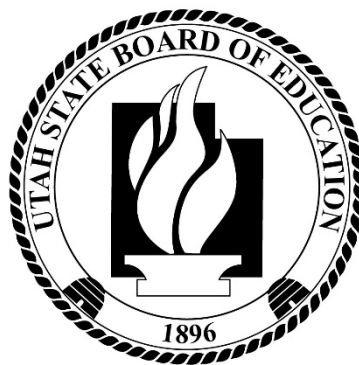


**Utah State Board of Education**  
**Special Education Rights of Parents and**  
**Students**

**PROCEDURAL SAFEGUARDS NOTICE**

September 2021





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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 student 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 student's education. If you or the school has issues or concerns about your student's education, you and your student'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 student's education.

As parents of students 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 student's school, a school administrator, the special education director, or the Utah State Board of Education Special Education Services section. More information is available on the [Utah State Board of Education Special Education Services](https://schools.utah.gov/specialeducation) website (<https://schools.utah.gov/specialeducation>).



## **EXPLANATIONS OF ABBREVIATIONS USED IN THIS NOTICE**

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FAPE Free Appropriate Public Education

IDEA Part B of the Individuals with Disabilities Education Act

IEP Individualized Education Program

LEA Local education agency; All Utah school districts, the Utah Schools for the Deaf and the Blind, and all Utah public charter schools that are established under State law that are not schools of an LEA within a school district

Rules Utah State Board of Education Special Education Rules

USBE Utah State Board of Education

The term “day” means calendar day, unless otherwise indicated. The term “school” means LEA, unless otherwise indicated.

## **CONTACT INFORMATION**

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

250 E 500 S

PO Box 144200

Salt Lake City, UT 84114-4200

801-538-7587

[Special Education Laws and Policies](#)

(<https://schools.utah.gov/specialeducation/programs/rulespolicies>)

### **The Utah Parent Center**

5296 Commerce Drive

Suite 302

Murray, UT 84107

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

[Utah Parent Center Website](#)

(<http://www.utahparentcenter.org>)

### **The Disability Law Center**

205 N 400 W

Salt Lake City, UT 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**

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### **CHILD FIND**

Special education departments in local education agencies (LEAs) 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 student is having significant difficulty with vision, hearing, speech, behavior, is experiencing slow development which is not typical for the student's age, has physical impairments, or learning difficulties, the student may be a student with a disability. If you know of any student whom you feel may qualify for these services, including students suspected of having a disability, even though the student is 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 USBE's [Carson Smith Scholarship](https://schools.utah.gov/specialeducation/programs/carsonsmithscholarship) webpage (<https://schools.utah.gov/specialeducation/programs/carsonsmithscholarship>).

### **FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA) NOTIFICATION**

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(s) 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. Mail the complaint to the following address:

U.S. Department of Education  
Student Data Privacy Policy Office  
400 Maryland Avenue SW  
Washington DC 20202-8520

## MEDICAID ANNUAL NOTIFICATION UNDER 34 CFR § 300.154(d)(2)(iv)

The regulations implementing the IDEA afford parents of eligible students certain rights with respect to an LEA'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 LEA 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(s) or other mode of communication used by the parent(s), unless it is clearly not feasible to do so.
2. **Your student's confidential information cannot be disclosed without your consent.** Parental consent must be obtained under the FERPA regulations (34 CFR § 99) and the IDEA regulations (34 CFR § 300.622) before the LEA discloses, for claiming purposes, your student's personally identifiable information (PII) to the agency responsible for the administration of the State's public benefits or insurance program (e.g., Medicaid).
3. **Your student 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 FAPE to an eligible student under IDEA, the LEA:
  - a. May not require the parent(s) to sign up for or enroll in public benefits or insurance programs in order for their student to receive a FAPE;
  - b. May not require the parent(s) 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 parent(s) otherwise would be required to pay;
  - c. May not use a student'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 student outside of the time the student 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 student 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 LEA 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 LEA of its responsibility to ensure that all required services are provided at no cost to the parent(s).

#### UTAH REGISTRY OF AUTISM AND DEVELOPMENTAL DISABILITIES (URADD) NOTIFICATION

This notice is to inform you of your child's potential inclusion in the Utah Registry of Autism and Developmental Disabilities (URADD) and the Centers of Disease Control and Prevention's (CDC's) Utah Autism and Developmental Disabilities Monitoring Network (UT-ADDM). Your student's data are not, and never will be shared, with non-URADD employees or the CDC.

As a parent of a child who is eligible to receive special education services, you have a right to opt your child out of the URADD and UT-ADDM education databases at any time. If you would like to request that your student's data are not shared, please notify your LEA's special education director within 30 days of receiving this notice. If, at a later date, you would like to have your student's data deleted, contact your LEA's special education director.

