to a response from the LEA to reasonable requests for explanations and interpretations of the records;
2. 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 or adult student from exercising the right to inspect and review the records; and
3. The right to have a representative of the parent or adult student inspect and review the records.

An LEA may presume that the parent or adult student 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 (34 CFR §300.614).**

Each LEA must keep a record of parties obtaining access to education records collected, maintained, or used under the IDEA and USBE Special Education Rules (except access by parents or adult students 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 (34 CFR §300.615).**

If any education record includes information on more than one student, the parents of those students or the adult students 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 (34 CFR §300.616).**

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

**FEES (34 CFR §300.617).**

The USBE staff and each LEA may charge a fee for copies of records that are made for parents or adult students under the IDEA if the fee does not effectively prevent the parents or adult students from exercising their right to inspect and review those records.

The USBE staff and an LEA may not charge a fee to search for or to retrieve information under the IDEA.

**AMENDMENT OF RECORDS AT PARENT'S REQUEST (34 CFR §300.618, 34 CFR §99.20).**

A parent or adult student who believes that information in the education records collected, maintained, or used under the IDEA or USBE Special Education Rules 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 or adult student of the refusal and advise the parent(s) or adult student of the right to a hearing on the matter.

**OPPORTUNITY FOR A HEARING (34 CFR §300.619, 34 CFR §99.21).**

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. This hearing is not an IDEA due process complaint/hearing.

**RESULT OF HEARING (34 CFR §300.620, 34 CFR §99.21).**

If, as a result of the hearing, the LEA decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must amend the information accordingly and so inform the parent(s) or adult student in writing.

If, as a 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(s) or adult student 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:

1. 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
2. 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 (34 CFR §300.621).**

A hearing that challenges education records must be conducted according to the procedures under 34 CFR §99.22 as described below. At a minimum, the LEA's hearing procedures must adhere to the following requirements:

1. The hearing shall be held within a reasonable period of time after the LEA receives the request, and the parent(s) of the student or adult student shall be given notice of the date, place, and time reasonably in advance of the hearing.
2. The hearing may be conducted by any party, including an official of the LEA who does not have a direct interest in the outcome of the hearing.
3. The parent(s) of the student or adult student 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.
4. The LEA shall make its decision in writing within a reasonable period of time after the conclusion of the hearing.
5. 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.

## **CONSENT (34 CFR §300.622).**

Except as to disclosures addressed in referral to and action by law enforcement and judicial authorities for which parental consent is not required by 34 CFR §99, parental or adult student consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under the IDEA or USBE Special Education Rules, or used for any purpose other than meeting a requirement of the IDEA or USBE Special Education Rules.

An LEA may not release information from education records to participating agencies without parental or adult student consent unless authorized to do so by 34 CFR §99.31 and §99.34 (FERPA):

1. 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(s) of the student or the adult student if the disclosure is:
  - a. To other school officials, including teachers within the LEA who have been determined by the LEA to have legitimate educational interests.
  - b. 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.
2. 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 adult student of the transfer of the records at the last known address of the parent or adult student, except that the LEA does not have to provide any further notice of the transfer of records when:

- a. The transfer is initiated by the parent(s) or adult student at the sending LEA.
- b. 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(s) or adult student 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 parent(s) or adult student refuses 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.

***Note:** As authorized in 34 CFR §99.31 (FERPA), Utah LEAs include in the annual Procedural Safeguards notice that it is their policy to forward educational records of a student with disabilities without parental or adult student consent or notice to officials of another school or school district in which a student seeks or intends to enroll.*

#### **SAFEGUARDS (34 CFR §300.623).**

Each LEA must protect the confidentiality of personally identifiable information at the 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 §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 INFORMATION (34 CFR §300.624).**

The LEA must inform parent(s) or adult students when personally identifiable information collected, maintained, or used under the IDEA and USBE Special Education Rules 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 adult student. However, a permanent record of the student's name, address, phone number, his/her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Each student's records may be considered "no longer needed to provide educational services" and may be destroyed three years after the student graduates or three years after the student turns 22 under IDEA. Medicaid requires that records be maintained for at least five years after the provision of services.

### **TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY (34 CFR §300.520).**

When a student with a disability reaches the age of majority under State law (i.e., age 18) that applies to all students (except for a student with a disability who has been determined to be incompetent under State law) or the student with a disability marries or becomes emancipated:

1. The LEA must provide any notice required by the IDEA to both the individual and the parents; and
2. All other rights accorded to parents under the IDEA transfer to the student;
3. All rights accorded to parents under the IDEA transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution; and
4. Whenever a state transfers rights, the LEA must notify the individual and the parents of the transfer of rights within a reasonable time frame.

