

# Procedural Safeguards Manual for Parents

*(Parental Rights in Special Education)*

Bureau of Children, Family and Community Services  
October 2005



State of Iowa  
**Department of Education**  
Grimes State Office Building  
Des Moines, Iowa 50319-0146

## **State Board of Education**

Gene E. Vincent, Carroll, President  
Sally J. Frudden, Charles City, Vice President  
Charles C. Edwards, Jr., Des Moines  
Sister Jude Fitzpatrick, West Des Moines  
Rosie Hussey, Mason City  
Wayne Kobberdahl, Council Bluffs  
Gregory D. McClain, Cedar Falls  
Mary Jean Montgomery, Spencer  
Max Phillips, Woodward  
Tara Richards, Indianola (Student Member)

### **Administration**

Judy A. Jeffrey, Director and Executive Officer  
of the State Board of Education  
Gail Sullivan, Chief of Staff

### **Division of Early Childhood, Elementary and Secondary Education**

Pam Pfitzenmaier, Division Administrator

### **Bureau of Children, Family and Community Services**

Lana Michelson, Bureau Chief  
Toni Van Cleve, Administrative Consultant  
Deb Samson, Consultant

## Table of Contents

<b>Introduction</b>	<b>1</b>
Where can I find further assistance?	
When should I get a copy of the procedural safeguards?	
Are there other sources of information available to me?	
What notice must the Iowa Department of Education give me about the procedural safeguards?	
<b>Educational Records</b>	<b>3</b>
What educational records may I examine?	
<b>Participation in Meetings</b>	<b>3</b>
In what meetings about my child must I be included?	
How will the school help that happen?	
What is considered “a meeting”?	
How am I involved in placement decisions about my child?	
What if I can’t participate in the meeting?	
Can a placement decision be made without me?	
<b>Provisions for Surrogate Parent</b>	<b>4</b>
Why would a surrogate parent be appointed?	
What does the district need to do?	
What are the criteria for being selected as a surrogate?	
What if the child is an unaccompanied homeless youth?	
What are surrogate parent responsibilities?	
How soon must a surrogate parent be appointed for a child?	
<b>Independent Educational Evaluation (IEE)</b>	<b>4</b>
What is an Independent Educational Evaluation (IEE)?	
Can I request an IEE?	
Why would I ask for an IEE?	
What might the school say or do if I request an IEE?	
If I choose to get an IEE, what can be done with the information that I get?	
Who pays for an IEE?	
What other points do I need to know or think about in respect to an IEE?	
<b>Prior Notice</b>	<b>5</b>
What is prior notice by a district or an AEA?	
What information is included in the notice?	
What will the “notice” look like?	
<b>Behavior and Discipline Procedures</b>	<b>6</b>
What happens if my child violates the code of student conduct?	
How long can my child be removed from the regular school setting?	
What if my child is removed for more than the 10 school days?	

- Will my child continue to receive special education services while removed from school?
- Are there times when services will not be provided to my child?
- Who decides where and if the services will be provided to my child?
- What is a manifestation determination?
- If there is a determination that the behavior was a manifestation of my child's disability, what happens then?
- Are there occasions when these rules of manifestation determination do not apply?
- How do I know that a disciplinary action for my child has started?
- Who determines the interim alternative educational setting?
- Can I appeal the school disciplinary action decision?
- Can a district request a hearing or an appeal?
- What can an administrative law judge (ALJ) do?
- Can the school district do anything about the ALJ's decision?
- When can there be an expedited hearing?
- Are there additional requirements before an expedited hearing can be held?
- Are there other timelines I need to know regarding the expedited hearing?
- Where does my child go to school in the meantime?
- If my child has not been found eligible for special education, are there still protections under IDEA 2004?
- What is meant by the school's "basis of knowledge" about my child's disability?
- Is there an exception to the school's "basis of knowledge"?
- What are the conditions that apply if no "basis of knowledge" exists for the school?
- Can my child be referred to law enforcement and/or judicial authorities?
- If my child is referred to law enforcement or judicial authorities, what information about my child will they receive from the district?
- What is considered a change of placement because of a disciplinary removal?

## **Legal Process Options**

**10**

### **Preappeal Conference**

**10**

- What help can I get from the Iowa Department of Education to help resolve a dispute with my child's district or AEA?

### **Complaint Procedure**

**10**

- Does the Iowa Department of Education provide a procedure to file a complaint?
- What must the procedure include?
- Are there other limits to this procedure? Are extensions beyond 60 days allowed?
- How is a complaint filed and who can file?

### **Due Process Hearing Request (referred to as "Due Process Complaint Notice" in IDEA 2004)**

**12**

- Why would I file a due process hearing request?
- Is there a time limit for filing a due process hearing request?
- Are there exceptions to the time line requirements for filing a due process hearing request?
- How can I find out where to obtain legal assistance?
- What do I need to include in a due process hearing request?
- How important is it that all of the requirements of the notice are included?
- Who decides whether the notice has met all of the requirements?

Where do I send the due process hearing request?

What if there are other things I want to add to the due process after I file?

How will the school respond to my a due process hearing request?

### **Resolution Session**

**13**

What is the purpose of the resolution session?

Does a resolution session need to be held?

Who attends the resolution session?

What is the “resolution period”?

How important is the resolution session?

Does a legally binding settlement agreement come from this resolution session?

Is there a period of time where I can change my mind about the agreement?

### **Mediation**

**14**

What procedures and requirements for a mediation do I need to know?

How do I know who the mediators are? How is one chosen to listen to the concerns about my child? Who pays for the mediation?

How do I know the mediator is impartial?

What are some things I need to know about the mediation process?

What if I don't want to use a mediation process?

Who is a disinterested party?

What would the disinterested party do?

### **Impartial Due Process Hearing**

**15**

Who is responsible for conducting the due process hearing?

Who listens to the information and makes decisions at the due process hearing?

What are the qualifications of an impartial administrative law judge (ALJ)?

In the meantime, where does my child go to school?

Is there an exception to the current placement provision?

What if my child has never been in public school?

What can be discussed at the due process hearing?

Is there a timeline that needs to be followed for requesting a due process hearing?

Are there exceptions to the timeline rule?

What are the rights in a due process hearing that I need to be aware of according to the law?

What about disclosure of additional information at the due process hearing?

Are there rights specific to me as parent at the due process hearing?

What decision is an administrative law judge required to make?

Am I restricted from filing other due process hearing requests?

Is the decision of the administrative law judge (ALJ) final?

If I am not happy with the ALJ decision, what can I do?

Who else will know about the due process hearing decision?

What is the timeline of a due process hearing?

### **Civil Action**

**17**

Is there a time limitation to pursue civil action?

Are there additional requirements for civil action?

**Attorney Fees****18**

- What do I need to know about attorney fees?
- Can attorney fees and related costs be prohibited for certain services?
- Is there an exception to the prohibition on attorney fees and related costs?
- Can the court reduce the amount of the attorney fees?
- Is there an exception to the reduction in the amount of attorney fees?

**Placement of Children by Parents in Private Schools when Free Appropriate Public Education (FAPE) is an Issue****19**

- When won't the district pay for the cost of education in a private school for my child with a disability?
- Can I be reimbursed for private school placement for my child?
- Can reimbursement for private school placement be reduced or denied?
- Are there exceptions to the reduction or denial of reimbursement for private school placement?

**Confidentiality of Information****19**

- May I have access to my child's educational records?
- How do I know what records are kept on my child?
- Is there a charge for the records?
- What does the "right to inspect" include?
- When people say the records should or should not have personally identifiable information, what do they mean?
- How are my child's records protected regarding who has access to the records?
- What if I don't think the information in the record is accurate?
- Does the district or AEA need to ask me for permission to release the information in my child's educational record? Are there exceptions?
- Are there other steps a district and AEA must take to protect and safeguard my child's confidentiality and privacy?
- What happens to my child's educational records when they are no longer needed?

