

# **YOUR RIGHTS AS PARENTS - REGARDING SPECIAL EDUCATION**

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with notice containing a full explanation of the procedural safeguards available under the IDEA and U.S. Department of Education regulations.

A copy of this notice must be given to parents only one time a school year, except that a copy must also be given to the parents: (1) upon initial referral or parent request for evaluation to determine if the student is a student with a disability; (2) upon receipt of the first written formal complaint involving the student's system, (3) upon receipt of the first due process complaint involving the student's system in a school year; (4) when a decision is made to take a disciplinary action that constitutes a change of placement; and (5) upon parent request. [34 C.F.R. § 300.504(a)]

## *Terms used in this document*

The terms Local Education Agency (LEA), agency or system refer to school systems as designated by the state of Georgia to provide special education and related services to eligible children.

The term parent refers to the same broad definition of parent as found in the Individuals with Disabilities Education Act (IDEA) including the biological or adoptive parent, a foster parent, a guardian authorized to make educational decisions for the child, a person acting in the place of a biological 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 a surrogate that has been appointed.

As a parent of a child who has been referred for special education services or a child who is already receiving special education and related services, you and your child have certain rights which are protected by state and/or federal law. These rights are outlined in the next few pages. Please be sure to ask your school or school system for an explanation if there is anything in them that you do not understand, if you need them in a different language or if you want them explained to you.

## **CONFIDENTIALITY OF INFORMATION**

The information about your child being a child with a disability eligible under the IDEA, his or her special education and related services and other related information is confidential and is not released to others within the system unless they have a legitimate need to know nor is it released to other agencies or groups except under limited circumstances. Regarding when confidential information is released, you have the following rights:

1. Right to restrict third party access to your child's records by withholding consent to disclose records except in certain limited circumstances described in the Family Education Right to Privacy Act (34 C.F.R. § 99.31(a)).
2. Right to be notified and receive copies before information in your child's file is destroyed.
3. Right to be told to whom information has been disclosed.
4. Right to review and receive copies of all information sent to another agency where your child seeks or is eligible to enroll.

## **RECORDS:**

Education records means the type of records covered under the definition of “educational records” in the Family Educational Rights and Privacy Act of 1974 (34 C.F.R. Part 99), those regulations define

Educational records mean those records that are:

- (1) Directly related to the student and
- (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.

The term does not include:

- (1) Records that are kept in the sole possession of the maker, are used only as a person memory aid and are not accessible or revealed to any other person except a temporary substitute for the maker of the record
- (2) Records of the law enforcement unit of an educational agency subject to the provisions of §99.8
- (3) Records relating to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business; related exclusively to the individual in that individual’s capacity as an employee; and are not available for use for any other purpose.
- (4) Records on a student who is 18 years of age or older or is attending an institution of postsecondary education that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in his or her professional capacity; made, maintained or used only in connection with treatment of the student and disclosed only to individuals providing the treatment, and treatment does not include remedial educational activities or activities that are program of instruction.
- (5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual’s attendance as a student.
- (6) Grades on peer-graded papers before they are collected and recorded by a teacher.

“educational records” as follows:

Rights related to records:

1. Right to examine all records relating to your child without unnecessary delay after parents' request and before any meeting regarding an IEP or hearing and, in no case, more than 45 days after request.
2. Right to have your representative review the records.
3. Right to request that the agency provide copies of the records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.
4. Right to have the agency presume that a parent has authority to inspect and review records of his or her child unless agency has been notified that parent does not have authority under state law.
5. Right to inspect and review only the information relating to their child if any educational record includes information on more than one child.
6. Right to have the public agency keep a record of parties obtaining access to identifiable student information included in educational records collected, maintained, or used under this part (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

7. Right to have the public agency search for or retrieve educational records without charge.
8. A parent may be charged a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
9. Right to be informed of all types and locations of records being collected, maintained or used by the agency.
10. Right to ask for an explanation of any item in the records.
11. Right to ask for an amendment of any record if the record is inaccurate, misleading or violates the privacy or other rights of the child.
12. Right to have the agency decide whether to amend the information within a reasonable time after being asked to do so.
13. Right to be informed of refusal to amend and right to a hearing if the agency refuses to make the requested amendment.
14. Right to be informed if the agency decides in a hearing that the information is inaccurate, misleading or violative of the child's rights and the right to have the record amended.
15. Right to be informed of the parents' right to place a statement in the record commenting on information or setting forth the parents' reasons for disagreeing with the agency decision if it is decided in a hearing that information need not be amended.
16. Right to have the parents' explanation maintained in the record as long as the contested record is maintained.
17. Right to have the parents' explanation disclosed if the contested record is disclosed.