### **STUDENTS' RIGHTS (34 CFR §300.625).**

The rights of privacy afforded to parents are transferred to the student who reaches the age of 18, provided the student has not been declared incompetent by a court order or the student has married or become emancipated.

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, providing the student has not been declared incompetent by a court order or the student has married or become emancipated.

Because the rights accorded to parents under the IDEA are transferred to a student who reaches the age of 18, providing the student has not been declared incompetent by a court order or the student has married or become emancipated, the rights regarding educational records must also be transferred to the student. However, the LEA must provide any notice required under Section 615 of the IDEA to the student and the parents.



# **STATE COMPLAINT PROCEDURES**

## **STATE COMPLAINT PROCEDURES (34 CFR §300.151 AND 53A-15-305).**

### **General**

The Utah Legislature finds that it is in the best interest of students with disabilities to provide for a prompt and fair final resolution of disputes which may arise over educational programs and rights and responsibilities of students with disabilities, their parents, and public schools (53A-15-305(1)).

The USBE has adopted procedures for resolving any complaint under the IDEA, including a complaint filed by an organization or individual from another state. The complaint must be filed with the USBE's State Director of Special Education in person, by U.S. Mail, or by fax, and include the name of the school district or charter school in which the alleged violation occurred. The party filing the complaint must also forward a copy to the LEA or public agency. If the parent(s) or adult student are unable to file in writing, they may contact the LEA or USBE State Director of Special Education for assistance.

1. Upon receipt of a written IDEA State complaint by either the LEA or the USBE State Director of Special Education, the receiving party will notify the other agency within one business day, to ensure coordination of the process and copies received by both. The State complaint timeline begins when both parties have received copies.

### **Remedies for Denial of Appropriate Services**

In resolving a complaint in which it has found a failure to provide appropriate services, the USBE must address:

1. 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.
2. Appropriate future provision of services for all students with disabilities.

## **MINIMUM STATE COMPLAINT PROCEDURES (34 CFR §300.152).**

### **Time Limit and Extension; Minimum Procedures; Implementation**

The USBE State Director of Special Education shall resolve the complaint within 60 calendar days unless exceptional circumstances exist. An extension of time shall not exceed ten calendar days. If an extension is necessary, the complainant and the LEA or public agency shall be notified, in writing, by the USBE Special Education Services section. Within this time limit, the USBE State Director of Special Education shall:

1. Carry out an independent on-site investigation, if the USBE State Director of Special Education determines that such an investigation is necessary.
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

3. Review all relevant information and make a determination as to whether the LEA is violating a requirement of the IDEA or of USBE Special Education Rules.
4. Issue a written decision to the complainant, with a copy sent to the LEA Director of Special Education and either the school district Superintendent or charter school Administrator, that addresses each allegation in the complaint and contains:
  - a. Findings of facts and conclusions, and
  - b. The reasons for the USBE's final decisions.
5. Permit an extension of the time limit under Rule IV.G.4.a of the USBE SER only if:
  - a. Exceptional circumstances exist with respect to a particular complaint or
  - b. The parent(s), adult student, 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.
6. Determine procedures for the effective implementation of the USBE's final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

### **Final Decision**

The complaint decision issued by the USBE is the final action and is not subject to an appeal. If either party disagrees with the decision, their remedy is to file a Due Process Complaint provided that the aggrieved party has the right to file a Due Process Complaint on the issue with which the party disagrees.

### **FILING A STATE COMPLAINT (34 CFR §300.153).**

The complaint must include the following:

1. A statement that the LEA or public agency has violated a requirement of the IDEA or the USBE Special Education Rules.
2. The facts on which the statement is based.
3. The signature and contact information for the complainant.
4. If alleging violations with respect to a specific student:
  - a. The name and address of the residence of the student;
  - b. The name of the school the student is attending;
  - c. In the case of a homeless student, available contact information for the student and the name of the school the student is attending;
  - d. A description of the nature of the problem of the student, including facts relating to the problem; and,

- e. 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 Rule IV.E.1 of the USBE SER.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.

Nothing in the State complaint process limits the ability of the LEA to attempt to resolve the alleged violation directly with the complainant; however, the State will continue to act on the submitted complaint until a report is issued or the complaint is withdrawn.