**Child's Rights****21**

- When do the procedural rights under IDEA 2004 transfer to my child?
- What happens at the age of majority?

**Appendices****23****Definitions****23****Model Forms****26**

- Form for Filing a Complaint
- Model Form to Assist Parents in Requesting a Preappeal Conference
- Model Form to Assist Parents in Filing a Due Process Hearing Request

**INTRODUCTION**

Parents have rights, known as procedural safeguards, which apply to every aspect of the special education process. State and federal laws and regulations outline what needs to happen to ensure that children with identified disabilities and on an Individualized Education Program (IEP) receive a free appropriate public education (FAPE). This document serves as *your* procedural safeguards notice and will help you understand the rights available to you and your child through a federal law, the Individuals with Disabilities Education Improvement Act (IDEA 2004) and the Iowa Administrative Rules of Special Education. Some of the areas that will be reviewed in this document are: Notice, Informed Consent, Recordkeeping, Evaluations, Mediation, Due Process, Attorney Fees, Age of Majority and Discipline.

***Where can I find further assistance?***

If you would like further verbal explanation of your rights, contact any of the following for more help:

- **Your local school district superintendent or principal**
- **Your Area Education Agency (AEA) and ask for:**
  - Director of Special Education
  - The AEA Parent-Educator Connection program

AEA 1	Dubuque	800-632-5918
AEA 267	Cedar Falls	800-542-8375
AEA 4	Sioux Center	800-572-5073
AEA 8	Fort Dodge	800-669-2325
AEA 9	Bettendorf	800-947-2329
AEA 10	Cedar Rapids	800-332-8488

AEA 11	Johnston	800-362-2720
AEA 12	Sioux City	800-352-9040
AEA 13	Council Bluffs	800-432-5804
AEA 14	Creston	800-362-1864
AEA 15	Ottumwa	800-622-0027
AEA 16	Burlington	800-382-8970

- **The Iowa Department of Education**  
 Bureau of Children, Family, and Community Services  
 Grimes State Office Building  
 Des Moines, Iowa 50319-0146  
 515-281-3176  
 515-242-6019 FAX  
[deb.samson@iowa.gov](mailto:deb.samson@iowa.gov)
- **The Iowa Parent Training and Information Center**  
 321 East 6th Street  
 Des Moines, Iowa 50309  
 1-800-450-8667  
 515-243-1713  
 FAX 515-243-1902  
[info@askresource.org](mailto:info@askresource.org)  
<http://askresource.org>
- **Iowa Protection and Advocacy, Inc.**  
 950 Office Park Road, Suite 221  
 West Des Moines, Iowa 50265  
 515-278-2502  
 515-278-0571 (TDD)  
 800-779-2502  
 515- 278-0539 FAX  
[info@ipna.org](mailto:info@ipna.org)
- **Independent Living Centers:**

Central Iowa CIL 4132 E. 10 <sup>th</sup> Street Des Moines, IA 50309 Phone: 515-563-9337 FAX: 515-563-9337	Evert Conner Rights and Resources CIL 26 E Market Street Iowa City, IA 52240 Phone: 319-933-3870	Illinois Iowa CIL 736 Federal Street Davenport, IA 52801 Phone: 319-934-1460 TDD: 319-932-1460
---	--	--

Both you and the school district share in the education of your child. If you or school personnel have concerns about the education of your child, use every opportunity to hold early and open discussions about your concerns. If your child is receiving special education services, become actively involved in the development of your child's IEP.

***When should I get a copy of the procedural safeguards?***

You will receive a copy of the procedural safeguards for your child with a disability one time a year, except that a copy also must be given to you:

1. Upon initial referral or your request for evaluation for your child;
2. Upon your request for due process hearing under IDEA in that school year;
3. Upon a request by you for the rights information.

***Are there other sources of information for me to find out more about IDEA 2004, the Iowa Administrative Rules of Special Education and other rules and regulations that are important for me to know?***

The following listings are internet addresses with information about parental safeguards you can visit.

- Iowa Administrative Rules of Special Education  
<http://www.state.ia.us/educate/ecese/cfcs/speced/rules.html>  
Search word: Iowa Department of Education - Rules
- Individuals with Disabilities Education Improvement Act (IDEA) 2004  
<http://www.ed.gov/policy/speced/guid/idea/idea2004.html>

For your reference, requirements for the contents of the Procedural Safeguard Manual for Parents are found in 20 USCS § 1415(d) of the Individuals with Disabilities Education Act (IDEA) 2004.

- Family Educational Rights and Privacy Act (FERPA):  
<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

**Other resources and references:**

- *Working Things Out When Things Go Wrong* – a document from the Iowa Department of Education
- National Dissemination Center for Children with Disabilities, NICHY, <http://www.nichcy.org> is a web site with many publication regarding IDEA 2004, procedural safeguards and other disability information.
- PACER Center, <http://www.pacer.org/idea/2004/summary.html> has a summary of IDEA 2004 at the time of this printing, as well as other information for families who have children with disabilities.
- The Iowa Department of Education website for Conflict Resolution at:  
<http://www.state.ia.us/educate/ecese/cfcs/conres/index.html>

*Check with your child's classroom teacher, building principal or AEA consultant (the AEA person who most often talks to you about your child) for further information.*

***What notice must the Iowa Department of Education give me about the procedural safeguards?***

The Iowa Department of Education must give notice that is adequate to fully inform you about the procedural safeguards under IDEA. They include:

1. The Parental Safeguard notices will be available in English, Spanish, Bosnian, Vietnamese, and Laotian.
2. A description of:
  - a. The children on whom personally identifiable information is maintained;
  - b. The types of information sought;
  - c. The methods the State intends to use in gathering the information (including the sources from whom information is gathered); and
  - d. The uses to be made of the information.
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information.
4. A description of all of the rights of parents and children regarding this information, including the rights under FERPA (part 99).
5. Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

## EDUCATIONAL RECORDS

### ***What educational records may I examine?***

As a parent of a child with a disability, you must be afforded an opportunity to inspect and review all education records of your child with respect to:

1. Identification;
2. Evaluation;
3. Educational placement of your child; and
4. The provision of a free appropriate public education (FAPE) to your child.

## PARTICIPATION IN MEETINGS

### ***In what meetings about my child must I be included?***

As a parent of a child with a disability, you must be afforded an opportunity to participate in meetings with respect to:

1. The identification, evaluation, and educational placement of the child; and
2. The provision of a free appropriate public education (FAPE) to the child.

### ***How will the school help that happen?***

Each district and AEA must provide notice to ensure that parents of children with disabilities have the opportunity to participate in meetings. The notice that the school will use to inform you of the meeting is discussed on page 5 in this manual.

### ***It seems people get together often and discuss issues about my child. What is considered “a meeting”?***

In this case, it is easier to state from the law what a meeting does not include:

1. Informal or unscheduled conversations involving district and AEA personnel.
2. A conversation on issues such as teaching methodology, lesson plans, or coordination of service provision, if those issues are not addressed in the child’s IEP.
3. Preparatory activities that district and AEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

### ***How am I involved in placement decisions about my child?***

Each district and AEA must ensure you are a member of any group that makes decisions on the educational placement of your child.

### ***What if I can’t participate in the meeting?***

If you cannot participate in a meeting in which a decision is to be made relating to the educational placement of your child, the district and AEA must use other methods to ensure your participation. Those may include:

1. Individual or conference telephone calls.
2. Video conferencing.

### ***Can a placement decision be made without me?***

A group may make a placement decision without your involvement if the district is unable to obtain your participation in the decision. The school must have a record of its attempts to ensure your involvement.

