

AN EXPLANATION OF RIGHTS AND PROCEDURAL SAFEGUARDS OF A PARENT WITH A CHILD WITH DISABILITIES IN SCHOOL

PLEASE NOTE: This document was written by the Texas Education Agency in August 1997. In May 1997, Congress enacted major changes in special education law. The U.S. Department of Education is expected to publish draft regulations under the new law in the fall of 1997, but these regulations will not become final until at least April 1998. For the 1997-98 school year, therefore, it is important that a parent get competent help in understanding his or her rights under the law. This document must be used with caution. In many important respects, the law governing a parent's rights is simply not clear at this time.

This Document

If you are the parent of a child with a disability, this document is for you.¹ Your public school must give you this document each time:

1. your child is first referred for special education evaluation;
2. you are notified of an admission, review, and dismissal (ARD) committee meeting about your child;
3. your school reevaluates your child; and
4. your school requests a "due process hearing" about your child.

Parent Consent

Your school cannot evaluate your child before placement, place your child in a special education program, or reevaluate your child after placement without your consent. Your school does not have your consent unless each of the following are true:

1. you have been fully informed of all relevant information in your native language or other mode of communication;
2. you understand and agree in writing to the proposed action;
3. your written consent describes the proposed action and lists any records that will be released and to whom; and
4. you understand that your consent is voluntary and you may revoke your consent at any time.

The school cannot withhold any special education benefit from your child because you refuse to give consent, except the action to which you do not consent. Some schools have local parental consent policies that expand your right to consent. These policies are permitted, so long as effective procedures are in place that ensure your refusal to consent cannot result in a failure to provide a free appropriate public education (FAPE) to your child.

If your refusal to consent might cause your school to violate your child's right to a FAPE, your school may file a due process hearing. (See "Impartial Due Process Hearing".) The hearing officer will determine whether the school must evaluate your child or begin providing special education and related services to your child *without* your consent. If the hearing officer does override your consent, you may appeal the decision to court. During the due process hearing and any court appeals, the school may not change your child's current educational placement. Of course, you have the right to withdraw your child from the public school system at any time and enroll your child in a private, parochial or home school.

Prior Written Notice

Your school must notify you in writing before it takes or refuses to take any action to identify your child as a special education student; before it takes or refuses to take any action affecting the free appropriate public education (FAPE) of your child; or any time the school evaluates your child. Any time prior written notice is required, your school must:

1. describe the action proposed or refused by the school;
2. explain why the action is proposed or refused;
3. describe other options considered and why it rejected them;
4. describe each evaluation procedure, test, record, or report supporting its decision;
5. describe any other factors related to its decision;
6. enclose a copy of this document; and
7. give you the name, address, and telephone number of people to contact for help in understanding the rights explained in this document.

Your school must give you this prior notice in language that is understandable to you and the general public. The notice must be in your native language or other mode of communication (unless this is clearly not feasible). If yours is not a written language, your school must translate the notice to you orally or by other means, must make sure you understand the notice, and must keep a written record that it has done these things.

Testing and Evaluation

Your school will follow a set of evaluation procedures to determine whether your child has a disability and a need for special education and related services. In addition, the evaluation information will be used by the ARD committee in developing an individual educational plan (IEP). (See "Admission, Review, and Dismissal Committee.")

Your school may not use racially or culturally biased testing or evaluation materials or procedures to evaluate or place your child. These materials and procedures must be provided and administered in your child's native language or mode of communication, unless this is clearly not feasible. Your school cannot use a single procedure as the sole criterion for deciding the appropriate educational program for your child. Your school must give you a copy of your child's evaluation report.

Admission, Review, and Dismissal Committee

Your school must make decisions about your child's educational program through an admission, review, and dismissal (ARD) committee. *You are a member of your child's ARD committee.* While you are not required to attend, your school must invite you to every meeting of your child's ARD committee.