More information about the [ADDM Network](https://www.cdc.gov/ncbddd/autism/addm.html), can be found on the CDC website (<https://www.cdc.gov/ncbddd/autism/addm.html>).

More information about [URADD](https://medicine.utah.edu/psychiatry/research/labs/uradd/), can be found on the University of Utah School of Medicine website (<https://medicine.utah.edu/psychiatry/research/labs/uradd/>).

## **GENERAL INFORMATION**

### **PRIOR WRITTEN NOTICE (34 CFR § 300.503; RULES IV.C.).**

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#### **NOTICE**

Prior written notice must be given to the parent(s) of a student with a disability or adult student a reasonable time before the school:

1. Proposes to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE) to the student; 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 written notice must include:

1. A description of the action proposed or refused by the school;
2. An explanation of why the school proposes or refuses to take the action;
3. A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
4. A statement that the parent(s) 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 parent(s) to contact to obtain assistance in understanding the provisions of the IDEA;
6. A description of other options that the individualized education program (IEP) Team considered and the reasons why those options were rejected; and
7. A description of other factors that are relevant to the school'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(s) 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(s) or adult student is not a written language, the school must take steps to ensure that:

1. The notice is translated orally or by other means to the parent(s) or adult student in the parent's or adult student's native language or other mode of communication;
2. The parent(s) 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; Rules I.E.31.).*

*Native language*, when used with respect to an individual with limited English proficiency (LEP), means the following:

1. The language normally used by that individual, or, in the case of a non-adult student, the language normally used by the parent(s) of the 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 an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, braille, or oral communication).

### **ELECTRONIC MAIL (34 CFR § 300.505; RULES IV.D.5.).**

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The parent(s) of a student with a disability or the adult student may elect to receive notices by an electronic mail communication, if the school makes that option available.

### **PARENTAL CONSENT (34 CFR § 300.300; RULES II.C.).**

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**PARENTAL CONSENT DEFINITION (34 CFR § 300.9; RULES I.E.9.).**

*Consent* means that:

1. The parent(s) or adult student has been fully informed of all information relevant to the activity for which consent is sought, in the parent's or adult student's native language or other mode of communication.
2. The parent(s) or adult student understands and agrees in writing to the carrying out of the activity for which the parent's or adult student's 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(s) or adult student understand that the granting of consent is voluntary on the part of the parent(s) or adult student and may be revoked at any time. If parent(s) or an 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).
4. If the parent(s) or adult student revokes consent in writing for the student's receipt of special education and related services, the school 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.

## CONSENT FOR INITIAL EVALUATION

The school proposing to conduct an initial evaluation to determine if a student qualifies as a student with a disability under the IDEA must, after providing prior written notice to the parent(s) or adult student, obtain informed consent (as described under the headings Prior Written Notice and Parental Consent Definition) from the parent(s) 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.

The school must make reasonable efforts to obtain informed consent from the parent(s) or adult student for an initial evaluation to determine whether the student is a student with a disability.

When conducting psychological evaluations, the school must implement the parental or adult student consent requirements of UCA 53E-9-203 (Student Privacy and Data Protection).

If the parent(s) of a student or an adult student enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation or fails to respond to a request to provide consent, the school may, but is not required to, seek to conduct an initial evaluation of the student by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. The school does not violate its obligations to locate, identify, and evaluate the student if it does not pursue an evaluation of the student in these circumstances.

### *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 parent(s), the school is not required to obtain informed consent from the parent(s) if:

1. Despite reasonable efforts to do so, the school cannot determine the whereabouts of the parent(s) of the student;
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

A school 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 the student.

A school 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 student.

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 school:



1. May not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or impartial due process hearing) 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 because of the failure to provide the student with the special education and related services for which the parent(s) refuses to or fails to provide consent; and
3. Is not required to convene an IEP Team meeting or develop an IEP for the student.

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 school:

1. May not continue to provide special education and related services to the student but must provide prior written notice, as described under the Prior Written Notice heading, before ceasing the provision of special education and related services:
2. May not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) 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 FAPE available to the student for the failure to provide the student with further special education and related services; and
4. Is not required to convene an IEP Team meeting or develop an IEP for the student for further provision of special education and related services.

#### PARENTAL CONSENT FOR REEVALUATIONS

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

If the parent(s) or adult student refuses to consent to the reevaluation, the school may, but is not required to, pursue the student's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override the parent's refusal to consent to the student's reevaluation.

The school 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 school 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

The school must maintain documentation of reasonable efforts to obtain informed parental or adult student consent for initial evaluations, to provide special education and related services

for the first time, for a reevaluation, and to locate the parent(s) of wards of the State for initial evaluations.