## PROVISIONS FOR SURROGATE PARENTS

### ***Why would a surrogate parent be appointed?***

Each district, AEA, and the state must ensure that the rights of a child are protected when:

1. No parent can be identified.
2. The district or AEA, after reasonable efforts, cannot locate a parent.
3. The child is a ward of the State under the laws of Iowa.
4. In the case of a child who is a ward of the State, the judge overseeing the child's case alternatively may appoint a surrogate parent. The criteria is listed below.
5. The child is an unaccompanied homeless youth.

### ***What does the district need to do?***

The duties of a district include the assignment of an individual to act as a surrogate for the parents. This must include a method for:

1. Determining whether a child needs a surrogate parent; and
2. Assigning a surrogate parent to the child.

### ***What are the criteria for being selected as a surrogate?***

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

1. Is not an employee of the Iowa Department of Education, the AEA, the district, or any other agency that is involved in the education or care of the child;
2. Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
3. Has knowledge and skills that ensure adequate representation of the child.

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

### ***What if the child is an unaccompanied homeless youth?***

In that case, 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.

### ***What are surrogate parent responsibilities?***

The surrogate parent may represent the child in all matters relating to:

1. The identification, evaluation, and educational placement of the child; and
2. The provision of a free appropriate public education (FAPE) to the child.

### ***How soon must a a surrogate parent be appointed for a child?***

The state must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 calendar days after a district or AEA determines that the child needs a surrogate.

## INDEPENDENT EDUCATIONAL EVALUATION

### ***What is an Independent Educational Evaluation (IEE)?***

An independent educational evaluation (IEE) is an evaluation of your child that is conducted by a qualified examiner who is not employed by the school district or AEA. The AEA has set forth the criteria for the IEE in its board policy.

### ***Can I request an IEE?***

Yes, you have a right to obtain an IEE for your child, subject to several considerations.

***Why would I ask for an IEE?***

When you disagree with the results of the educational evaluation done by the school or AEA you may request an IEE.

***What might the school say or do if I make a request for an IEE?***

The school or AEA could ask you why you object to the public evaluation, but an explanation from you is not required. An explanation may not unreasonably delay either the IEE or a school or AEA initiated hearing. The school or AEA could agree with you and provide the IEE at public expense. The school could ask for a hearing to show why the completed evaluation is appropriate. In that case, an ALJ would make a decision about whether the school or AEA is correct. Even if the evaluation is determined to be appropriate through a hearing process, you may still get an IEE; but the school or AEA will not pay for it.

***If I chose to get an IEE, what can be done with the information that I get?***

If the evaluation meets the criteria of the AEA, the information must be considered in decisions made with respect to free appropriate public education (FAPE) for your child. In a due process hearing, either you or the school may use the information for the child.

***Who pays for an IEE?***

The AEA pays for the full cost of the evaluation or ensures that the evaluation is at no cost to you. If an ALJ requests an IEE, it must be at public expense.

***What other points do I need to know or think about in respect to an IEE?***

1. If you are seeking an IEE at public expense, the AEA will provide information about where an IEE may be obtained and the agency criteria.
2. The AEA may not impose conditions or timelines, other than its criteria in getting the IEE.
3. The AEA criteria must be consistent with your right to an IEE.

**PRIOR NOTICE**

Because your participation in decisions for your child's education is important, the laws require assurances that you are involved during specific activities along the way. Those specific activities and decisions affect your child's special education services. "Prior notice" is a written communication to you from the school when the school is proposing or refusing to initiate or proposing or refusing to change the identification, evaluation or educational placement, or the provisions of FAPE for your child. Such notice must be given to you a reasonable time before the district or AEA implements that action, but after the decision on the proposal or refusal has been made. The proposal or refusal must be an issue over which an IEP Team has the authority to render a decision, although an IEP Team will not be involved in determining whether a child should receive an initial evaluation.

***What is prior notice by a district or AEA?***

It is a written communication from a district or AEA that includes information about a variety of items, depending on the issue. You may get prior notice about anything that is happening to your child in relation to special education services. Those times must include:

1. The initiation of a service.
2. A change in a special education service.
3. Issues related to identification of special education services.
4. The educational placement of your child, if there is a change.
5. Evaluations that are needed.
6. Anything related to the provision of FAPE if the IEP Team's inquiry leads to the conclusion that a substantial or material change has occurred.

You may also get written prior notice if the school or AEA is refusing to do any of the items listed above.

***What information is included in the notice?***

1. A description of the proposed or refused action.
2. An explanation of why an action is being proposed or refused.
3. A description of each evaluation procedure, assessment, record or report that agency used as a basis for the proposed or refused action.
4. A statement saying your child has protection under the procedural safeguards in the law. If this notice is not an initial referral for evaluation you will be referred to this document for a description of your procedural safeguards.
5. Sources for parents to contact to obtain assistance in understanding the sections of the law covered in the procedural safeguards manual.
6. A description of other options the IEP Team considered and the reasons why those options were rejected.
7. A description of other factors that are relevant to the agency's proposal or refusal.

***What will the "notice" look like?***

It will be a form or written letter, using language that is as understandable as possible. It will be in your native language, or presented in another reasonable and feasible way that is understandable to you. There may also be written documentation presented that indicates you understand what the district or AEA is presenting to you.

**BEHAVIOR AND DISCIPLINE PROCEDURES**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct.

***What happens if my child violates the code of student conduct?***

School personnel may remove your child from his/her current placement by:

1. Suspension;
2. Placing him/her in another setting; or
3. Assigning your child to an appropriate interim alternative educational setting for a violation involving weapons, drugs or for inflicting serious bodily injury.

***How long can my child be removed from their regular school setting?***

Your child may not be removed for more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct

***What if my child is removed for more than the 10 school days?***

After your child has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the district must provide services.

For disciplinary changes in placement that 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 child's disability* school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, but must provide services.

***Will my child continue to receive special education services while the child is removed from school?***

When your child is removed from the current placement they must:

1. Continue to receive educational services, although in another setting, so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in the IEP.
2. Receive a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.
3. The services required may be provided in an interim alternative educational setting.

***Are there times when services will not be provided to my child?***

The school need not provide services during periods of removal of your child who has been removed from the current placement for 10 school days or less in that school year, if services are not provided to a child without disabilities who has been similarly removed.

***Who decides where and if the services will be provided to my child?***

After a child with a disability has been removed from his or her 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:

1. School personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, if any, and the location in which services will be provided.
2. If the removal is for more than 10 consecutive school days or is a change of placement, your child's IEP Team determines appropriate services and the location in which services will be provided.

***What is a manifestation determination?***

Within 10 school days of any decision to change the placement of your child because of a violation of the code of student conduct, the school, relevant members of the child's IEP Team (as determined by you and the district) and you must review all relevant information in the student's file including:

1. Your child's IEP;
2. Any teacher observations;
3. Any relevant information provided by you.

The purpose is to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability.
2. If the conduct in question was the direct result of the school's failure to implement the IEP.

If either of the conditions are met, the conduct must be determined to be a manifestation of the child's disability.

*This process is not followed for removals that are not more than 10 consecutive school days or do not constitute a change of placement.*

***If there is a determination that the behavior was a manifestation of my child's disability, what happens then?***

If the district, you, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; *and*
3. Return the child to the placement from which the child was removed, unless the parent and the district agree to a change of placement as part of the modification of the behavioral intervention plan (except as provided for special circumstances addressed in the next question).