### **INDEPENDENT EDUCATIONAL EVALUATION:**

*Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child. *Public expense* means that the school system either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of the IDEA, which allow each State to use whatever State, local, Federal and private sources of support are available in the State to meet the requirements. [34 C.F.R. § 300.503(a)(3)(i - ii)]

You are entitled to only one independent educational evaluation of your child at public expense each time your school system conducts an evaluation of your child with which you disagree.

If you request an independent educational evaluation of your child at public expense, your school system must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at

public expense, unless the school system demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school system's criteria.

1. If your school system requests a hearing and the final decision of the administrative law judge is that your school system's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
2. If you request an independent educational evaluation of your child, the school system may ask why you object to the evaluation of your child obtained by your school system. However, your school system may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school system's evaluation of your child.

As a parent, you have the

1. Right to obtain an independent educational evaluation by a qualified examiner.
2. Right to have the independent evaluation obtained at either public or private expense considered in meetings where placement or program decisions are made or in a hearing regarding a free appropriate public education.
3. Right to be told by your local school system where an independent evaluation may be obtained at no expense or low expense.
4. Right to an independent evaluation at public expense under the same criteria as those used by the public agency under which the evaluation is obtained, including the location of the evaluation if you disagree with the agency's evaluation, except that the public agency has the right to initiate a hearing regarding a free appropriate public education to show that its evaluation is appropriate.
5. Right to an independent evaluation at public expense when the evaluation is requested by an ALJ/hearing officer during a hearing.

## **NOTICE:**

Notice means written information provided to the parent about proposed evaluations, meetings, and /or changes in program or eligibility or any other information related to the identification, evaluation and services provided to a child with a disability under the IDEA. Written notice is provided to give you information and the opportunity to respond prior to the changes being made.

1. Right to be notified and present at all meetings before the agency initiates or changes (or refuses to initiate or change) the identification, evaluation, placement or provision of a free appropriate public education for your child.
2. Right to have that notice in writing, in your native language, or other principal mode of communication, at a level understandable to the general public. Right of a parent, whose native language or other mode of communication is not a written language, to have the notice translated orally or by other means in his or her native language or other mode of communication; the right

to understand the content of the notice; and the right to written evidence that these requirements have been met.

3. Right to have the notice describe the proposed action, explain why it is proposed, describe the options considered by the agency and explain why those other options were rejected.
4. Right to be notified of each evaluation procedure, test, assessment, record or report the agency has used as a basis for any agency-proposed action or basis for refusal.
5. Right to a description of any other factors which are relevant to the agency's proposed action or basis for refusal.
6. Right to a notice that includes a full explanation of all the procedural safeguards available to the parents.
7. Right to be notified of sources to contact to obtain assistance in understanding provisions of the IDEA.
8. Right to prior written notice that contains all information in items 2 through 7 above before the agency initiates or changes or refuses to initiate or change the identification, evaluation, placement or provision of a free and appropriate public education.
9. Right to be present at all IEP meetings. This includes the right to have the meeting at mutually agreeable time and location, to be notified of whom will be in attendance and to bring anyone with you that has knowledge or expertise about your child with a disability.
10. If, available in your school system, you may choose to receive all notices by email. These include prior written notice, the procedural safeguards (parents rights ) notice, and notices related to due process complaints.