Your school must convene an ARD committee to identify your child as requiring special education or related services and to develop, review or revise your child's individual educational plan (IEP). An IEP is a written statement of your child's education needs and the special education and related services your school must provide. Your school must have an IEP for your child in effect by the beginning of each school year. The requirements of an IEP are unique to each child. Your school must convene your child's ARD committee at least once a year. You may also request an ARD committee meeting at any time.

Your school must give you written notice of scheduled ARD committee meetings at least five school days before the meeting, unless you agree otherwise. This notice must state the purpose, time, and place for the meeting and list the people who will attend. The meeting must take place at a mutually agreed upon time and place. If needed, the school must use other methods—telephone, letter, or personal conferences—to allow you to participate before or during the meeting. If you simply cannot attend, the school can conduct the meeting without you.

You may bring one or more persons to the meeting to help you or represent you. You have a right to be actively involved in the ARD committee meeting and to discuss any service you feel will be helpful to your child. If you are hearing impaired or have a native language other than English, the school must provide you an interpreter at the meeting. You may audio tape record any ARD committee meeting, but must first inform all members attending that you are recording it.

You have a right to sign the IEP to show that you were present at the meeting and to indicate on the IEP your agreement or disagreement with the decisions made by the ARD committee.

¹If your child is an infant two years old or younger and is deaf or visually impaired, contact the Texas Interagency Council on Early Childhood Intervention at 1-800-250-2246 for information about services for your infant.

Access to Records

You have the right to inspect and review any education records about your child which are collected, maintained, or used by your school for special education purposes. This right entitles you to:

1. require the school to explain and interpret the records (if your request is reasonable);
2. have your representative inspect and review the records; and
3. require the school to give you copies of the records, if without copies you cannot inspect and review the records.

On request, the school must let you inspect and review the records without unnecessary delay. At a minimum, the school must give you access before any ARD committee meeting or due process hearing about your child and, in no case, more than 45 days after your request.

If the right of another parent to inspect and review your child's records has been limited in any way, such as by divorce, separation, or guardianship, you should notify your school. Otherwise, the school may give each parent full access to inspect and review records relating to the child.

If any record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information.

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

The school may not charge a fee to search for or to retrieve any education record about your child. It may charge a fee for copying, if the fee does not effectively prevent you from exercising your right to inspect and review the records.

Your school must keep a record of everyone (except for you and authorized employees of the school) to whom it gives access to your child's special education records. This record must include the name of the person, the date access was given, and the purpose for which the person is authorized to use the records.

If you believe that information in education records collected, maintained, or used by your school for special education purposes is inaccurate or misleading, or violates the privacy or other rights of your child, you may ask your school to change the information.

The school must decide whether to change the information within a reasonable time after receiving your request. If the school district refuses to change the information as requested, it must inform you of the refusal and of your right to a hearing.

On your request, the school must hold a hearing on its refusal to change the education record about your child. This is not a due process hearing and is not before a hearing officer appointed by the Texas Education Agency. At this hearing, the school must ensure that the record is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. If the school refuses the requested change after hearing, it must inform you of this decision and must inform you of your right to place a statement in your child's education records.

This statement may comment on the information itself or it may give your reasons for disagreeing with the decision of the school. The school must maintain this statement as part of your child's education record as long as the affected portion of the record is maintained by the school. If the affected portion of the record is disclosed by the school to any person, your statement must be disclosed with it.

Independent Educational Evaluation

As used in this document, an independent educational evaluation (IEE) means an evaluation conducted by a qualified examiner who is not employed by your school. If you ask, your school must tell you how to get an IEE.

If you disagree with an evaluation of your child that the school has done, you have the right to request an IEE at public expense. This means your school must pay for the IEE or ensure that you obtain one at no cost. Your school must use the same criteria for an IEE at public expense as it uses for its own evaluations, including the location of the evaluation and the qualifications of the examiner.