***Are there occasions when these rules of manifestation determination do not apply?***

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

1. Carries a *weapon\** to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or a district;
2. Knowingly possesses or uses *illegal drugs\**, or sells or solicits the sale of a *controlled substance\**, while at school, on school premises, or at a school function under the jurisdiction of an SEA or a district; or

3. Has inflicted *serious bodily injury*\* upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or a district.

*\*Definitions of weapon, illegal drugs, controlled substance, and serious bodily injury are included in the definitions section on page 25 of this manual.*

***How do I know that a disciplinary action for my child has started?***

No later than the date on which the decision to take disciplinary action is made, the district must notify you of that decision, and provide you the procedural safeguards notice. (This manual is the procedural safeguards notice.)

***Who determines the interim alternative educational setting?***

The IEP Team determines the interim alternative educational setting.

***Can I appeal the school's disciplinary action decision?***

You may appeal the decision regarding:

1. Placement, or
2. The manifestation determination.

***Can a district request a hearing or an appeal?***

Yes, if they believe that your child's current placement is substantially likely to result in injury to your child or others, the district may request a hearing.

***What can an administrative law judge (ALJ) do?***

An ALJ hears, and makes a determination regarding an appeal. In making the determination, the ALJ may:

1. Return your child to the placement from which he/she was removed if the ALJ determines that the removal was a violation of the law or that his/her behavior was a manifestation of their disability;
2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the ALJ determines that maintaining your child's current placement is substantially likely to result in injury to him/her or to others.

***Can the district do anything about the ALJ's decision?***

The appeal procedures may be repeated, if the district believes your child would be dangerous if returned to the original placement.

***When can there be an expedited hearing?***

Whenever a hearing is requested regarding disciplinary procedures, you or the district must have an opportunity for an impartial due process hearing. The Iowa Department of Education must arrange for an expedited hearing:

1. It must occur within 20 school days of the date the hearing is requested;
2. It must result in a determination within 10 school days after the hearing.

***Are there additional requirements before an expedited hearing can be held?***

Yes, the district must convene a resolution meeting unless the parents, district, and AEA agree in writing to waive the meeting or all parties agree to use the mediation process.

***Are there other timelines I need to know regarding the expedited hearing?***

1. A resolution session meeting must occur within seven calendar days of the date the hearing is requested.
2. The hearing may proceed unless the matter has been resolved to the satisfaction of both you and the district within 15 calendar days of receipt of the hearing request.
3. The decisions from expedited due process hearings may be appealed.

***Where does my child go to school in the meantime?***

When an appeal has been requested by either you or the district, your child must remain in the interim alternative educational setting pending the decision of the ALJ or until the expiration of the time period provided, whichever occurs first, unless you and the Iowa Department of Education or the district agree otherwise.

***If my child has not been found eligible for special education, are there still protections under IDEA?***

If your child has not been determined to be eligible for special education and related services under IDEA and if your child has engaged in behavior that violated the code of student conduct, you may assert any of the protections provided for in this law if the school *had knowledge* that your child was a *child with a disability* before the behavior that precipitated the disciplinary action occurred.

***What does a “basis of knowledge” by the school mean?***

The school must be deemed to have knowledge that a child is a child with a disability before the behavior that precipitated the disciplinary action occurred. For example:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of your child, that your child is in need of special education and related services;
2. You requested an evaluation for special education;
3. The teacher of your child, or other personnel at the school, expressed specific concerns about a pattern of behavior demonstrated by your child directly to the director of special education of the agency or to other supervisory personnel of the agency in accordance with the district or AEA established child find or special education referral system.

***Is there an exception to the “basis of knowledge” of the school?***

A school would not be deemed to have knowledge:

1. If you have not allowed an evaluation of your child in the past.
2. If you have refused services under IDEA.
3. If your child has been evaluated and determined to not be a child with a disability.

***What are the conditions that apply if no “basis of knowledge” exists for the school?***

1. If a school does not have knowledge that your child is a child with a disability prior to taking disciplinary measures against him/her, the child may be subjected to the disciplinary measures applied to children without disabilities who engaged in comparable behaviors.
2. If you make a request for an evaluation of your child during the time period in which your child is subjected to disciplinary measures the evaluation must be conducted in an expedited manner.
3. Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your child is determined to be a *child with a disability*, taking into consideration information from the evaluation conducted by the district and information provided by you, the district must provide special education and related services.

***Can my child be referred to law enforcement and/or judicial authorities?***

Nothing prohibits a district or AEA from reporting a crime committed by a child 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 child with a disability.

***If my child is referred to law enforcement or judicial authorities, what information about my child can they receive from the district?***

Any district reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to which the agency reports the crime.

A district reporting a crime may transmit copies of the child's special education and disciplinary records only to the extent that the Family Educational Rights and Privacy Act permit the transmission.

***What is considered a change of placement because of a disciplinary removal?***

A change of placement occurs if:

1. The removal is for more than 10 consecutive school days;
2. Your child 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 child's behavior is substantially similar to the child's behavior in the incidents that resulted in the series of removals, taken cumulatively, is determined to have been a manifestation of the child's disability.
  - c. Because of such additional factors as:
    - i. The length of each removal;
    - ii. The total amount of time the child has been removed; and
    - iii. The proximity of the removals to one another.

**LEGAL PROCESS OPTIONS****Preappeal Conference*****What help can I get from the Iowa Department of Education to help resolve a dispute with my child's district or AEA?***

One option is a preappeal conference, which is a form of mediation. It means that a mediation is desired but a hearing is not being requested. A model form for your use is available on page 27. The Iowa Department of Education abides by the same guidelines for a preappeal conference as are outlined in the "mediation" section on page 14.

**Complaint Procedure*****Does the Iowa Department of Education provide a procedure to file a complaint?***

The Iowa Department of Education has written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State, by providing for the filing of a complaint with the Iowa Department of Education;
2. Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures.

In resolving a complaint in which the Iowa Department of Education has found a failure to provide appropriate services, the State must address:

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and
2. Appropriate future provision of services for all children with disabilities.

***What must the procedure include?***

The Iowa Department of Education must include in its complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the Iowa Department of Education determines that 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 district or AEA with the opportunity to respond to the complaint, including, at a minimum:
  - a. At the discretion of the district or AEA, a proposal to resolve the complaint; and
  - b. With the consent of the parent, an opportunity for the district or AEA to engage the parent in mediation, or alternative means of dispute resolution;

4. Review all relevant information and make an independent determination as to whether the district or the AEA is violating a requirement of IDEA;
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
  - a. Findings of fact and conclusions; and
  - b. The reasons for the Iowa Department of Education's final decision.

***Are there other limits to this procedure? Are extensions beyond 60 days allowed?***

The Iowa Department of Education's procedures also must:

1. Permit an extension of the time limit only if:
  - a. Exceptional circumstances exist with respect to a particular complaint; or
  - b. The parent and the district or AEA agree to extend the time to conduct the activities.
2. Include procedures for effective implementation of the Iowa Department of Education's final decision, if needed, including:
  - a. Technical assistance activities;
  - b. Negotiations; and
  - c. Corrective actions to achieve compliance.

If a written complaint is received that is also the subject of a due process hearing, the State must set aside the complaint until the conclusion of the hearing.

1. If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties:
  - a. The due process hearing decision is binding on that issue; and
  - b. The SEA must inform the complainant to that effect.

***How is a complaint filed and who can file?***

An organization or individual may file a signed written complaint.

The complaint must include:

1. A statement that a district or AEA has violated a requirement of Part B of IDEA 2004;
  - a. The facts on which the statement is based;
  - b. The signature and contact information for the complainant; and
  - c. If alleging violations against a specific child:
    - i. The name and address of the residence of the child;
    - ii. The name of the school the child is attending;
    - iii. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
    - iv. A description of the nature of the problem of the child, including facts relating to the problem; and
    - v. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
  - d. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received.
  - e. The party filing the complaint must forward a copy of the complaint to the district or AEA serving the child at the same time the party files the complaint with the Iowa Department of Education.