The documentation must include a record of the school's attempts in these areas such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parent(s) or adult student and any responses received; and
3. Detailed records of visits made to the parents' 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 consent is required for all students before administration of that test or evaluation.

A school may not use a parent's or adult student's refusal to consent to one service or activity under Rules II.C.1.–3. (i.e., parental consent for initial evaluation, parental consent for services, or parental consent for reevaluations) to deny the parent or student any other service, benefit, or activity of the school, except as required by Rules II.C.

If parent(s) of a student or an adult student who is homeschooled or placed in a private school by the parent(s) or adult student at their own expense does not provide consent for the student's initial evaluation or reevaluation, or the parent(s) or adult student fails to respond to a request to provide consent, the school may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) to override the consent procedures and is not required to consider the student as eligible to receive equitable services (services made available to some parentally-placed private school students with disabilities).

Unless parent(s) or the adult student revoke consent for special education and related services or refuse consent for initial placement, disagreements regarding the provision of IEP services should be resolved by the IEP Team and result in a completed IEP which includes all components necessary for the provision of FAPE.

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

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The parent(s) of a student with a disability or adult student must be afforded, in accordance with the 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 a FAPE to the student.

The parent(s) 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 school must provide notice, consistent with the Rules, to ensure that parent(s) of students with disabilities or adult students have the opportunity to participate in meetings.

A meeting does not include informal or unscheduled conversations involving school 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 school personnel engage in to develop a proposal or a response to the parents' or adult student's proposal that will be discussed at a later meeting.

Each school 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 or adult student (34 CFR § 300.327), including notifying the parent(s) 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 (34 CFR § 300.322(a)).

The notice of meeting must indicate the purpose(s), time, and location of the meeting, who will be in attendance, and inform the parent(s) or adult student of their right to bring other individuals who have knowledge or special expertise about the student (34 CFR § 300.322(b)).

If neither the parent(s) or the adult student can participate in a meeting in which a decision is to be made relating to the educational placement of the student, the school 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 school is unable to obtain the parent's or adult student's participation in the decision. In this case, the school must have a record of its attempt to ensure their involvement.

## **INDEPENDENT EDUCATIONAL EVALUATION (34 CFR § 300.502; RULES IV.B.)**

### INDEPENDENT EDUCATIONAL EVALUATION DEFINITIONS

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

*Public expense* means that the school either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent(s) or adult student.

### RIGHT TO EVALUATION AT PUBLIC EXPENSE

The parent(s) of a student with a disability or adult student have the right to obtain an IEE of the student at public expense if they disagree with an evaluation obtained by the school.

The school must provide to the parent(s) or adult student, upon request for an independent educational evaluation, information about where an IEE may be obtained and the school criteria applicable for IEEs.

If the parent(s) or adult student requests an IEE at public expense, the school 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 IEE is provided at public expense, unless the school demonstrates in a hearing that the evaluation obtained by the parent(s) or adult student did not meet LEA criteria.

If the school files a due process complaint notice to request a hearing and the final decision is that the school's evaluation is appropriate, the parent(s) or adult student still has the right to an IEE, but not at public expense.

If the parent(s) or adult student requests an IEE, the school may ask for the parent's or adult student's reason why the parent(s)/adult student objects to the public evaluation. However, the explanation by the parent(s) or adult student may not be required, and the school may not unreasonably delay either providing the IEE at public expense or requesting a due process hearing to defend the public evaluation.

The parent(s) or adult student is entitled to only one IEE at public expense each time the school conducts an evaluation with which the parent(s) or adult student disagrees.

An IEE conducted at public expense becomes the property of the LEA, in its entirety.

#### PARENT-INITIATED EVALUATIONS

If the parent(s) or adult student obtains an IEE at public expense or shares with the school an evaluation obtained at private expense, the results of the evaluation:

1. Must be considered by the school, if it meets school criteria, in any decision made with respect to the provision of a FAPE to the student, and
2. 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 IEE as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

#### SCHOOL CRITERIA

If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, 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 IEE.

Except for the criteria described above, an LEA may not impose additional conditions or timelines related to obtaining an IEE at public expense.

#### **SURROGATE PARENTS (34 CFR § 300.519; RULES IV.T.).**

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Each school must ensure that the rights of a student are protected when:

1. No parent can be identified for a student under the age of majority;

2. The school, after reasonable efforts, cannot locate a parent for a student under the age of majority;
3. The student is a ward of the State under the laws of that State; or
4. The student is an unaccompanied homeless youth under the age of majority.

The duties of a school include the assignment of an individual to act as a surrogate for the parent(s) 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 school may select a surrogate parent in any way permitted under State law. Schools must ensure that a person selected as a surrogate parent:

1. Is not an employee of the USBE, the school, 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 the surrogate parent 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 school solely because the person is paid by the school 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 a FAPE to the student.