### **State Complaints and Due Process Hearings**

If a written State complaint is received that is also the subject of a due process hearing under the Due Process Hearing Procedures, or contains multiple issues of which one or more are part of that hearing, the USBE 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.

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 USBE 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 USBE State Director of Special Education and resolved by the USBE.

Parents or adult students and other interested individuals, including parent training and information centers, independent living centers, protection and advocacy agencies, professional organizations, and other appropriate entities, shall be informed about these procedures through:

1. Procedural safeguards notice provided by LEA.
2. Presentations and other training events by USBE staff conducted throughout the state.

## **DUE PROCESS COMPLAINT PROCEDURES**

### **FILING A DUE PROCESS COMPLAINT (34 CFR §300.507 AND 53A-15-305).**

#### **General**

The Utah Legislature finds that is in the best interest of students with disabilities to provide for a prompt and fair final resolution of disputes which may arise over educational programs and rights and responsibilities of students with disabilities, their parents, and public schools (53A-15-305(1)).

Prior to seeking a hearing or other formal proceedings, the parties to a dispute under this section shall make a good faith effort to resolve the dispute informally at the school building level. If the dispute is not resolved, a party may request a due process hearing (53A-15-305(4)).

The due process complaint must allege a violation that occurred not more than two years before the date the parent or adult student or LEA knew or should have known about the alleged action that forms the basis of the due process complaint, except if the parent or adult student 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 or adult student that was required under the IDEA to be provided to the parent.

#### **Advocates and Legal Representation**

Persons with special expertise, including advocates, may assist or accompany either party to a due process hearing. The parties may:

1. Be represented by an attorney authorized to practice law in the State of Utah, or
2. Represent themselves, also referred to as pro se representation (Utah Bar Rules 14-102-111, 14-802(c)(8)).

#### **Information for Parents**

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

### **DUE PROCESS COMPLAINT (34 CFR §300.508).**

#### **General**

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 USBE State Director of Special Education in person, by U.S. Mail, or by fax. Upon receipt of a due process complaint by either the LEA or the USBE State Director of Special Education, the receiving party will notify the other agency within one business day, to ensure timely initiation of the process.

## **Content of the Complaint**

The due process complaint must include:

1. The name of the student;
2. The address of the residence of the student;
3. The name of the school the student is attending;
4. 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;
5. 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
6. A proposed resolution of the problem to the extent known and available to the party at the time.

## **Notice Required Before a Hearing on a Due Process Complaint**

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.

## **Sufficiency of Complaint**

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 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 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.

## **Complaint Amendment**

A party may amend its due process complaint only if:

1. 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
2. The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five 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.

## **LEA Response to a Due Process Complaint**

If the LEA has not sent a written prior notice to the parent or adult student regarding the subject matter contained in the parent's due process complaint, the LEA must, within ten calendar days of receiving the due process complaint, send to the parent or adult student a response that includes:

1. An explanation of why the LEA proposed or refused to take the action raised in the due process complaint;
2. A description of other options that the IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
4. 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 or adult student regarding the subject matter of the parent's or adult student's due process complaint until after the due process complaint is received, the LEA may still assert that the parent's or adult student's due process complaint was insufficient, where appropriate.

## **Other Party Response to a Due Process Complaint**

The party receiving a due process complaint must, within ten 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 (34 CFR §300.509).**

The USBE staff have developed model forms to assist parents or adult students in filing a State complaint, a due process hearing complaint, and requesting mediation. These forms are available on the [Utah State Board of Education website](http://www.schools.utah.gov) at <http://www.schools.utah.gov>. Parties are not required to use the State's model forms. Parents or adult students, 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 or requesting mediation.

## **MEDIATION (34 CFR §300.506).**

### **General**

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

## Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on the part of the parties;
2. Is not used to deny or delay a parent's or adult student's right to a hearing on the parent's or adult student's due process complaint, or to deny any other rights afforded under the IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

An LEA may establish procedures to offer to parents or adult students and schools that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents or adult students, 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 or adult student.

The USBE State Director of Special Education or designee 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 USBE State Director of Special Education or designee selects mediators on a random, rotational, or other impartial basis.

The USBE 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:

1. Sets forth that resolution and 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
2. Is signed by both the parent or adult student 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.

## **Impartiality of Mediator**

An individual who serves as a mediator:

1. May not be an employee of the USBE or the LEA that is involved in the education or care of the student, and
2. 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 USBE solely because he or she is paid by the agency to serve as a mediator.

## **RESOLUTION PROCESS (34 CFR §300.510).**

### **Resolution Meeting**

Within 15 calendar days of receiving notice of the parents' or adult students' due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parents or adult student and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that:

1. Includes a representative of the LEA who has decision-making authority on behalf of that agency; and
2. May not include an attorney of the LEA unless the parent or adult student is accompanied by an attorney.

The purpose of the meeting is for the parents of the student or adult 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 parent(s) or adult student and the LEA agree in writing to waive the meeting, or the parent(s) or adult student 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.

### **Resolution Period**

If the LEA has not resolved the due process complaint to the satisfaction of the parent(s) or adult student within 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 15 days of receiving notice of a parent's or adult student's due process complaint or fails to participate in the resolution meeting, the parent(s) or adult student may seek the intervention of a hearing officer to begin the due process hearing timeline.

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 adult student or LEA withdraws from the mediation process.

### **Written Settlement Agreement**

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 or adult student 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.

### **Agreement Review Period**

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

# HEARINGS ON DUE PROCESS COMPLAINTS

## IMPARTIAL DUE PROCESS HEARING (34 CFR §300.511).

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

The USBE State Director of Special Education shall monitor all due process hearings to ensure adherence to required procedures.

### Impartial Hearing Officer

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

At a minimum, a hearing officer must:

1. Not be an employee of the USBE or the LEA that is involved in the education or care of the student; or
2. Not be a person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
3. Possess knowledge of, and the ability to understand, the provisions of the IDEA and USBE Special Education Rules, Federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts;
4. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
5. 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.

### Subject Matter of Due Process Hearing

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.

### Timeline for Requesting a Hearing

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

### Exceptions to the Timeline

The timeline described in Rule IV.M.6 does not apply to a parent or adult student if the parent or adult student was prevented from filing a due process complaint due to:

6. Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or
7. The LEA's withholding of information from the parent or adult student that was required to be provided to the parent or adult student.

## **HEARING RIGHTS (34 CFR §300.512).**

### **General**

Any party to a hearing or an appeal has the right to:

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

### **Additional Disclosure of Information**

At least five 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 business days prior to the hearing without the consent of the other party.

### **Parental Rights at Hearings**

Parents or adult students involved in hearings must be given the right to:

1. Have the student who is the subject of the hearing present;
2. Open the hearing to the public; and
3. Have the record of the hearing and the findings of fact and decisions provided at no cost to parents.

## **HEARING DECISIONS (34 CFR §300.513).**

### **Decision of the Hearing Officer**

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:

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

Nothing in this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements.

### **Separate Request for a Due Process Hearing**

A parent or adult student has the right to file a separate due process complaint on an issue separate from a due process complaint already filed.

### **Findings and Decision Provided to the Advisory Panel and General Public**

The USBE State Director of Special Education, after deleting any personally identifiable information, must:

1. Transmit the findings and decisions on the due process complaint to the Utah Special Education Advisory Panel (USEAP); and
2. Make those findings and decisions available to the public online.

## **FINALITY OF DECISION (34 CFR §300.514).**

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

## **STATE ENFORCEMENT MECHANISMS (34 CFR §300.537).**

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 USBE 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 (34 CFR §300.515).**

The USBE State Director of Special Education or designee must ensure that not later than 45 calendar days after the expiration of the 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.

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

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.

### **Expedited Due Process Hearings**

Expedited due process hearings may be requested by either a parent or adult student or an LEA in the following instances (§300.532):

1. The parent or adult student disagrees with any disciplinary decision resulting in a placement (including the interim alternative educational setting [IAES]) decision, or the manifestation determination.
2. The LEA believes that maintaining the current placement of the student following a disciplinary procedure in §300.530 and §300.531 is substantially likely to result in injury to the student or others.

Expedited due process hearings must occur within 20 days of the date the due process complaint is filed (in compliance with the due process requirements of IV.J). The hearing officer must make a determination within ten school days after the hearing.

Unless the parent or adult student and LEA agree in writing to waive the resolution meeting or agree to use the mediation process described in §300.506, a resolution meeting must occur within seven days of receiving notice of the due process complaint, and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

## **CIVIL ACTION (34 CFR §300.516).**

### **General**

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 30 days of the date of the due process hearing decision. A federal court may apply a similar time limit.

## **Additional Procedures**

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at the request of a party; and
3. Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

## **Jurisdiction of District Courts**

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

## **Rule of Construction**

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 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 (34 CFR §300.517 AND 53A-15-305(7)).**

### **General**

In any action or proceeding brought under Procedural Safeguards of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

1. To the prevailing party who is the parent of a student with a disability or the adult student;
2. To a prevailing party who is the USBE or LEA against the attorney of a parent or adult student who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent or adult student who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation;
3. Or to a prevailing USBE or LEA against the attorney of a parent or adult student, or against the parent or adult student, if the parent's or adult student'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.

Funds under 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 the IDEA for conducting an action or proceeding under the Procedural Safeguards of the IDEA.

## **Award of Fees**

A court awards reasonable attorneys' fees consistent with the following:

1. 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.
2. No bonus or multiplier may be used in calculating the fees awarded.
3. 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 or adult student if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten calendar days before the proceeding begins;
  - b. The offer is not accepted within ten calendar days; and
  - c. 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.
4. 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 a mediation under §300.506.
5. 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.
6. An award of attorneys' fees and related costs may be made to a parent or adult student 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:

1. The parent(s) or adult student, or the parent's or adult student's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable 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 the parent or adult student did not provide to the LEA the appropriate information in the due process request notice.

If the parties fail to reach agreement or payment of attorney fees, then a party seeking recover of attorney fees for a special education administrative action under 20 U.S.C. §1415(i) shall file a court action within 30 days after issuance of a due process decision (53A-15-305(7)).

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 the IDEA.

**STUDENT'S STATUS DURING PROCEEDINGS (34 CFR §300.518).**

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

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

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



# **PROCEDURES WHEN DISCIPLINING STUDENTS WITH DISABILITIES**

## **Authority of School Personnel (34 CFR §300.530).**

Consistent with the requirements of the IDEA and USBE Special Education Rules, as well as applicable USBE Rules, each LEA shall establish, maintain, and implement policies and procedures for disciplining students with disabilities.

## **Case-by-Case Determination**

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.

## **General**

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

## **Additional Authority**

For disciplinary changes in placement that would exceed ten 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 tenth day of removal that constitutes a change in placement, the LEA must provide services to the student.

## **Services**

A student with a disability who is removed from the student's current placement must:

1. Continue to receive educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

The services may be provided in an interim alternative educational setting (IAES).

An LEA is only required to provide services during periods of removal to a student with a disability who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a student without disabilities is similarly removed.

After a student with a disability has been removed from his/her current placement for ten school days in the same school year, if the current removal is for not more than ten 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 to be provided during the removal.

### **MANIFESTATION DETERMINATION (34 CFR 300.530).**

Within ten school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the LEA, the parent or adult student, and relevant members of the student's IEP Team (as determined by the parent or adult student 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 or adult students to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or
2. If the conduct in question was the direct result of the 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 or adult student, and relevant members of the student's IEP Team determine that the misconduct was caused by or had a direct and substantial relationship to the student's disability or was the direct result of the LEA's failure to implement the IEP.

If the LEA, the parent or adult student, and relevant members of the student's 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.

### **Determination that Behavior Was a Manifestation of the Student's Disability**

If the LEA, the parent(s) or adult student, 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:

1. Conduct a functional behavioral assessment (FBA), 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 (BIP) for the student; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
3. Unless the misconduct falls under the definition of special circumstances in Rule V.E.5 of the USBE SER, return the student to the placement from which the student was

removed, unless the parent or adult student and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

### **Special Circumstances**

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

1. 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 LEA;
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an LEA; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an LEA.

### **Definitions**

For purposes of this section, the following definitions apply:

*Controlled substance* means a drug or other substance that cannot be distributed without a prescription, 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 controlled, possessed, or used under the supervision of a licensed health-care professional or one legally possessed or used under the Controlled Substances Act (21 USC §812).

*Serious bodily injury* means bodily injury that 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 (18 USE §1365). Serious bodily injury does not include a cut, abrasion, bruise, burn, disfigurement, physical pain, illness, or impairment of the function of a bodily member, organ or mental faculty that is temporary (21 USC §1365).

*Weapon* means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2.5 inches (18 USC §930).

### **Procedural Safeguards Notice**

On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the LEA must notify the parents or adult student of that decision, and provide the parents or adult student the Procedural Safeguards notice.

## **CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS (34 CFR §300.536).**

For purposes of removals of a student with a disability from the student's current educational placement, a change of placement occurs if:

1. The removal is for more than ten consecutive school days; or
2. The student has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than ten school days in a school year;
  - b. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  - c. Of such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

The LEA determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

## **DETERMINATION OF SETTING (34 CFR §300.531).**

The student's IEP team determines the interim alternative educational setting (IAES) 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 Rule V.E.5 of the USBE SER.