A model form to file the complaint can be found on page 26.

**Due Process Hearing Request**  
**(in IDEA referred to as Due Process Complaint Notice)**

***Why would I file a due process hearing request?***

You may file a due process hearing request relating to your child and referring to:

1. The identification;
2. The evaluation;
3. The educational placement of your child with a disability; or
4. The provision of FAPE to your child.

***Is there a time limit for filing a due process hearing request?***

The basis of the due process hearing request must claim a violation took place not more than two years ago.

***Are there exceptions to the time line requirements for filing a due process hearing request?***

Yes, the timeline shall not apply if you were prevented from requesting the hearing due to:

1. Specific misrepresentations by the district or AEA that it had resolved the problem forming the basis of the hearing request; or
2. The district or AEA withheld information from you that was required to be provided.

***How can I find out where to obtain legal assistance?***

The Iowa Department of Education must inform you of any free or low-cost legal and other relevant services available in the area if:

1. You request the information; or
2. You or the agency requests a hearing under this section.

***What do I need to include in a due process hearing request?***

The due process hearing request must include:

1. The name of your child.
2. The address of the residence of your child.
3. The name of the school your child is attending.
4. A description of the nature of the problem relating to the proposed or refused initiation or change in your child's program or services, including facts relating to the problem.
5. A proposed resolution of the problem you think may work given what you know about your child and the problem at that time.
6. In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending.

***How important is it that all of the requirements of the notice are included?***

You will not have a due process hearing until you or your attorney files a due process hearing request that meets all requirements. A model form to file a due process hearing request is found on page 25.

***Who decides whether the notice has met all of the requirements?***

The due process hearing request must be considered sufficient unless the party receiving the due process hearing request notifies the Iowa Department of Education in writing within 15 calendar days of receipt of the due process hearing request that the receiving party believes the notice does not meet the requirements. The Department of Education will then notify the ALJ and the other party in writing.

Within five calendar days of receipt of notification, the ALJ must make a determination on the face of the due process hearing request of whether it meets the requirements, and must immediately notify the parties in writing of that determination.

***Where do I send the due process hearing request?***

You are required to send the notice to your child's resident district, the AEA and any other parties named. This request must remain confidential. You will also need to provide a copy of the notice to the Iowa Department of Education. The Iowa Department of Education is responsible for conducting the impartial due process hearing.

***What if there are other things I want to add to the due process hearing request after I file?***

You may amend your due process hearing request only if:

1. The other party consents in writing to the amendment and is given the opportunity to resolve the due process hearing request through a resolution session; or.
2. The ALJ grants permission, except that the ALJ may only grant permission to amend at any time not later than five calendar days before the due process hearing begins.

*When you choose to amend a due process hearing request, the timelines all begin again for the impartial due process hearing or the resolution session meeting.*

***How will the district respond to my due process hearing request?***

If the district has not sent a prior written notice to you regarding the subject matter contained in the due process hearing request you wrote, the district must, **within 10 calendar days of receiving** the due process hearing request, send to you a response that includes:

1. An explanation of why the agency proposed or refused to take the action raised in the due process hearing request;
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 agency used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the agency's proposed or refused action.

The district and AEA receiving a due process hearing request must, within 10 calendar days of receiving the due process hearing request, send to you a response that specifically addresses the issues raised in the due process hearing request. Copies of this response should also be sent to the Iowa Department of Education.

<b>Resolution Session</b>
---------------------------

Within 15 calendar days of receiving notice of the parents' due process hearing request, and prior to the initiation of an impartial due process hearing, the district and AEA must convene a meeting with you and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process hearing request that:

1. Includes a representative of the district and AEA who has decision-making authority.
2. May not include an attorney of the district or AEA unless an attorney accompanies you.

***What is the purpose of the resolution session?***

The purpose of the resolution meeting is for you to discuss your due process hearing request, and the facts that form the basis of request for the hearing so that the district and AEA have the opportunity to resolve the dispute that is the basis for the due process hearing request.

***Does the resolution session need to be held?***

Yes, unless:

1. You, the district, and AEA agree in writing to waive the meeting.
2. You, the district, and AEA agree to use the mediation process available through the Iowa Department of Education.

The parties identified in the due process hearing request will need to send documentation to the Iowa Department of Education demonstrating that the resolution session was held or that all parties agreed to waive the resolution session.

***Who attends the resolution session?***

You and the district and AEA determine the relevant members of the IEP Team to attend the resolution session.

***What is the “resolution period”?***

The 30 calendar day period that begins when the district receives the due process hearing request. During that time there are opportunities to resolve the issues in the complaint. If the district has not resolved the issues presented in the due process hearing request to your satisfaction within 30 calendar days, the due process hearing must occur, assuming the requirement for filing a due process hearing request requirements have been met.

***How important is the resolution session?***

Except when you and the district have jointly agreed to waive the resolution session or to use mediation, when you have filed a due process hearing request, your failure to participate in the resolution session may delay the timelines for the resolution process and impartial due process hearing until the meeting is held.

***Does a legally binding settlement agreement come from this resolution session?***

If a resolution to the dispute is reached at the resolution session you and the district must execute a legally binding agreement that is:

1. Signed by you and a representative of the district who has the authority to bind the district; and
2. Enforceable in any State court of competent jurisdiction or in a district court of the United States.

***Is there a period of time where I can change my mind about the agreement?***

There is and it is called an agreement review period. If you execute an agreement during the resolution period, either you or the district and AEA may void the agreement within 3 business days of execution of the agreement.

<b>Mediation</b>
------------------

The Iowa Department of Education must ensure that procedures are established and implemented to allow parties to resolve disputes through a mediation process.

***What are the procedures and requirements for a mediation that I need to know?***

The procedures must ensure that the mediation process:

1. Is voluntary on the part of the parties (you, the district and the AEA);
2. Is not used to deny or delay your right to a hearing on a due process hearing request; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

***How do I know who the mediators are? How is one chosen to listen to concerns about my child? Who pays for the mediation?***

The Iowa Department of Education must:

1. Maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
2. Select mediators on a random, rotational, or other impartial basis.
3. Bear the cost of the mediation process, including the costs of meetings with a disinterested party when the choice is to not use mediation.

***How do I know the mediator is impartial?***

An individual who serves as a mediator:

1. May not be an employee of the Iowa Department of Education, the AEA or the district that is involved in the education or care of the child; and
2. Must not have a personal or professional interest that conflicts with the person’s objectivity.

According to the law, a person who otherwise qualifies as a mediator is not an employee of a district, the AEA or the Iowa Department of Education solely because he or she is paid by the agency to serve as a mediator.

***What are some things I need to know about the mediation process?***

1. 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.
2. If you and the district resolve a dispute through the mediation process, including the preappeal conference, you, the district, and AEA must execute a legally binding agreement.
3. 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.
4. Both you and a representative of the district and AEA who have the authority to bind such agencies must sign the legally binding agreement.
5. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.
6. The parties to mediation will be required to sign a confidentiality pledge prior to the commencement of the mediation to ensure that all discussions that occur during mediation remain confidential.

***What if I don't want to use a mediation process?***

The AEA may establish procedures to offer to parents and districts that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party.

***Who is a disinterested party?***

1. An appropriate alternative dispute resolution entity; or
2. The Iowa Parent Training and Information Center; or
3. Community parent resource center.

***What would the disinterested party do?***

The disinterested party would explain the benefits of, and encourage the use of, the mediation process to you.