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

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

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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 school must provide any notice required by the IDEA to both the individual and the parent(s); an
2. All other rights accorded to the parent(s) under the IDEA transfer to the student;
3. All rights accorded to the parent(s) under the IDEA transfer to students who are incarcerated in an adult or juvenile State or local correctional institution; and

Whenever a state transfers rights, the school must notify the individual and the parent(s) of the transfer of rights within a reasonable time frame.

# CONFIDENTIALITY OF INFORMATION

## **CONFIDENTIALITY OF INFORMATION (34 CFR § 300.610; RULES IV.V.; R277-487).**

The USBE staff and schools 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 schools pursuant to the IDEA and R277-487.

CONFIDENTIALITY DEFINITIONS (34 CFR § 300.611; RULES IV.V.1.).

*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 school, agency, or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under the IDEA.

PERSONALLY IDENTIFIABLE INFORMATION (34 CFR § 300.32; RULES I.E.34.).

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

1. The name of the student, the student’s parent(s), 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; or
4. A list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

## **NOTICE TO PARENT(S) OR ADULT STUDENT (34 CFR § 300.612; RULES IV.V.2.).**

The USBE and school must give notice that is adequate to fully inform you, 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 PII 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 schools must follow regarding storage, disclosure to third parties, retention, and destruction of PII; 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 schools of the activity.

### **ACCESS RIGHTS (34 CFR § 300.613; RULES IV.V.4.)**

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Each school must permit parents or adult students to inspect and review any education records relating to their student or themselves that are collected, maintained, or used by the school. The school 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.

1. The right to inspect and review education records under this section includes:
2. The right to a response from the school to reasonable requests for explanations and interpretations of the records;
3. The right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent(s) or adult student from exercising the right to inspect and review the records; and
4. The right to have a representative of the parent(s) or adult student inspect and review the records.

A school may presume that the parent(s) or adult student has authority to inspect and review records relating to the student unless the school has been advised that the parent(s) does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

### **RECORD OF ACCESS (34 CFR § 300.614; RULES IV.V.5.)**

Each school must keep a record of parties obtaining access to education records collected, maintained, or used under the IDEA and the Rules (except access by the parent(s) or adult students and authorized employees of the school), 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; RULES IV.V.6.)**

If any education record includes information on more than one student, the parent(s) 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; RULES IV.V.7.)**

On request, the school must provide you with a list of the types and locations of education records collected, maintained, or used by the school.



**FEES (34 CFR § 300.617; RULES IV.V.8.).**

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

The USBE staff and a school 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; RULES IV.V.9.).**

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The parent(s) or adult student who believes that information in the education records collected, maintained, or used under the IDEA or the Rules is inaccurate or misleading or violates the privacy or other rights of the student may request the school that maintains the information to amend the information.

The school 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 school decides to refuse to amend the information in accordance with the request, it must inform the parent(s) 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; RULES IV.V.10.).**

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The school 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; RULES IV.V.11.).**

If, as a result of the hearing, the school 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 school 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 school.

Any explanation placed in the records of the student under this section must:

1. Be maintained by the school as part of the records of the student as long as the record or contested portion is maintained by the school; and
2. If the records of the student or the contested portion is disclosed by the school to any party, the explanation must also be disclosed to the party.

#### HEARING PROCEDURES (34 CFR § 300.621; RULES IV.V.12.).

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 school's hearing procedures must adhere to the following requirements:

1. The hearing shall be held within a reasonable period of time after the school 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 school 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 the parent's or adult student's choice at the parent's or adult student's own expense, including an attorney.
4. The school shall make its decision in writing within a reasonable period of time after the conclusion of the hearing.
5. The decision of the school 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 TO RELEASE PERSONALLY IDENTIFIABLE INFORMATION (34 CFR § 300.622; RULES IV.V.13.).

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:

1. Disclosed to anyone other than officials of participating agencies collecting or using the information under the IDEA or the Rules, or
2. Used for any purpose other than meeting a requirement of the IDEA or the Rules.

A school 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. 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 school who have been determined by the school 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. 34 CFR § 99.34 requires that a school transferring the education records of a student pursuant to 34 CFR § 99.34 above shall make a reasonable attempt to notify the parent(s) of the student or adult student of the transfer of the records at the last known address of

the parent(s) or adult student, except that the school 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 school.
- b. The school includes in its annual notice of procedural safeguards, that it is the policy of the school to forward education records on request to a school in which the student seeks or intends to enroll.
- c. The school transferring the records must keep a copy of the records for three years after the transfer.

A school receiving PII from another educational agency or institution may make further disclosure of the information on behalf of the school 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 PII to a third party, then that party may proceed with statutory procedures in an effort to obtain the desired information.