If you request an IEE at public expense, your school has the right to file a due process hearing to show that its evaluation is appropriate. If the hearing officer decides that the school's evaluation is appropriate, you still have the right to an IEE, but not at public expense.

If you pay for an IEE, the school must consider the results of the evaluation when deciding anything affecting the provision of FAPE to your child. You can use the IEE as evidence at a due process hearing about your child.

If a hearing officer requests an IEE as part of a due process hearing, the cost of the evaluation must be at public expense.

Complaint Process

If you believe your school has violated federal or state law on children with disabilities in educating your child, you may file a written complaint with the Texas Education Agency (TEA) at the address below:

Texas Education Agency
Complaints Management Division
1701 North Congress Avenue
Austin, TX 78701-1494

Your complaint should state the violation(s) you believe has occurred and state the facts on which your complaint is based.

Within 60 calendar days after receiving your written complaint, the TEA will:

1. conduct an independent investigation, including on-site investigation as needed, if the TEA determines such an investigation is necessary;
2. give you an opportunity to give more information about the complaint, over the telephone or in writing;
3. review all relevant information and determine whether the school has violated applicable law; and
4. give you a written decision that rules on each allegation in your complaint.

You may appeal the TEA's final decision to the U.S. Department of Education.

In addition, the TEA operates a 24-hour toll free "hot line" through which you can leave a message. This hot line enables you to discuss your rights and possible violations with a trained professional during normal business hours. The number is 1-800-252-9668.

Mediation

You are strongly encouraged to work with your local school personnel to resolve differences as they occur. There may be times, however, when a neutral third party may help you reach agreement with your school. Mediation is an alternative dispute resolution procedure made available to you by the Texas Education Agency (TEA). The TEA will normally offer this service to you each time you request a "due process hearing." (See "Impartial Due Process Hearing.") However, you may request that a mediator be assigned to you at other times as well. To request a mediator, write to the TEA at the address below:

Texas Education Agency
Complaints Management Division
1701 North Congress Avenue
Austin, TX 78701-1494

The mediation process:

1. must be voluntary. No mediator will be assigned unless both you and your school request it and agree to abide by the terms of the mediation.
2. cannot be used to deny or delay your due process hearing or any of your legal rights.
3. will be conducted by a neutral person, a qualified and impartial mediator trained in effective mediation techniques.

Each mediation session must be held in a timely manner and in a convenient location.

You have the right to bring an attorney or other representative to the mediation, but are not required to do so.

Most of the TEA's mediators are not attorneys. Even if your mediator happens to be an attorney, the mediator cannot advise or advocate for any party to the mediation. The mediator helps the parties reach an agreement, if they can agree.

Nothing you say to the mediator will be repeated by the mediator to the TEA. If you want the TEA to investigate or get involved in the dispute between you and your school, you must file a complaint using the TEA's complaint process. (See "Complaint Process.")

Any communication that occurs during mediation is confidential by law and may not be used as evidence in any legal proceeding. You may be required to sign a confidentiality pledge as a condition of participating in mediation.

If you reach an agreement with your school, the terms of your agreement will be put in writing. Your signature on this agreement may create a legally binding contract. Such a contract might release your school from significant legal liabilities it may owe to you as a result of its education of your child up to the present. However, you cannot waive in a contract any aspect of your child's right to future educational benefits. Violations of the agreement may be addressed by filing a complaint or requesting a due process hearing. (See "Complaint Process" and "Impartial Due Process Hearing.")

The mediator does not represent or speak on behalf of the TEA. The TEA pays for the mediator and related costs. You must pay your lawyer or other representative if you choose to bring one.

Impartial Due Process Hearing

You have the right to due process hearing about any of the following:

1. identifying your child as needing special education or related services;
2. evaluating your child for special education or related services;
3. placing your child in special education or related services; or
4. your child's free appropriate public education (FAPE).

In certain situations, your school may request a due process hearing against you. (See "Parent Consent" and "Hearing Officer Placement in an Alternative Educational Program.")