**Impartial Due Process Hearing**

Whenever a due process hearing request is filed, you or the district involved in the dispute must have an opportunity for an impartial due process hearing.

***Who is responsible for conducting the due process hearing?***

The Iowa Department of Education must conduct the hearing.

***Who listens to the information and makes decisions at the due process hearing?***

A person with the title of administrative law judge (ALJ) assumes that role at a due process hearing. The Iowa Department of Education must keep a list of the persons who serve as ALJs. The list must include a statement of the qualifications of each of those persons.

***What are the qualifications of an impartial ALJ?***

At a minimum, an ALJ must not be:

1. An employee of the Iowa Department of Education, the AEA or the district that is involved in the education or care of the child; or
2. A person having a personal or professional interest that conflicts with the person's objectivity in the hearing.

An ALJ:

1. Must possess knowledge of, and the ability to understand, the provisions of the IDEA 2004, Federal and State regulations pertaining to IDEA, and legal interpretations of the IDEA by Federal and State courts;
2. Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
3. Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ.

***In the meantime, where does my child go to school?***

Your child must remain in his or her current educational placement during the period of the administrative or judicial proceedings, unless all parties agree otherwise.

***Is there an exception to the current placement provision?***

Yes, if a child is in an interim alternative educational placement at the time of the hearing proceedings, the child must remain in that setting pending the decision of the ALJ or the expiration of the time period occurs.

***What if my child has never been in public school?***

If the due process hearing request involves an application for initial admission to public school, your child, with your consent, must be placed in the public school until the completion of all the proceedings.

If the decision of an ALJ in a due process hearing conducted by the Iowa Department of Education agrees with you that a change of placement is appropriate, that placement must be treated as an agreement between the State and you.

***What can be discussed at the due process hearing?***

The party requesting the due process hearing shall not be allowed to raise any issues at the due process hearing that were not raised in the due process hearing request unless the other party agrees otherwise.

***Is there a timeline that needs to be followed for requesting a due process hearing?***

You, the district, or AEA must request an impartial hearing within two years of the date that you, the district, or AEA knew or should have known about the alleged action that forms the basis of the due process hearing request.

***Are there exceptions to the timeline rule?***

The timeline does not apply if you were prevented from filing a due process hearing request due to:

1. Specific misrepresentations by the district or AEA that it had resolved the problem forming the basis of the due process hearing request.
2. The district or AEA withheld information from you that was required to be provided to you.

***What are the rights in a due process hearing that I need to be aware of according to the law?***

Any party to a hearing conducted 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 children with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
5. Obtain a written, or, at the option of the parents, electronic findings of fact and decisions.

***What about disclosure of additional information at the due process 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 at least five business days prior to a hearing. An ALJ may bar any party that fails to comply with the five business day rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

***Are there rights specific to me as parent at the due process hearing?***

When you are involved in hearings you must be given the right to:

1. Have your child, 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 described provided at no cost to you.

***What decision is an administrative law judge required to make?***

An ALJ must make a decision on substantive grounds based on a determination of whether the child received a FAPE. In matters alleging a procedural violation, an ALJ may find that a child did not receive a FAPE only if the procedural inadequacies:

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

Nothing shall be construed to preclude an ALJ from ordering a district or AEA to comply with procedural requirements.

***Am I restricted from filing other due process hearing requests?***

Nothing precludes you from filing a separate due process hearing request on an issue separate from a due process hearing request already filed.

***Is the decision of the ALJ final?***

A decision made in a hearing is final, except that any party involved in the hearing may appeal the decision.

***If I am not happy with the ALJ decision, what can I do?***

Any party shall have the right to bring civil action with respect to the due process hearing decision. Such 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.

***Who else will know about the due process hearing decision?***

The Iowa Department of Education, after deleting any personally identifiable information, must:

1. Transmit the findings and decisions to the State Special Education Advisory Panel; and
2. Make those findings and decisions available to the public.

***What is the time line for due process hearings?***

The Iowa Department of Education must ensure that not later than 45 days after the expiration of the 30 calendar day period:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to each of the parties.

An ALJ may grant specific extensions of time beyond this time period at the request of either party.

**Civil Action**

Any party aggrieved by the findings and decision made has the right to bring a civil action with respect to the request for 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.

***Is there a time limitation to pursue civil action?***

If you disagree with the decision of the ALJ, you shall have 90 calendar days from the date of the decision of the ALJ to file a civil action.

***Are there additional requirements for civil action?***

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.

## ATTORNEY FEES

### ***What do I need to know about attorney fees?***

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

1. The prevailing party who is the parent of a child with a disability;
2. To a prevailing party, the Iowa Department of Education, the AEA or the district, against your attorney who files a due process hearing request or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against your attorney who continues to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
3. To a prevailing Iowa Department of Education, AEA or district against your attorney, or against you, if your 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.

No bonus or multipliers may be used in calculating the attorney fees.

### ***Can attorney fees and related costs be prohibited for certain services?***

IDEA states that attorney fees and may not be awarded or related costs may not be reimbursed in any action or proceeding under the Legal Process Options Section for services performed subsequent to the time of a written offer of settlement to you,:

1. The offer to settle the dispute is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedures or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
2. The offer is not accepted within 10 calendar days; and
3. The court or ALJ finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
4. Attorney 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 that is conducted prior to the filing of a request for due process.

The resolution process shall not be considered:

1. A meeting convened as a result of an administrative hearing or judicial action; or
2. An administrative hearing or judicial action for purposes of this section.

### ***Is there an exception to prohibition on attorney fees and related costs?***

An award of attorney fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

### ***Can the court reduce the amount of the attorney fees?***

The court may reduce the amount of the attorney fees if the court finds:

1. If you, or your attorney, unreasonably protracted the final resolution of the controversy;
2. The amount unreasonably exceeds the hourly rate prevailing in the community;
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 did not provide the district or AEA the appropriate information in the due process hearing request notice.

### ***Is there an exception to the reduction in the amount of attorney fees?***

Provisions of reducing attorney fees do not apply if the court finds the district, AEA or the Iowa Department of Education unreasonably protracted the final resolution of the action or there was a violation of Section 615 of IDEA 2004.

**PLACEMENT OF CHILDREN BY PARENTS IN PRIVATE SCHOOLS WHEN FREE APPROPRIATE PUBLIC EDUCATION (FAPE) IS AN ISSUE**
***When won't the district pay for the cost of education in a private school for my child with a disability?***

It is not required that the district pay for the cost of education in a private school, including special education and related services for your child with a disability, if:

1. The district made FAPE available to your child; and
2. You elected to place the child in a private school or facility.

If there is a disagreement between you and district regarding the availability of an appropriate program for your child, the question of who will pay is subject to an impartial due process hearing.

***Can I be reimbursed for private school placement for my child?***

If your child has been determined an eligible child under IDEA and has received special education and related services at school and then you enroll your child in a private preschool, elementary or secondary school without the consent or a referral by the district, a court or an ALJ *may* require the district to reimburse the you for the cost of the enrollment if:

1. The court or ALJ finds that the agency had not made FAPE available to your child in a timely manner prior to the enrollment in the private school, and
2. The private placement is appropriate.

An ALJ or court may find the private placement appropriate even if it does not meet the state standards that apply to education.

***Can reimbursement for private school placement be reduced or denied?***

Yes, reimbursement can be denied if:

1. At the most recent IEP meeting that you attended prior to the removal you did not inform the IEP Team that you were rejecting the placement the Team was proposing to provide FAPE; including
2. You did not state your concerns with the proposed placement and your intent to enroll your child in a nonpublic school at public expense;
3. You did not give written notice 10 business days (including any holidays that occur on a business day) before the removal including your concerns and the reasons why;
4. Prior to the removal the district requested an evaluation and you did not make the child available; or
5. If there are judicial findings of unreasonableness with respect to actions you have taken.