### **SAFEGUARDS (34 CFR § 300.623; RULES IV.V.14.).**

Each school must protect the confidentiality of PII at the collection, storage, disclosure, and destruction stages.

One official at each school must assume responsibility for ensuring the confidentiality of any PII.

All persons collecting or using PII must receive training or instruction regarding the State's policies and procedures in this section and 34 CFR § 99.

Each school must maintain, for public inspection, a current listing of the names and positions of those employees within the school who may have access to PII for students with disabilities.

### **DESTRUCTION OF INFORMATION (34 CFR § 300.624; USBE SER IV.V.15.).**

A school must inform the parent(s) or the adult student when PII collected, maintained, or used under the IDEA and the 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 parent(s) or adult student. However, a permanent record of the student's name, address, phone number, the student's 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.

## **STUDENTS' RIGHTS (34 CFR § 300.625; RULES IV.V.16.).**

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The rights of privacy afforded to parent(s) 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 parent(s) 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 school must provide any notice required under Section 615 of the IDEA to the student and the parents.

## **STUDENTS WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE (34 CFR § 300.148; RULES VI.C.).**

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### **GENERAL PROCEDURES FOR PRIVATE SCHOOL PLACEMENT WHEN FAPE IS AT ISSUE**

The IDEA does not require a school or USDB 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 the school 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 school or USDB must include that student in the population whose needs are addressed consistent with Rules VI.B.

Disagreements between the parent(s) or adult student and a school 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.E.–U.

### **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 a school or USDB, enroll the student in a private preschool, elementary school, or secondary school without the consent of or referral by the school or USDB, a court or a hearing officer may require the school 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 school 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 schools.

### **LIMITATION ON REIMBURSEMENT**

The cost of reimbursement described in the above paragraph 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 school 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 10 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 school or USDB of the information described above;
3. Prior to the parent's or adult student's removal of the student from the public school, the school or USDB informed the parent(s) or adult student, through the prior written 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.

However, 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 prior written notice of their responsibility to provide the notice described above; or
  - c. Compliance with the notice requirements above 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 the above Limitation on Reimbursement requirement would likely result in serious emotional harm to the student.

## **STATE COMPLAINT PROCEDURES**

### **STATE COMPLAINT PROCEDURES (34 CFR §300.151–153; UCA 53E-7-208; RULES IV.E.).**

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#### **GENERAL STATE COMPLAINT PROCEDURES**

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 (UCA 53E-7-208(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.

1. 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.
2. The party filing the complaint must also forward a copy to the school or public agency.
3. If the complainant(s) are unable to file in writing, they may contact the school or USBE State Director of Special Education for assistance.
4. Upon receipt of a written IDEA State complaint by either the school or the 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.
5. The State complaint timeline begins when both parties have received copies.

### **MINIMUM STATE COMPLAINT PROCEDURES (34 CFR § 300.152; RULES IV.E.)**

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#### **TIME LIMIT AND EXTENSION; MINIMUM PROCEDURES; IMPLEMENTATION**

The State Director of Special Education shall resolve the complaint within 60 calendar days unless exceptional circumstances exist. If an extension is necessary, the complainant and the school or public agency shall be notified, in writing, by the USBE Special Education Services section. Within this time limit, the State Director of Special Education shall:

1. Carry out an independent on-site investigation, if the 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. Provide the school or other public agency with the opportunity to respond to the complaint, including, at a minimum:
  - a. At the discretion of the agency, a proposal to resolve the complaint; and
  - b. An opportunity for the parent(s) who has filed a complaint and the agency to voluntarily engage in mediation (Rules IV.H.).

4. Review all relevant information and make a determination as to whether the school or other public agency is violating a requirement of the IDEA or of the Rules.
5. 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 decision.
6. Permit an extension of the time limit under Rules IV.E.6. only if:
  - a. Exceptional circumstances exist with respect to a particular complaint; or
  - b. The parent(s), the adult student, or the complainant (if not the parent(s)) and the school or public agency involved agree to extend the time to engage in mediation, or to engage in other alternative means of dispute resolution available in the State.
7. 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.

#### 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.

#### 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 in the Rules, 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 Rules IV.E. 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 a school or public

agency's failure to implement a due process decision, however, must be submitted directly to the State Director of Special Education and resolved by the USBE.

Parent(s) 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 school.
2. Presentations and other training events by USBE staff conducted throughout the State.

### **FILING A STATE COMPLAINT (34 CFR § 300.153; RULES IV.E.).**

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The complaint must include the following:

1. A statement that the school or other public agency has violated a requirement of the IDEA or the 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.2.

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 school or public agency 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.



## **DUE PROCESS COMPLAINT PROCEDURES**

### **FILING A DUE PROCESS COMPLAINT (34 CFR § 300.507; UCA 53E-7-208; RULES IV.G.).**

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#### **GENERAL DUE PROCESS COMPLAINT FILING PROCEDURES**

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 (UCA 53E-7-208(1)).

Prior to seeking a hearing or other formal proceeding, 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 (UCA 53A-7-208(3)).

The parent(s) or school may file a due process complaint on any matter relating to a proposal or a refusal to change the identification, evaluation or educational placement of a student with a disability, or the provision of FAPE to the student.

The due process complaint must allege a violation that occurred not more than two years before the date the parent(s) or adult student or school knew or should have known about the alleged action that forms the basis of the due process complaint, except:

1. If the parent(s) or adult student was prevented from filing a due process complaint due to specific misrepresentations by the school that it had resolved the problem forming the basis of the due process complaint; or
2. The school withheld information from the parent(s) or adult student that was required under the IDEA to be provided to the parent(s).

#### **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 school must inform the parent(s) or adult student of any free or low-cost legal and other relevant services available in the area if the parent(s) or adult student requests the information; or the parent(s) or adult student or the school requests a hearing under this section.

## **DUE PROCESS COMPLAINT (34 CFR § 300.508; RULES IV.H.).**

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### GENERAL DUE PROCESS COMPLAINT PROCEDURES

The school 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).

1. The party filing a due process complaint must forward a copy of the due process complaint to the State Director of Special Education in person, by U.S. Mail, or by fax.
2. Upon receipt of a due process complaint by either the LEA or the 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, 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 Rules IV.H. 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 school has not sent a prior written notice to the parent(s) or adult student regarding the subject matter contained in the parent(s) or adult student's due process complaint, the LEA must, within 10 calendar days of receiving the due process complaint, send to the parent(s) or adult student a response that includes:

1. An explanation of why the school 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 school used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the school's proposed or refused action.

If a school has not sent prior written notice to the parent(s) 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 school 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 10 calendar days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

### **MODEL FORMS (34 CFR § 300.509; RULES IV.I.).**

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The USBE staff have developed model forms to assist parent(s) or adult students in filing a State complaint, a due process hearing complaint, and requesting mediation. These forms are available on the USBE's [Dispute Resolution](https://schools.utah.gov/specialeducation/programs/studentparentrights?mid=5220&tid=1) webpage (<https://schools.utah.gov/specialeducation/programs/studentparentrights?mid=5220&tid=1>).

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.

## **MEDIATION (34 CFR § 300.506; RULES IV.F.).**

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### **GENERAL MEDIATION PROCEDURES**

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

### **MEDIATION 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.

A school may establish procedures to offer an opportunity to meet to schools and parents or adult students that choose not to use the mediation process. This meeting should be:

1. At a time and location convenient to parents or adult students,
2. With a disinterested party:
  - a. Who is under contract with an appropriate alternative dispute resolution entity, or
  - b. A parent training and information center or community parent resource center in the State; and
  - c. Who would explain the benefits of, and encourage the use of, the mediation process to the parents or adult students.

The 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. Additionally:

1. The State Director of Special Education or designee selects mediators on a random, rotational, or other impartial basis.
2. The USBE bears the cost of the mediation process, including the costs of meetings described in this section.
3. Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets for that resolution and that:

1. 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(s) or adult student and a representative of the school 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 school 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 a school or the USBE solely because the person is paid by the agency to serve as a mediator.

### **RESOLUTION PROCESS (34 CFR § 300.510; RULES IV.J.).**

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#### RESOLUTION MEETING

Within 15 calendar days of receiving notice of the parent's or adult student's due process complaint, and prior to the initiation of a due process hearing, the school must convene a meeting with the parent(s) 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 school who has decision-making authority on behalf of that school; and
2. May not include an attorney of the school unless the parent(s) or adult student is accompanied by an attorney.

The purpose of the meeting is for the parent(s) 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 school 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 school agree in writing to waive the meeting, or the parent(s) or adult student and the school agree to use the mediation process.

The parent(s) and the school determine the relevant members of the IEP Team to attend the meeting.

#### RESOLUTION PERIOD

If the school 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. Except as provided in Rules IV.J.9., 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 the parent(s) or adult student 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 school is unable to obtain the participation of the parent(s) or adult student in the resolution meeting after reasonable efforts have been made (and documented using the procedures in Rules III.G.3.) the school may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's or adult student's due process complaint.

If the school 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(s) or adult student or school 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(s) or adult student and a representative of the school who has the authority to bind the school 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; RULES IV.K.).**

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Whenever a due process complaint is filed, the parent(s) or adult student or the school involved in the dispute must have an opportunity for an impartial due process hearing.