## **CONSENT:**

*Consent* means:

- a) You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
- b) You understand and agree in writing to that described action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**
- c) You understand that the consent is voluntary on your part and you may withdraw your consent at anytime. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

1. Right to give consent before an *initial* evaluation of your child to determine whether your child is eligible under the IDEA to receive special education and related services. You must also receive prior written notice of the proposed action.
  - a. If you refuse to provide consent or fail to respond to a request for consent, the public agency may, but is not required to, pursue the evaluation by using the mediation or due process procedures to obtain that evaluation.
  - b. Consent to an initial evaluation is NOT consent to provide services under the IDEA.
  - c. The public agency does not violate its child find obligations if it does not pursue the evaluation if you do not provide consent. .
2. Right to give consent before a reevaluation is conducted. This is true unless your school system can demonstrate that (i) it took reasonable steps to obtain your consent for your child's reevaluation; **and (ii)** you did not respond.
  - a. If you refuse to consent to your child's reevaluation, the school system may, but is not required to, pursue your child's reevaluation by using the mediation, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation.
  - b. As with initial evaluations, your school system does not violate its obligations under the IDEA if it declines to pursue the reevaluation in this manner.
3. If the parent of a child in home school or placed in private school at parental expense does not provide consent for the evaluation or reevaluation, or the parent fails to respond to the request to provide consent, the public agency may NOT use the procedures of mediation or due process hearing to obtain consent.
  - a. The public agency is not required to consider the child eligible for services.
4. Right to give consent before initial placement can be made in special education. The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services.
  - a. If the parent fails to respond or refuses to provide consent for the initial provision of special education and related services, the public agency may NOT use the mediation or due process hearing procedures to obtain that consent.
  - b. The public agency will not be in violation of its child find responsibilities nor its obligation to make a free and appropriate public education available (FAPE) if you do not consent.
  - c. The public agency is not required to convene an IEP team meeting or to develop an IEP for a child for which consent for special education and related services has not been provided.
5. Right to revoke consent at any time. If at any time subsequent to the consent for initial provision of services, the parent of a child revokes consent *in writing* for the continued provision of special education and related services, the public agency:
  - a. May not continue to provide the special education and related services to the child but
  - b. Must, prior to ceasing the provision of services, provide prior written notice
  - c. May not use mediation or due process hearing procedures to obtain consent
  - d. Will not be in violation of the provision of FAPE if you withdraw consent.
  - e. Is not required to convene an IEP team meeting or develop an IEP for further provision of service.

6. Consent is not required prior to reviewing existing data as part of an evaluation or reevaluation or prior to administering a test that is administered to all children unless consent is required for all children.

## **DISPUTE RESOLUTION**

The regulations for the IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any IDEA requirement by a school system, the State Educational Agency, or any other public agency. Only a parent or a school system may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child. While staff of the State Educational Agency generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school system's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below.

1. Right to present complaints, both formal written complaints or due process complaints, with respect to any matter relating to the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education to your child. Detailed explanation and description of all dispute resolution is contained in State board Rule 160-4-7-.12 Dispute Resolution.
  - (a) Formal Written Complaint: the complaint must be a signed, written complaint that sets forth an alleged violation of the IDEA. The complaint shall include a statement that the local system has violated the requirements of IDEA and the facts on which the statement is based. The complaint must allege a violation that occurred not more than **one (1) year** prior to the date the complaint is received.
    1. Right to mediation, if both parties agree, whenever a formal written complaint is filed.
    2. Written complaints are investigated by the Georgia Department of education or its contractors. Both the complainant and the public agency involved have the opportunity to provide information to the Georgia Department of Education during the investigation.
    3. Decisions of written complaints are issued by the Georgia Department of Education within 60 calendar days unless extended for extenuating circumstances.
    4. The decision of a written complaint cannot be appealed.
  - (b) Due Process Complaint: the complaint must set forth an alleged violation that occurred not more than **two (2) years** before the date the parent knew or should have known about the alleged action that forms the basis for the complaint. A due process complaint is a request for a hearing to occur to resolve the matter. The two year time limitation does not apply if you could not file a due process complaint within the timeline because (1) The school system specifically misrepresented that it had resolved the issues identified in the complaint; or (2) The school system withheld information from you that it was required to provide you under Part B of the IDEA.