***Are there exceptions to the reduction or denial of reimbursement for private school placement?***

According to the law, the cost of reimbursement must not be reduced or denied if:

1. The district prevented you from providing the notice.
2. You did not get notice of these requirements.
3. If compliance would likely result in physical harm to the child.

The costs of reimbursement may not be reduced or denied for failure to provide the required notice if:

1. You are illiterate and unable to write in English; or
2. Compliance would likely result in serious emotional harm to your child.

**CONFIDENTIALITY OF INFORMATION**
***May I have access to my child's educational records?***

1. Public agencies must permit you to inspect and review any education records that are collected or maintained or used by the educational agency through provisions in both IDEA and the Family Educational Rights and Privacy Act (FERPA).
2. The agency will comply with a request to review or inspect the records without unnecessary delay – no longer than 45 calendar days and before any IEP meeting, any hearing or resolution session.

***How do I know what records are kept on my child?***

Each agency must provide parents on request a list of the types and locations of education records collected, maintained or used by an agency.

***Is there a charge for the records?***

Each agency may charge a fee for the copies of records if the fee does not effectively prevent you from your right to review and inspect the records. The agency may not charge a fee to search for or to retrieve the information.

***What does the “right to inspect” include?***

1. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
2. The right to request that the agency provide copies of the records containing the information if failure to provide the copies would effectively prevent you from exercising the right to inspect and review the records;
3. The right to have a representative of yours inspect and review the records.

The agency may presume the parent has authority to inspect and review education records unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation and divorce.

***When people say the records should or should not have personally identifiable information, what do they mean?***

Usually, what is meant by personally identifiable information is specific information such as the home address, a social security number or a listing of personal characteristics that describe a child in a way that other people could identify the child with reasonable certainty.

***How are my child’s records protected regarding who has access to the records?***

With the exception of access by parents, and authorized employees, the agency maintaining the records, the district or AEA, shall keep a record of parties obtaining access to education records including:

1. Name of the party;
2. Date access was given; and
3. The purpose for which the party is authorized to use the records.

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

***What if I don’t think the information in the record is accurate?***

If you believe that the information collected, maintained or used is inaccurate or misleading or violates the privacy or other rights of your child, you may request the agency that maintains the information to amend the record. The district or AEA shall decide whether to amend the information in accordance with the request within a reasonable amount of time. If the district or AEA decides to refuse to amend the information, it shall inform you of the refusal and advise you of the right to a hearing. (The hearing requirements are from FERPA and not those in IDEA.)

***As a result of the hearing:***

1. If the decision is that the information is misleading, inaccurate or otherwise in violation of the privacy or other rights of your child, the agency shall amend the information accordingly and inform you in writing.
2. If the decision is that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the agency will inform you of the decision. The district or AEA will also inform you of your right to place in the records it maintains on your child, a statement commenting on the information or setting forth your reasons for disagreeing with the decision of the agency.

3. Any explanation you placed in the records of your child must be maintained by the agency as part of the record as long as the record or contested portion is maintained by the agency. If the records or the contested portion is disclosed by the agency to any other party, your explanation must also be disclosed.

***Does the district or AEA need to ask me for permission to release the information in my child's educational records? Are there exceptions?***

Yes, parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies (e.g., another district in which you are going to enroll your child). An education agency or institution may not release information from education records to participating agencies without parental consent unless authorized to do so according to FERPA. (The Iowa Department of Education shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.)

***Are there other steps the district and AEA must take to protect and safeguard my child's confidentiality and privacy?***

Each agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages of records. Other obligations from the law include:

1. One official at each agency shall assume responsibility for ensuring the confidentiality of personally identifiable information.
2. All people collecting or using personally identifiable information must receive confidentiality and privacy training or instruction on confidentiality and privacy.
3. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

***What happens to my child's educational records when they are no longer needed?***

There is some information in your child's record that is kept as part of a permanent record and may be maintained without time limitations. That information would be things such as: name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed. The district and AEA must inform you when personally identifiable information collected, maintained or used under IDEA 2004 is no longer needed to provide educational services to your child. The information must be destroyed at your request.

## CHILD'S RIGHTS

Iowa provides policies and procedures of the extent to which children are afforded rights of privacy, taking into consideration the age of your child and type or severity of the disability. Educational record rights transfer to your child at 18. However, educational records shall be made available to the parents if the eligible individual is determined to be a dependent student as defined in section 152 of Title 26, the Internal Revenue Code of 1954.

***When do the procedural rights under IDEA 2004 transfer to my child?***

Parental rights will transfer to your child at the age of majority. The age of majority is 18 in Iowa, except for a child with a disability who has legally been determined to be incompetent under Iowa law. In addition, all minors attain their majority by marriage. A person who is less than 18 but who is tried, convicted, and sentenced as an adult also attains majority status.

***What happens at the age of majority?***

1. The district will provide any notice required under the law to both you and your child.
2. All other rights given to you will transfer to your child (this includes youth who are incarcerated in a juvenile or an adult Federal, Iowa or local correctional institution).
3. Beginning at least one year before your child reaches the age of majority under Iowa law, your child's IEP shall include a statement that he or she has been informed of the rights that will transfer to your child at the age of majority. Special education rights transfer to the student when he or she reaches the age of majority.

As a parent, you will retain the rights you have had with the exception of requesting an IEE, and giving consent of an initial evaluation or reevaluation. You will be able to attend and participate at IEP meetings if the student, district or AEA invites you.

**APPENDICES**

**Definitions**

Because the language used in law is so specific, a few definitions are included in the manual to help you understand the law. As parents, you need to have an increased awareness of what you are reading – ‘must’ and ‘shall’ in the law are different from a ‘may’, as an example. *Musts* and *shalls* are ‘need to happen’ items and a ‘may’ suggests there is a choice to do or not. Not every term defined in the law is included here. Talk to your district personnel, AEA consultants, other parents, PEC program staff in your AEA, and/or the PTI of Iowa for support in understanding what some other words mean – and use the supporting materials from the organizations listed in the beginning of the manual!

<b>Day; business day; school day</b>	<p><b>Day</b> means calendar day unless otherwise indicated as business day or school day.</p> <p><b>Business day</b> means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of a business day).</p> <p><b>School day</b> has the same meaning for all children in school, including children with and without disabilities.</p>
<b>Free appropriate public education or FAPE</b>	<p>Means special education and related services that:</p> <ol style="list-style-type: none"> <li>1. Are provided at public expense, under public supervision and direction, and without charge;</li> <li>2. Meet the standards of the State, including the requirements of IDEA 2004;</li> <li>3. Include an appropriate preschool, elementary school, or secondary school education in the State involved</li> <li>4. Are provided in conformity with an individualized education program (IEP).</li> </ol>
<b>Homeless children</b>	<p>Has the meaning given the term in section 725 (42 U.S.C. 11434a) of the McKinney-Vento Homeless Assistance Act, as amended, 42 U.S.C. 11431 <u>et seq.</u></p> <p>The term “homeless children and youths” --</p> <p>(A) means individuals who lack a fixed, regular, and adequate nighttime residence; and</p> <p>(B) includes--</p> <ol style="list-style-type: none"> <li>(i) children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;</li> <li>(ii) children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings</li> <li>(iii) children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and</li> <li>(iv) migratory children who qualify as homeless because the children are living in circumstances described in clauses (i) through (iii).</li> </ol>
<b>Individualized education program or IEP</b>	<p>Means a written record of an eligible individual’s special education services developed, reviewed, and revised with an IEP team. The IEP document records the decisions reached at the IEP meeting and sets forth in writing a commitment of resources necessary for the eligible individual to receive needed services appropriate to the individual’s special learning needs.</p>