The impartial due process hearing shall be conducted by the USBE. The State Director of Special Education shall monitor all due process hearings to ensure adherence to required procedures.

#### IMPARTIAL HEARING OFFICER

The 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 school 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 the 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 the person 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

The parent(s) or adult student or school must request an impartial hearing on their due process complaint within two years of the date the parent(s) or adult student or school 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 Rules IV.K.6 does not apply to parent(s) or an adult student if the parent(s) or adult student was prevented from filing a due process complaint due to:

1. Specific misrepresentations by the school that it had resolved the problem forming the basis of the due process complaint; or

2. The school's withholding of information from the parent(s) or adult student that was required to be provided to the parent(s) or adult student.

## **HEARING RIGHTS (34 CFR § 300.512; RULES IV.L.).**

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### GENERAL HEARING RIGHTS

Parent(s) or adult students have the right to represent themselves at a due process hearing. In addition, any party to a hearing or an appeal (including a hearing relating to disciplinary procedures) 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. Be represented at the due process hearing by an attorney;
3. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
4. 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;
5. Obtain a written or, at the option of the parent(s) or adult student, electronic, verbatim record of the hearing; and
6. Obtain written or, at the option of the parent(s) 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

Parent(s) 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 parent(s) or adult student.

## **HEARING DECISIONS (34 CFR § 300.513; RULES IV.M.).**

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### 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 parent's or adult student's 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 Rules IV.O.2. shall be construed to preclude a hearing officer from ordering a school to comply with procedural requirements.

#### **SEPARATE REQUEST FOR A DUE PROCESS HEARING**

The parent(s) 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 State Director of Special Education or designee, after deleting any personally identifiable information, must:

1. Share 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; RULES IV.N.).**

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; RULES IV.O.).**

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; RULES IV.P.).**

The 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 parent(s) or adult student and student involved.

#### EXPEDITED DUE PROCESS HEARINGS

Expedited due process hearings may be requested by either the parent(s) or adult student or a school in the following instances (34 CFR § 300.532):

1. The parent(s) 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 school believes that maintaining the current placement of the student following a disciplinary procedure in 34 CFR §§ 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 Rules IV.H.). The hearing officer must make a determination within 10 school days after the hearing.

Unless the parent(s) or adult student and school agree in writing to waive the resolution meeting or agree to use the mediation process described in 34 CFR § 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; RULES IV.Q.).**

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#### GENERAL CIVIL ACTION PROCEDURES

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 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 (UCA 53E-7-208(4)(a)).

#### ADDITIONAL CIVIL ACTION 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 the Rules 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 under 34 CFR §§ 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under the procedural safeguards of the IDEA.

## **ATTORNEYS' FEES (34 CFR § 300.517; UCA 53E-7-208(4)(B); RULES IV.R.).**

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### GENERAL ATTORNEYS' FEES PROCEDURES

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

1. The prevailing party who is the parent(s) of a student with a disability or the adult student;
2. A prevailing party who is the USBE or school against the attorney of parent(s) or adult student who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of parent(s) or adult student who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
3. To the prevailing USBE or school against the attorney of parent(s) or adult student, or against the parent(s) 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 under the procedural safeguards of the IDEA. A school 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 under the procedural safeguards of the IDEA 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 the parent(s) 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 10 calendar days before the proceeding begins;
  - b. The offer is not accepted within 10 calendar days; and
  - c. The court or administrative hearing officer finds that the relief finally obtained by the parent(s) is not more favorable to the parent(s) than the offer of the 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 34 CFR § 300.506.
5. A resolution meeting shall not be considered a meeting convened as a result of an administrative hearing or judicial action and also is not considered an administrative hearing or judicial action for purposes of attorneys' fees in this section.
6. An award of attorneys' fees and related costs may be made to the parent(s) 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(s) or adult student did not provide to the school the appropriate information in the due process request notice in accordance with 34 CFR § 300.508.

If the parties fail to reach agreement or payment of attorneys' fees, then a party seeking recovery of attorneys' fees for a special education administrative action under 20 USC § 1415(i) shall file a court action within 30 days after issuance of a due process decision (UCA 53E-7-208(4)(b)).

The above regulations regarding attorney's fees do not apply in any action or proceeding if the court finds that the State or school 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; RULES IV.S.).**

Except as provided in 34 CFR § 300.533, during the pendency of any administrative or judicial proceeding regarding a request for a due process hearing, unless the school and the parent(s) of the student or adult student agree otherwise, the student involved in the complaint must remain in the student's 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 school and the parent(s) or adult student.

# **PROCEDURES WHEN DISCIPLINING STUDENTS WITH DISABILITIES**

## **AUTHORITY OF SCHOOL PERSONNEL (34 CFR § 300.530; RULES V.A.).**

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Consistent with the requirements of the IDEA and Rules, each school 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 Rules V.B., is appropriate for a student with a disability who violates a code of student conduct.

### **GENERAL DETERMINATION PROCEDURES**

School personnel may remove a student with a disability who violates a code of student conduct from the student's current placement to an appropriate interim alternative educational setting (IAES), another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

After a student with a disability has been removed from the student's current placement for 10 school days in the same school year, during any subsequent days of removal the school must provide services to the extent required.

### **AUTHORITY OF SCHOOL PERSONNEL**

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability (see Manifestation Determination below), 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 10th day of removal that constitutes a change in placement, the school 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 (FBA), 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 IAES.

A school is only required to provide services during periods of removal to a student with a disability who has been removed from the student's current placement for 10 school days or less in that school year, if it provides services to a student without disabilities who has been similarly removed.

After a student with a disability has been removed from the student's current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed, 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.

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; RULES V.E.).**

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Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school, the parent(s) or adult student, and relevant members of the student's IEP Team (as determined by the parent(s) or adult student and the school) 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 parent(s) or adult student 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 school's failure to implement the IEP.

The conduct must be determined to be a manifestation of the student's disability if the school, the parent(s) 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 school's failure to implement the IEP.

If the school, the parent(s) or adult student, and relevant members of the student's IEP Team determine that the misconduct was a direct result of the school's failure to implement the IEP, the school must take immediate steps to remedy those deficiencies.

#### **DETERMINATION THAT BEHAVIOR WAS A MANIFESTATION OF THE STUDENT'S DISABILITY**

If the school, 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 an FBA, unless the school had conducted an FBA 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 BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior; and
3. Unless the misconduct falls under the definition of special circumstances as described below, return the student to the placement from which the student was removed, unless the parent(s) or adult student and the school agree to a change of placement as part of the modification of the BIP.

#### SPECIAL CIRCUMSTANCES

School personnel may remove a student to an IAES 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 (see the definition below) to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the USBE or a school;
2. Knowingly possesses or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the USBE or a school; or
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the USBE or a school.

#### *Manifestation Determination 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 USC § 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 any other authority under the Controlled Substances Act (21 USC § 812) or under any other provision of Federal law.

*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, or any other injury to the body, no matter how temporary (18 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 pocketknife 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 school must notify the parent(s) or adult student of that decision and provide the parent(s) or adult student the procedural safeguards notice.

### **CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS (34 CFR § 300.536; RULES V.D.).**

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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 10 consecutive school days; or
2. The student has been subjected to a series of removals that constitute a pattern:
  - a. Because the series of removals total more than 10 school days in a school year;
  - b. Because the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  - c. Because 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 school 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; RULES V.G.)**

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The student's IEP team determines the IAES for services if the behavior that gives rise to the removal is not a manifestation of the student's disability, the removal constitutes a change of placement, or the behavior falls under the Special Circumstances outlined 34 CFR § 300.531 and Rules V.G.

### **APPEALS (34 CFR § 300.532; RULES V.H.)**

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#### GENERAL APPEALS PROCEDURES

The parent(s) of a student with a disability or adult student who disagrees with any decision regarding placement or the manifestation determination, or 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 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 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 appeal procedures may be repeated if the school 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 parent(s) or adult student or the school involved in the dispute must have an opportunity for an impartial due process hearing.

The school is responsible for arranging the expedited due process hearing with the 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 10 school days after the hearing.

Unless the parent(s) or adult student and school 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 final, unless meeting the requirements of 34 CFR § 300.514(b) or 34 CFR § 300.516.

#### **PLACEMENT DURING APPEALS (34 CFR § 300.533; RULES V.I.)**

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When an appeal through a due process complaint has been made by either the parent(s) or adult student or the school, the student must remain in the IAES pending the decision of the hearing officer or until the expiration of the time period described under the heading Authority of School Personnel, whichever occurs first, unless the parent(s) or adult student and the USBE or school agree otherwise.

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

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### **GENERAL PROTECTIONS**

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 described in this notice if the school 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**

A school must be deemed to have knowledge that a student is a student with a disability before the behavior that precipitated the disciplinary action occurred, if:

1. The parent(s) of the student or adult student expressed concern in writing to supervisory or administrative personnel of the appropriate school, 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 school, expressed specific concerns about a pattern of behavior demonstrated by the student directly to the director of special education of the school or to other supervisory personnel of the school.

### **EXCEPTION**

A school would not be deemed to have knowledge that a student is a student with a disability 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 the IDEA; 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 a school 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 engage 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 parent(s) or adult student, the school must provide special education and related services.

**REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES  
(34 CFR § 300.535; RULES V.K.).**

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Nothing in the IDEA prohibits a school 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**

A school 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 school reports the crime.

A school 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 FERPA.