2. Right to present a formal written complaint or a due process complaint if you disagree with a determination by the school system that your child's behavior was not a manifestation your child's disability.
3. Right to mediation and/or an impartial due process hearing whenever you file a due process complaint and to an expedited due process hearing whenever you file a due process complaint regarding the manifestation of a disability.
4. Responsibility to file due process complaint notice. A parent or school alleging a due process violation under IDEA, or his or her attorney, is required to provide a due process complaint notice to the other party (or their attorney) and the Georgia Department of Education. The notice must include the name and home address of the child; the name of the school the child attends; in the case of a homeless child or youth, the child's contact information and the name of the child's school; a description of the nature of the problem, and a proposed resolution. The party presenting the due process complaint must file this notice before a due process hearing can occur.
  - a. Responsibility to provide sufficient notice of the nature of the problem for which you are filing a due process complaint. If the school system feels that the parent's due process complaint notice is insufficient, the system must notify the hearing officer in writing within 15 days of receiving the complaint.
  - b. Administrative Law Judges (ALJs)/Hearing Officers then have up to 5 days to determine if the notice meets the requirements of IDEA. Upon making a determination, the ALJ must immediately notify all parties in writing of the decision.
  - c. If the ALJ determines that the complaint is sufficient, the school must respond to the due process complaint. If the ALJ determines that the complaint is not sufficient, the parent has the opportunity to resubmit a new complaint and the timelines start over.
5. Right to prior written notice regarding the subject matter of the due process complaint. When the school receives a due process complaint notice, it must first determine whether it provided prior written notice regarding the subject matter of the due process complaint. If it has not done so, the school must provide a response to the parents within 10 days of receiving the due process complaint notice. Prior written notice must contain the following: (1) an explanation of why the agency proposed or refused to take the action raised in the due process complaint, (2) a description of other options that the IEP team considered and the reasons 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 relevant factors in the school's proposal or refusal.
6. Right to a resolution session that provides an opportunity for parents and school systems to resolve any issues in the due process complaint so that the parents and systems can avoid a due process hearing and provide immediate benefit to the child. Within 15 days of when a complaint is filed, the system must convene a Resolution Session between the parents and relevant members of the IEP Team. The session must include a representative of the system who has decision-making authority on behalf of the system. The session may not include an attorney for the system unless the parent is also accompanied by an attorney. The session provides an opportunity for the party who filed the due process complaint to discuss that complaint and the facts forming the basis of it, and an opportunity for the responding party to resolve the complaint. If the parties reach an

agreement, they must execute a legally binding agreement that is signed by the parents and the system representative. The agreement is enforceable in any state court of competent jurisdiction or in a United States system court. Either party may void the agreement up to 3 days after its execution. If the due process complaint is not resolved through this session, then the parties may proceed to a due process hearing.

7. The Resolution Session must occur before a due process hearing may proceed unless both parties agree to use the mediation process or they both agree in writing to waive the resolution session and mediation.
8. Right to be told by the local system of any free or low-cost legal and other relevant services available (e.g., an expert on disability conditions that may be a witness at the hearing) when parent requests information or parent or agency initiates a due process complaint.
9. Right to a hearing conducted by the Georgia Department of Education or a contracted impartial agent of the Georgia Department of Education. The hearing shall be at no cost to either party; however each party is responsible for his, her, or its costs associated with hiring legal counsel or expert witnesses unless a court awards the recovery of such costs to the prevailing party.
10. Right to have the hearing chaired by an administrative law judge (ALJ)/hearing officer who is not employed by a public agency involved in the education of your child or otherwise personally or professionally interested in the hearing (the ALJ/hearing officer is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ/hearing officer).
11. Right to a list of the persons who serve as ALJs/hearing officers, including a statement of the qualifications of each of those persons.
12. Right of either party to be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities at a hearing.
13. Right to have your child present.
14. Right to have the hearing open to the public.
15. Right of parents or parties to present evidence and confront, cross-examine and compel the attendance of witnesses at a hearing.
16. Right to have a hearing or an appeal set at a time and place reasonably convenient to you and your child.
17. At least five (5) business days prior to a hearing conducted pursuant to paragraph (1), each party shall 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. An ALJ/hearing officer may bar any party that fails to comply with this provision from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

18. Right of parents or parties to ask an ALJ/hearing officer to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five days before the hearing.
19. Right of parents or parties to have a written or, at the option of the parent, electronic verbatim record of the hearing.
20. Right of parents or parties to obtain written or, at the option of the parents, electronic findings of fact and decisions within 45 days after the local education agency received the initial request for the hearing, except that the ALJ/hearing officer may grant a specific extension of time at the request of either party.
21. Right of parents or parties to the implementation of a final decision made by the ALJ/hearing officer, unless a party brings a civil action. If a party chooses to bring a civil action, your child will remain in his or her present educational placement until the completion of all appeals unless both parties agree otherwise. Any corrective or compensatory actions required in the decision will not occur until completion of all appeals.
22. Right of aggrieved parents or parties to appeal the decision of the ALJ/hearing officer by bringing a civil action in state or federal court within 90 days from the date of the decision of the ALJ/hearing officer.
23. Right to have your child remain in his or her present educational placement until completion of all hearing and appeal proceedings, unless you and the agency agree otherwise. This right does NOT apply to appeals regarding placement under discipline procedures, manifestation determinations, or when a school system believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. During those appeals, the child must remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period specified in the disciplinary code or federal law, whichever occurs first, unless the parent and the State or school system agree otherwise.
24. Right to have child placed in the public school program until the completion of all the proceedings if the due process complaint involves an application for initial admission to the public school.
25. U.S. District Courts can award reasonable attorneys' fees to prevailing parties, whether that is a parent, State educational agency or local system as part of any settlement of a due process complaint or civil action. Attorneys' fees awarded to SEAs or local systems may only be granted under certain guidelines.
  - a. The parents or their attorney may be forced to pay the agency's attorneys' fees when that attorney files a complaint or civil action that is frivolous, unreasonable, or without foundation, or if the litigation clearly became frivolous, unreasonable, or without foundation.
  - b. The parents or their attorney may be forced to pay the SEAs or local system attorneys' fees if the parents' complaint or subsequent civil action was presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

- c. Not all legal and administrative proceedings and services are eligible for reimbursement. A court may not award attorneys' fees for any services performed subsequent to the time of a written offer of settlement that is made to the parents if:
  - 1) the offer is made in accordance with Rule 68 of the Federal Rules of Civil Procedure;
  - 2) in the case of an administrative hearing, if the offer is made more than 10 days prior to the hearing;
  - 3) the offer is not accepted within 10 days; and
  - 4) the court or administrative hearing officer find that the relief finally obtained by the parents is not more favorable than the offer of settlement. However, attorneys' fees may be awarded to parents who were substantially justified in rejecting the settlement offer.
  - 5) In addition, IEP Team meetings are not eligible for reimbursement 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 session.
  - 6) Attorneys' fees for Resolution Sessions are also ineligible for reimbursement.

26. Mediation may be requested by the school system or the family or any party for any disagreement related to the IDEA.

- a. Mediation shall be at no cost to either party, except that either party shall be responsible for the cost of an attorney or other representative or advisor.
- b. Mediation is voluntary.
- c. Mediation shall not be used to deny or delay a right to a hearing
- d. Mediation shall be scheduled in a timely manner and held in a location convenient to the parties in the dispute.
- e. Mediations shall be conducted by a qualified trained mediator who is impartial and randomly selected by the state.
- f. Discussions during mediation are confidential and may not be used as evidence in any subsequent due process hearing.
- g. If the dispute is resolved in mediation, the parties must enter into a legally binding agreement that sets forth the resolution, is signed by the parties.

27. Resolution session agreements, mediation agreements and due process decisions are legally binding and may be enforced through State court or District court.

- a. Any party may also file a written formal complaint alleging that a resolution agreement, a mediation agreement or a due process decision has not been carried out by the parties. The Georgia Department of Education will conduct an investigation under the formal written complaint procedures and issue a written decision.

## **EVALUATIONS:**

Evaluations may occur when a child is suspected of being a child with a disability who needs special education and related services. Evaluations (usually termed reevaluations) may also occur to determine the current educational needs for a child who is eligible and is receiving special education and related services. A school system may refuse to evaluate your child, but the school system must provide you with prior written notice that explains its refusal and explains that you are entitled to a due process

hearing to determine if your child should be evaluated. The following rights outline the basic procedures for evaluations.

1. Right to have a full and individual evaluation of your child's educational needs.
2. Right to have the evaluation conducted by a multidisciplinary team including at least one specialist with knowledge in the area of the suspected disability.
3. Right to have your child assessed in all areas related to any suspected disability.
4. Right to have appropriate tests administered by qualified examiners.
5. Right to have a variety of assessment tools and other factors used to gather relevant functional, developmental and academic information in determining eligibility for special education and related services and the appropriate educational program for your child.
6. Right to have more than one assessment or piece of data used to determine eligibility.
7. Right to provide information or other privately obtained assessments (conducted by qualified examiners) and have that information considered in the process of determining whether the child is a child with a disability and the educational needs of the child.
8. Right to have the evaluation made in your child's native language or mode of communication.
9. Right to have a reevaluation every three years.
10. Right to have a reevaluation in less than three years if you or your child's teacher requests it. Reevaluations shall not occur more frequently than one time per year unless the school system and the parent agree otherwise.
11. Right to have Initial evaluations completed and an eligibility decision made within 60 calendar days unless referral occurs less than 30 days prior to the end of the school year or in the summer.
  - a. Any summer vacation period in which the majority of an LEA's teachers are not under contract shall not be included in the 60 day timeline for evaluation. However an LEA is not prohibited from conducting evaluations over a summer vacation period.
  - b. Holiday periods and other circumstances when children are not in attendance for five consecutive school days shall not be counted toward the 60 day timeline, including the weekend days before and after such holiday periods.
  - c. Students who turn three during the summer period or other holiday periods must have eligibility decision and IEP (if appropriate) in place by the third birthday.
12. Right to have the eligibility decision for initial determination based on (a) the presence of a disability as defined in the IDEA and (b) the documentation of the impact of the disability on the education of the child.

13. In the case of a previous revocation of consent to provide special education and related services, a new referral shall be treated as an initial evaluation.

### **LEAST RESTRICTIVE ENVIRONMENT:**

Least restrictive environment is the term used to describe the right for the child to remain with his peers without disabilities to the maximum extent appropriate for his or her education. Each child is different and the IEP team determines the setting for services to be delivered. A child should remain in the regular classroom with special education and related services provided in the regular classroom unless there is evidence that this environment is not successful even with supports and services.

1. Right to have your child educated with non-disabled children to the maximum extent appropriate as determined by the IEP team.
2. Right to have your child remain in a regular education environment, unless a special class or separate school is needed. Removing a child from a regular class environment should be done only when the nature or severity of the disability is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily.
3. Right to have available a continuum of alternative placements so that removal from the regular educational program can be the least restrictive situation.
4. Right to have supplementary services such as resource room or itinerant instruction to make it possible for your child to remain in a regular class placement for the majority of the school day.
5. Right to have placement in the school your child would attend if non-disabled, unless the child's individualized education program requires some other arrangement.
6. Right to participate in non-academic and extracurricular services and activities such as meals, recess, counseling, athletics and special interest groups to the same extent as a non-disabled child.

### **SURROGATE PARENTS:**

A surrogate parent is a person appointed for a student for whom no parent can be identified or who is a ward of the state or whose parent's whereabouts cannot be discovered, after reasonable efforts by the local system.

- When a child is a ward of the State, the surrogate may alternatively be appointed by the judge overseeing the child's care provided that the surrogate meets the requirements of the IDEA.
- When a child is an unaccompanied youth as defined in the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 1143a(6)), the local system shall appoint a surrogate in accordance with these requirements.
- The school system shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the system that the child needs a surrogate.

A surrogate parent has no personal or professional interest that conflicts with the interests of the student presented, has knowledge and skills that ensure adequate representation of the students, is not an employee of the Georgia Department of Education, the local system, or any other agency that is involved in the education or care of the child.

1. The school system must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.
2. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child.

### **PRIVATE SCHOOL PLACEMENT AT PUBLIC EXPENSE:**

The IDEA does not require a school system to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school system made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility. However, for students enrolled in private schools, the school system where the private school is located must include your child in the population whose needs are addressed under the IDEA provisions regarding children who have been placed by their parents in a private school.

1. The school system is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the school system made a (FAPE) free appropriate public education available to the child and the parents elected to place the child in such private school or facility.
  - a. When a child is placed by the parent in a nonprofit private elementary or secondary school, the system where the private school is located must consider the student an eligible child in any provision or consideration of proportionate share of federal funds. There is no individual entitlement to special education and related services when parentally enrolled in a private elementary or secondary school in the circumstances described above.
2. If a child with a disability who has previously received special education and related services from the school system has been enrolled by his parents in a private elementary or secondary school without the consent of, or referral by, the school system due to a disagreement about the provision of FAPE, a court or ALJ/hearing officer may require the school system to reimburse the parents for the cost of that enrollment if the court or ALJ/hearing officer finds that the school system had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.
3. The cost of any reimbursement described in paragraph (2) above may be reduced or denied if: (a) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school the parents failed to inform the IEP team that they were rejecting the placement proposed by the school system to provide a free appropriate public education to the child, including stating their concerns and their intent to enroll their child in private school at public expense; or the parents failed, at least 10 business days (including any holidays that occur on a business day) prior to removal of the child from the public school, to give the school system written notice that they were rejecting the placement proposed by the school system to provide a free appropriate public education to the child, including stating their concerns and their intent to enroll their child in private school at public

expense; (b) prior to the parents' removal of the child from the public school, the school system has notified the parents in writing of its intent to evaluate the child with a statement of an appropriate and reasonable purpose of such evaluation, but the parents did not make the child available for the evaluation; or (c) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

4. Reimbursement may not be reduced or denied for failure of the parent to provide notice referred to in paragraph (3) above if:
  - a. The parent is illiterate and cannot write in English;
  - b. Compliance with the notice requirements would result in physical or serious emotional harm to the child;
  - c. The school prevented the parent from providing the notice; or
  - d. The parent had not received this notice of rights.

## **PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES**

School personnel may, for not more than ten school days in a row, remove a child with a disability who violates the code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension without consulting the student's IEP team. School personnel may also impose additional removals of not more than ten days for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

Once a child has been removed from his or her current placement for a total of ten, consecutive or not consecutive, school days in the same school year, the school system must, during any subsequent days of removal in that school year, provide services that enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct (except for a removal that is less than ten school days and is not a change in placement), the school system, the parent and relevant members of the IEP team must review all relevant information in the student's file, in the IEP, any teacher observations and any relevant information provided by the parent to determine:

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

If the relevant members of the IEP team determine that either of these conditions was met, the conduct must be determined to be a manifestation of the child's disability. If the conduct was the result of the school system's failure to implement the IEP, the school system must take immediate action to remedy those deficiencies.

When the conduct is a manifestation of the student's disability the IEP team must conduct (or review if already in place) the Functional Behavioral Assessment (FBA) and develop and implement (or review and modify) a behavioral intervention plan (BIP) for the student to address the behavior so as to prevent it from occurring in the future.