---

<b>Individualized education program team or IEP team</b>	Means a group of individuals that is responsible for developing, reviewing, or revising an IEP for a child with a disability.
--	---

---

<b>Educational service agencies and other public institutions or agencies.</b>	<p>The term includes:</p> <ol style="list-style-type: none"> <li>1. An educational service agency, or intermediate unit, Area Education Agencies (AEAs) in Iowa</li> <li>2. Local education agency (LEAs) means school, district, public school</li> <li>3. State Education Agency (SEA) means the Iowa Department of Education</li> </ol>
--	--

---

<b>Native language</b>	<p>Native language, when used with respect to an individual who is limited English proficient, means the following:</p> <ol style="list-style-type: none"> <li>1. The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child</li> <li>2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.</li> <li>3. 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).</li> </ol>
------------------------	---

---

<b>Parent</b>	<p>Means:</p> <ol style="list-style-type: none"> <li>1. A natural or adoptive parent of a child;</li> <li>2. A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;</li> <li>3. A guardian (but not the State if the child is a ward of the State);</li> <li>4. An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or</li> <li>5. A surrogate parent who has been appointed.</li> </ol>
---------------	---

---

<b>Personally identifiable</b>	<p>Means information that contains:</p> <ol style="list-style-type: none"> <li>1. The name of the child, the child's parent, or other family member;</li> <li>2. The address of the child;</li> <li>3. A personal identifier, such as the child's social security number or student number; or</li> <li>4. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.</li> </ol>
--------------------------------	--

---

**Definitions for page 7 in the procedural safeguards manual**

---

<b>Controlled substance</b>	<p><b>Controlled substance</b> means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) <u>For a listing, check</u> <a href="http://www4.law.cornell.edu/uscode/html/uscode21/usc_sec_21_00000812----000-.html">http://www4.law.cornell.edu/uscode/html/uscode21/usc_sec_21_00000812----000-.html</a></p>
<b>Illegal drug</b>	<p><b>Illegal drug</b> means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under the Controlled Substances Act or under any other provision of Federal law.</p>
<b>Serious bodily injury</b>	<p><b>Serious bodily injury</b> has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. The term "serious bodily injury" means bodily injury, which involves—</p> <ol style="list-style-type: none"><li>1. A substantial risk of death;</li><li>2. Extreme physical pain;</li><li>3. Protracted and obvious disfigurement; or</li><li>4. Protracted loss or impairment of the function of a bodily member, organ, or mental faculty.</li></ol> <p><a href="http://straylight.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001365----000-.html">http://straylight.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00001365----000-.html</a></p>
<b>Weapon</b>	<p><b>Weapon</b> has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length. <a href="http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000930----000-.html">http://www4.law.cornell.edu/uscode/html/uscode18/usc_sec_18_00000930----000-.html</a></p>

---

**Model Forms**

## **Model Form to Assist Parents in Filing a Complaint**

A complaint process can be used when you believe a district or area education agency **violated a requirement** of Part B of the Individuals with Disabilities Education Act (IDEA). (The complaint process is not the avenue to use when you are having differences of opinion with educators, such as the type of reading program to use or the amount of support services you believe should be provided for a child.)

Identify the agency or agencies that you believe violated a requirement of Part B of the Individuals with Disabilities Education Act of 2004.

If child-specific, name and address of the residence of the child:  
(If homeless, available contact information for the child, and the name of the school the child is attending)

Provide a description of the nature of the problem of the child, including facts relating to the problem.  
(Use additional sheets of paper if more space is needed.)

Include a proposed resolution of the problem to the extent known and available to you:

This alleged violation occurred not more than one year prior to the date that the complaint is received by the Department of Education: \_\_\_ YES \_\_\_ NO

Organization or person filing the complaint \_\_\_\_\_

Address \_\_\_\_\_

Contact person, if organization \_\_\_\_\_

Telephone number or other method of contact \_\_\_\_\_

**Send a copy of the completed form to:**

1. The district;
2. The AEA, and
3. Director, Iowa Department of Education  
Grimes State Office Building  
Des Moines, IA 50319-0146

## Model Form to Assist Parents in Requesting a Preappeal Conference under IDEA 2004, Part B

(A *preappeal conference* is a mediation without asking for a due process hearing.)

I, \_\_\_\_\_, am requesting a preappeal conference.  
(your name)

Child's name	Parent's name
Address of the residence of the child (or contact information)	Parent's address (or contact information)
Child's resident district, school, and AEA (and district and/or AEA child attends if different) or identification of school child is attending	Parent's phone number (or contact information)
	Is there another parent at another address with parental rights? <input type="checkbox"/> Yes <input type="checkbox"/> No

**This problem results from the:**

*Proposal to initiate or change*

- \_\_\_ the child's identification
- \_\_\_ the child's evaluation
- \_\_\_ the child's educational placement
- \_\_\_ provision of a free appropriate public education to the child

*Refusal to initiate or change:*

- \_\_\_ the child's identification
- \_\_\_ the child's evaluation
- \_\_\_ the child's educational placement
- \_\_\_ provision of a free appropriate public education to the child

**Describe the following (use additional sheets of paper if more space is needed)**

1. The nature of the problem relating to the proposal or refusal indicated above:
  
  
  
2. The facts of this case relating to the above problem:
  
  
  
3. Your proposed resolution of the problem:

Address and phone number of person filing request, if not parent: \_\_\_\_\_  
 Position/role of person filing request, if not parent: \_\_\_\_\_  
(for example: superintendent, principal, attorney)

- Send the completed form to:**
1. The district that made decisions with which you disagree
  2. The AEA special education director
  3. Director, Iowa Department of Education  
 Grimes State Office Building  
 Des Moines, IA 50319-0146

### Model Form to Assist Parents in Filing a Due Process Hearing under IDEA 2004, Part B

I, \_\_\_\_\_, am requesting a hearing before a State Administrative Law Judge.  
(your name)

_____	_____
Child's name	Parent's name
_____	_____
Address of the residence of the child (or contact information)	Parent's address (or contact information)
_____	_____
Child's resident district, school, and AEA (and district and/or AEA child attends if different) or identification of school child is attending	Parent's phone number (or contact number)
	Is there another parent at another address with parental rights? <input type="checkbox"/> Yes <input type="checkbox"/> No

**This problem results from the:**

*Proposal to initiate or change*

- \_\_\_ the child's identification
- \_\_\_ the child's evaluation
- \_\_\_ the child's educational placement
- \_\_\_ provision of a free appropriate public education to the child

*Refusal to initiate or change:*

- \_\_\_ the child's identification
- \_\_\_ the child's evaluation
- \_\_\_ the child's educational placement
- \_\_\_ provision of a free appropriate public education to the child

**Describe the following (use additional sheets of paper if more space is needed)**

1. The nature of the problem relating to the proposal or refusal indicated above:
  
2. The facts of this case relating to the above problem:
  
3. Your proposed resolution of the problem:

Before a hearing is actually held:

I/we agree to participate in a Resolution Session provided by the district/AEA: \_\_\_YES \_\_\_NO

I/we agree to participate in a mediation process provided by the state: \_\_\_YES \_\_\_NO

Address and phone number of person filing request, if not parent: \_\_\_\_\_

Position/role of person filing request, if not parent: \_\_\_\_\_

(for example: superintendent, principal, attorney)

**Send the completed form to:**

1. The district that made decisions with which you disagree
2. The AEA special education director
3. Director, Iowa Department of Education  
Grimes State Office Building  
Des Moines, IA 50319-0146