Before you sue your school in court about any of the matters listed, you must request a due process hearing. If you have not had a due process hearing your claims in court may be dismissed. (See "Civil Action.")

To request a hearing, you (or your attorney) must send a written request for a due process hearing to the Texas Education Agency (TEA) at the address below:

Texas Education Agency
Division of Hearings and Appeals
1701 North Congress Avenue
Austin, TX 78701-1494

The TEA has developed a form you may use to request a due process hearing. On request, your school will provide this form to you. This form can also be accessed on the Internet at:

<http://www.tea.state.tx.us/special.ed/spedpub.html>

You do not have to use the TEA's form, but your request must contain the following information:

1. your child's name, the address where your child resides, and the name of the school your child is attending;
2. a description of the problem your child is having relating to the school's proposed initiation or change, including facts relating to the problem; and
3. a resolution of the problem that you propose (to the extent known and available to you at the time).

You must send a copy of your due process hearing request to your school.

The hearing will be conducted by an impartial hearing officer appointed by the TEA. The hearing officer cannot be an employee of any agency involved in the education or care of your child and cannot have any personal or professional interest that would conflict with his or her objectivity in the hearing. The hearing officer is paid by the TEA.

The TEA maintains a list of current hearing officers. The list includes a statement of the qualifications of each hearing officer. This list can be requested by fax addressed to the Director of Hearings and Appeals at (512) 475-3662. It can also be accessed on the Internet at:

<http://www.tea.state.tx.us/special.ed/hearings>

At a due process hearing, you have the right to:

1. bring and be advised by your attorney and by people with special knowledge or training in the problems of children with disabilities;

2. present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. bring the child and open the hearing to the public;
4. have each session conducted at a time and place that is reasonably convenient to you and your child;
5. obtain a written or electronic verbatim record of the hearing; and
6. obtain written or electronic findings of fact and decisions. (After deleting any personally identifiable information, the TEA will transmit those findings and decisions to the state advisory panel and make them available to the public.)

Each party must disclose to the other any evidence, including evaluations completed by that date, it intends to introduce at a due process hearing at least five business days prior to the hearing. The hearing officer may order that this disclosure be done sooner. The hearing officer may refuse to admit any evidence that has not been disclosed on time.

The TEA must ensure that a final hearing decision is reached and mailed to the parties within 45 days after the receipt of your request for a hearing, unless the hearing officer has granted a specific extension at the request of either party.

The decision of the hearing officer is final, unless a party to the hearing appeals the decision to a state or federal court.

Child's Status During Proceedings

During a due process hearing and any court appeals, your child must remain in the present educational placement unless you and the school agree otherwise.

If the hearing involves an application for initial admission to public school, your child must be placed (if you consent) in the public school program until the completion of all the proceedings. (See "Parent Consent.")

If your child has been placed in an alternative educational placement, special rules may govern your child's status during some due process hearings. (See "Hearing Officer Placement in an Alternative Educational Program.")

Civil Action

You have the right to appeal the findings and decision of the hearing officer to state or federal court. The court must:

1. receive the records of the due process hearing;
2. hear additional evidence at the request of either party; and
3. grant the relief the court determines is appropriate, based on a preponderance of the evidence before the court.

If you want to sue your school about matters for which a due process hearing is available, you must have a due process hearing before filing suit in court. If you do not, your claims in court may be dismissed. (See "Impartial Due Process Hearing.")

Award of Attorney's Fees

If you win part or all of what you are seeking in a due process hearing or in court, a judge may rule that you are the "prevailing party." If so, the judge may order your school to pay for your attorney's fees and related costs (if they are reasonable).

This order may include attorney's fees and related costs for any due process hearing, for any appeal to court from a due process hearing, and for any mediation conducted after the filing of a due process hearing. This order may not include attorney's fees or costs for representation at admission, review, and dismissal (ARD) committee meetings, unless the ARD committee meeting is convened as a result of an order by a due process hearing officer or a judge.