## **APPEALS BY PARENT OR LEA (34 CFR §300.532).**

### **General**

The parent(s) of a student with a disability or adult student 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 appeal the decision by filing a due process hearing complaint.

### **Authority of Hearing Officer**

A due process hearing officer hears, and makes a determination regarding, an appeal. In making the determination, the hearing officer may:

1. 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 under the IDEA or USBE Special Education Rules or that the student's behavior was a manifestation of the student's disability; or
2. Order a change of placement of the student with a disability to an appropriate interim alternative educational setting (IAES) 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.

### **Expedited Due Process Hearing**

Whenever a hearing is requested under disciplinary procedures, the parents or adult student or the LEA involved in the dispute must have an opportunity for an impartial due process hearing.

The LEA is responsible for arranging the expedited due process hearing with the USBE State Director of Special Education, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within ten school days after the hearing.

Unless the parent(s) or adult student and LEA agree in writing to waive the meeting or agree to use mediation:

1. A resolution meeting must occur within seven calendar days of receiving notice of the due process complaint; and
2. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process complaint.

The decisions on expedited due process hearings are appealable.

### **PLACEMENT DURING APPEALS (34 CFR §300.533).**

When an appeal through a due process complaint has been made by either the parent or adult student 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 specified, whichever occurs first, unless the parent(s) or adult student and the SEA or LEA agree otherwise.

### **PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES (34 CFR §300.534).**

#### **General**

A student who has not been determined to be eligible for special education and related services under 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.

#### **Basis of Knowledge for Disciplinary Matters**

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:

1. The parent(s) of the student or adult 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;

2. The parent(s) of the student or adult student requested an evaluation of the student; or
3. 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.

### **Exception**

An LEA would not be deemed to have knowledge if:

1. The parent(s) of the student or adult student:
  - a. Has not allowed an evaluation of the student;
  - b. Has refused services under this part; or
2. The student has been evaluated and determined to not be a student with a disability under the IDEA.

### **Conditions That Apply If There Is No Basis of Knowledge**

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 or adult student, the LEA must provide special education and related services.

### **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES (34 CFR §300.535).**

Nothing in the IDEA 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.

### **Transmittal of Records**

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.

# **STUDENTS WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE**

## **GENERAL (34 CFR §300.148).**

An LEA or USDB is not required to pay for the cost of education, including special education and related services, of a student with a disability at a private school or facility if that LEA or USDB made a FAPE available to the student and the parent(s) or adult student elected to place the student in a private school or facility. However, the LEA or USDB must include that student in the population whose needs are addressed consistent with Rule VI.B of the USBE SER.

Disagreements between the parent(s) or adult student and an LEA or USDB regarding the availability of a program appropriate for the student, and the question of financial reimbursement, are subject to the State complaint and due process procedures in Rules IV.G–V of the USBE SER.

### **Reimbursement for Private School Placement**

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

### **Limitation on Reimbursement**

The cost of reimbursement may be reduced or denied if:

1. At the most recent IEP team meeting that the parent(s) or adult student attended prior to removal of the student from the public school, the parent(s) or adult student did not inform the IEP team that they were rejecting the placement proposed by the LEA or USDB to provide a FAPE to their student, including stating their concerns and their intent to enroll their student in a private school at public expense; or
2. At least ten business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, the parent(s) or adult student did not give written notice to the LEA or USDB of the information described in Rule VI.C.4.a of the USBE SER;
3. Prior to the parent(s)'s or adult student's removal of the student from the public school, the LEA or USDB informed the parent(s) or adult student, through the written prior notice requirements of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent(s) or adult student did not make the student available for the evaluation; or

4. Upon a judicial finding of unreasonableness with respect to actions taken by the parent(s) or adult student.

Notwithstanding the requirements for the parent(s) or adult student to provide notice to the LEA or USDB prior to removal of the student, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if:
  - a. The school prevented the parent(s) or adult student from providing the notice;
  - b. The parent(s) or adult student had not received written prior notice of the notice requirement in Rules VI.C.4.a–b of the USBE SER; or
  - c. Compliance with the notice requirements in Rules VI.C.4.a–b. of the USBE SER would likely result in physical harm to the student; and
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:
  - a. The parent(s) or adult student are not literate or cannot write in English; or
  - b. Compliance with Rule VI.C.4.a–b of the USBE SER would likely result in serious emotional harm to the student.