1. If your child carries a weapon to school or to a school function; if your child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; or if your child inflicts serious bodily injury on another person while at school, on school premises or at a school sponsored function, school system personnel may order a change in the placement of your child to (a) an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities), or to (b) an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days without regard to whether or not the behavior was a manifestation of disability. The alternative education setting shall be determined by the IEP team.
2. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate.
3. An ALJ/hearing officer may order a change in the placement of your child to the IEP-determined appropriate interim alternative educational setting for not more than 45 days if the ALJ/hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others; and determines that the interim alternative educational setting meets the requirements of paragraph (5).
4. Any interim alternative educational setting in which your child is placed pursuant to paragraph (1) or paragraph (4) in this section shall: (a) be selected so as to enable your child to continue to receive educational services in order to participate in the general curriculum, although in another setting, and to continue to progress toward the goals set out in the IEP; and (b) receive the services and modifications of a functional behavioral assessment and behavior intervention plan designed to address the behavior so that it does not recur.
5. If a disciplinary action is contemplated as described in paragraph (1) or paragraph (4) of this section for the behavior of your child, you shall be notified of that decision and of all procedural safeguards accorded under this section no later than the date on which the decision to take that action is made; and immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, the school system, the parent and relevant members of the IEP team shall conduct a review of the relationship between your child's disability and the behavior subject to the disciplinary action.
6. In carrying out a review described in paragraph (6) of this section, the school system, the parent and relevant members of the IEP team (as determined by the parent and the school system ) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine (1) if the conduct in question was caused by, or had a direct and substantial relationship to the child's disability; or (2) if the conduct in question was the direct result of the school systems failure to implement the IEP. When the school system, the parent and the relevant members of the IEP determine that either (a) or (b) is applicable, the conduct is a manifestation of the disability.
7. If the determination is that the behavior of your child was not a manifestation of his or her disability, the relevant disciplinary procedures applicable to children without disabilities may be

applied to your child in the same manner in which they would be applied to children without disabilities except that the child: (a) must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the child's IEP; and (b) receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

8. If the determination is made that the conduct was a manifestation of the disability, then the IEP team shall conduct a functional behavioral assessment and implement the behavior intervention plan or review such and revise as necessary if already in place. The child shall be returned to the placement from which he or she was removed, unless the parent and the school system agree to a change of placement as part of the modification of the behavioral intervention plan. For circumstances described in paragraph (1) or (4) an interim alternative setting may be used as determined by the IEP team.
9. If you request an expedited due process hearing regarding a disciplinary action described in paragraph (1)(b) or Paragraph (3) to challenge the interim alternative educational setting or the manifestation determination, your child shall remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period provided for in paragraph (1)(b) or paragraph (3), whichever occurs first, unless you and the State or the school system agree otherwise. Such expedited due process hearing must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing; a resolution session meeting must occur within seven days of the date the hearing is requested and the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request. The decision of an expedited due process hearing may be appealed.
10. When an expedited due process hearing has been requested regarding placement as a result of a violation of code of conduct, the child shall remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period defined, whichever occurs first, unless the parent and the State or local agency agree otherwise.
11. If a child has not been determined eligible for special education and related services and violated a code of student conduct, but the school system had knowledge before the behavior occurred that the child was a child with a disability, then the child may assert the protections described in this notice. A school system has knowledge that the child may be a child with a disability if:
  - a. The parent of the child has expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel or the teacher of the child.
  - b. The parent requested an evaluation related to eligibility for special education and related services under the IDEA.
  - c. The child's teacher or other system personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school system's director of special education or to other supervisory personnel of the school system.

A school system does not have knowledge if:

- a. The child's parent has not allowed an evaluation of the child

- b. Has refused special education and related services
- c. Has revoked consent for the delivery of special education and related services or
- d. The child has been evaluated and determined not to be a child with a disability eligible for services under the IDEA.

If you would like a further explanation of any of these rights, you may contact the special education director for your local school system:

Or you may ask for assistance from the Georgia Department of Education, Divisions for Special Education Supports and Services, Suite 1870, Twin Towers East, Atlanta, Georgia 30334-5010, (404) 656-3963 or 1-800-311-3627 or [www.gadoe.org](http://www.gadoe.org). Regional Georgia Learning Resource System (GLRS) Direction Services can also provide information by phone (1-800-282-7552), or their website at [www.glrs.org](http://www.glrs.org).

In Georgia, the rules for special education are posted on the website for the Georgia Department of Education: [http://www.gadoe.org/pea\\_board.aspx?PageReq=PEABoardRules](http://www.gadoe.org/pea_board.aspx?PageReq=PEABoardRules).