Your right to have the school pay for your attorney's fees and costs may be limited in response to what you (or your attorney) do or fail to do in the process. First, if the school offers to settle the dispute on terms that are at least as favorable to you as what you win, the judge may rule that you cannot be awarded attorney's fees or costs for work done after the offer to settle. The judge must enter this order if:

1. the school makes an offer to settle the dispute more than ten days before a due process hearing (or if you are appealing to court, within the time allowed by Rule 68 of the Federal Rules of Civil Procedure);

2. you do not accept the offer within 10 days; and
3. the judge or a due process hearing officer makes a finding that the school's offer was at least as favorable to you as the order you received.

Second, the judge must reduce the amount of attorneys fees awarded to you whenever the judge finds that:

1. you unreasonably protracted the dispute;
2. the fees charged by your attorney unreasonably exceed the hourly rate charged by similar attorneys in your community for similar services;
3. the time billed by your attorney is excessive considering the nature of the proceeding; or
4. your attorney failed to give the school the required notice when your due process hearing was originally requested. (See "Impartial Due Process Hearing.")

Discipline and Your Child

RELATIONSHIP OF CONDUCT TO DISABILITY

Your school may discipline your child, but may not punish your child for conduct which is a manifestation of a disability. If your school decides to discipline your child by removing your child from the current placement, it must:

1. on the day the decision is made, inform you of the decision and give you a copy of this document; and
2. immediately, if possible, but not later than 10 school days after the day the decision is made, review the relationship between your child's disability and the conduct subject to discipline.

The review must be done by an admission, review, and dismissal (ARD) committee. The ARD committee can find that your child's conduct was *not* a manifestation of a disability only if it:

1. first considers all relevant information about the conduct subject to discipline, including—
 - a. evaluation and diagnostic results, including any results or other relevant information that you give to the ARD committee;
 - b. observations of your child; and
 - c. your child's IEP and placement; and
2. then finds that —
 - a. with respect to the conduct subject to discipline, your child's individual educational plan and placement were appropriate; and your school provided special education services, supplementary aids and services, and behavior intervention strategies as required by your child's IEP and placement;
 - b. your child's disability did not impair your child's ability to understand the impact and consequences of the conduct subject to discipline; and
 - c. your child's disability did not impair the ability of your child to control the conduct subject to discipline.

If the ARD committee finds that your child's conduct was not a manifestation of your child's disability, your school may discipline your child using the disciplinary procedures that apply to children without disabilities. However, the school must transmit your child's special education and disciplinary records for consideration by the person(s) making the final discipline decision.

You may request a due process hearing to appeal the ARD committee's manifestation finding. The hearing officer must find whether the school demonstrated in its ARD committee meeting that your child's conduct was not a manifestation of your child's disability. The Texas Education Agency must arrange for an expedited hearing on this question.

PLACEMENT IN AN ALTERNATIVE EDUCATIONAL PROGRAM

Your school may not place your child in an alternative educational program (AEP) unless your child's conduct meets the criteria applicable to children without disabilities for AEP placement in Texas Education Code, Sections 37.006(a) or 37.007(a). Your child can only be placed in an AEP by an ARD committee, or by a due process hearing officer in the circumstances described in "Hearing Officer Placement in an Alternative Educational Program."

An ARD committee may place your child in an AEP only if it finds that the AEP —

1. enables your child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in your child's current IEP, that will enable the child to meet the goals set out in that IEP; and
2. includes services and modifications designed to address your child's conduct subject to discipline so that it does not recur.

Immediately after placing your child in the AEP, if possible, but not later than 10 school days after doing so, the ARD committee must make the manifestation finding described above. (See "Relationship of Conduct to Disability.")

Instead of removing your child to an AEP, your school may suspend your child for any conduct for which it could place your child in an AEP. However, the suspension may not exceed three school days.

HEARING OFFICER PLACEMENT IN AN ALTERNATIVE EDUCATIONAL PROGRAM

Your school may file a due process hearing seeking an order by the hearing officer placing your child in an AEP. If your school alleges that it would be dangerous for your child to remain in the current placement during the due process hearing and any court appeals, your child will be placed in the AEP proposed by the school and must remain there until the hearing officer decides the appropriate placement for your child. The hearing must be expedited in such cases.

To order your child placed in an AEP, the hearing officer must:

1. find that the school has demonstrated by substantial evidence that maintaining the current placement of your child is substantially likely to result in injury to your child or to others;
2. consider the appropriateness of your child's current placement;
3. consider whether your school has made reasonable efforts to minimize the risk of harm in your child's current placement, including the use of supplementary aids and services;
4. make the manifestation determination described (see "Relationship of Conduct to Disability"); and
5. find that the AEP:
 - a. enables your child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications; including those described in your child's current IEP, that will enable your child to meet the goals set out in that IEP; and
 - b. includes services and modifications designed to address your child's conduct subject to discipline so that it does not recur.

This placement may last for up to 45 days.

Child Referred to Private School by Public School

If necessary to provide the special education or related services required by your child's IEP, your school may refer your child to a private school or facility. This does not change your school's duty to your child. It is still responsible for your child's education and must pay all costs related to that education. You still have all the rights explained to you in this document.

Child Enrolled in Private School by Parent

PRIVATE EDUCATION WITH PUBLIC SPECIAL EDUCATION

If you enroll your child in a private, parochial, or home school, your child is entitled to special education and related services from the public school district where your child resides as follows:

1. the funds expended by the public school for special education and related services to your child must equal a proportionate amount of the federal funds made available to public school students in that district; and
2. the public school may provide special education and related services to your child on the premises of the private, parochial, or home school, to the extent consistent with law.

You may request such special education and related services from your public school. But even if you do not, the public school must identify all children with disabilities residing in the district and offer them a free appropriate public education (FAPE).

PUBLIC REIMBURSEMENT FOR PRIVATE EDUCATION

The public school district where your child resides is not required to pay for your child's education in a private, parochial, or home school if the district offered a FAPE to your child and you elected to place your child in a private school. But if your child previously received special education or related services as a public school student and you believe the public school failed to offer a FAPE to your child, you may file a due process hearing for an order requiring the public school to reimburse you for the cost of the entire private school education. Reimbursement may be ordered even if you enrolled your child in private school without the consent of or referral by the district, a hearing officer, or a judge.

The money to be reimbursed to you for your child's private education may be reduced or denied unless you give prior notice to the district. You must:

1. at the last ARD committee meeting you attend before removing your child from public school, state that you reject the district's offer of a FAPE to your child, state your concerns, and state that you intend to enroll your child in private school at public expense; and
2. give the district written notice of your concerns 10 business days before removing your child from public school (including any holidays that occur on a business day).

The prior notice required does *not* apply to you if:

1. you cannot read or write in English;
2. the notice would likely cause physical or serious emotional harm to your child;
3. the public school prevents you from giving the notice;
4. or the public school did not inform you that prior notice was required.

The money to be reimbursed to you may also be reduced or denied if:

1. before you removed your child from public school, the district notified you it intended to evaluate your child (and gave you an

- appropriate and reasonable statement of the purpose for the evaluation), but you did not let the public school do it; or
2. a judge finds you acted unreasonably.

Surrogate Parents

The rights explained in this document belong to you, the parent of your child. However, if your school cannot identify or find a parent of your child with reasonable effort or your child is a ward of the state, your school must assign a "surrogate parent" to represent your child in all matters relating to the identification, evaluation, and educational placement of your child and the provision of a FAPE to your child. This person may not be an employee of any public agency which is involved in the education or care of your child or have any conflict of interest with your child, but may be paid by your school to serve as a surrogate parent. The person must have the knowledge and skills needed to adequately represent your child.

District Information Here: