

UNDERSTANDING PROCEDURAL SAFEGUARDS

A Friendly Guide for Parents and Advocates

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KNOW
YOUR
RIGHTS



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For nearly 30 years, Tanya Alvarado has applied her expertise and outstanding legal skills to secure appropriate special education services and programs for hundreds of children through administrative proceedings and in federal court. She has served on the PA Bar Association Exceptional Children Committee, Diversity Member, and Legal Rights of Persons with Disabilities.

As a member of the Boards of Disability Rights Network and Reach Out and Read, she has helped steer organizational policies and made literacy available to our youngest children.

Ms. Alvarado is published in the Pennsylvania Bar Association Quarterly and L.R.P. Publication and is featured in Podcasts, newsletters, newspapers, and Puerto Rican Panorama. Through her longstanding mission of ensuring equal opportunities for children with disabilities, she has altered the trajectory of their lives enabling them to realize their potential and achieve their dreams.

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IDEA and SECTION 504

“requires the LEA to provide parents ... with this notice containing a full explanation of the procedural safeguards available under the IDEA and the U.S. Department of Education regulations”



PROCEDURAL SAFEGUARDS NOTICE

WHEN REQUIRED?

A: At least once a school year

B: Also:

- (1) Evaluation: Initial or parent request for evaluation (Consent);
- (2) Parent file first State complaint (complaints with PDE)
- (3) Parent file first due process complaint in a school year
- (4) Disciplinary Action that is a change of placement (manifestation determination); and
- (5) Upon parent request

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PROCEDURAL SAFEGUARDS NOTICE MUST BE

C: Procedural Safeguards Notice Must be:

1. Written in a language understandable to the general public; and
2. Provided in the native language of the parent or in another mode of communication that's used by the parent, unless it is clearly not feasible to do so.
3. If the native language or other mode of communication used by the parent is not a written language, then the school must take steps to ensure:
 - a. that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - b. that the parent understands the content of the notice; and
 - c. that there is written evidence that these requirements have been met.

MUST INCLUDE A FULL EXPLANATION OF:

Evaluations	Notice & IEPs	Private School Tuition	Conflicts	Discipline	Confidentiality and Access to Records
<ul style="list-style-type: none">• Consent• IEEs at public expense	<ul style="list-style-type: none">• Prior Written Notice/NOREPs• Receipt of Documents via Electronic Mail	<ul style="list-style-type: none">• Tuition Reimbursement (Parent decides to place in private school and asks LEA to pay tuition)	<ul style="list-style-type: none">• Mediation• State complaint procedures <i>Complaints with PDE</i>• Due process, appeals• Pendency	<p>Discipline Procedures</p>	<p>Confidentiality, Parent access to records, Student Records</p>

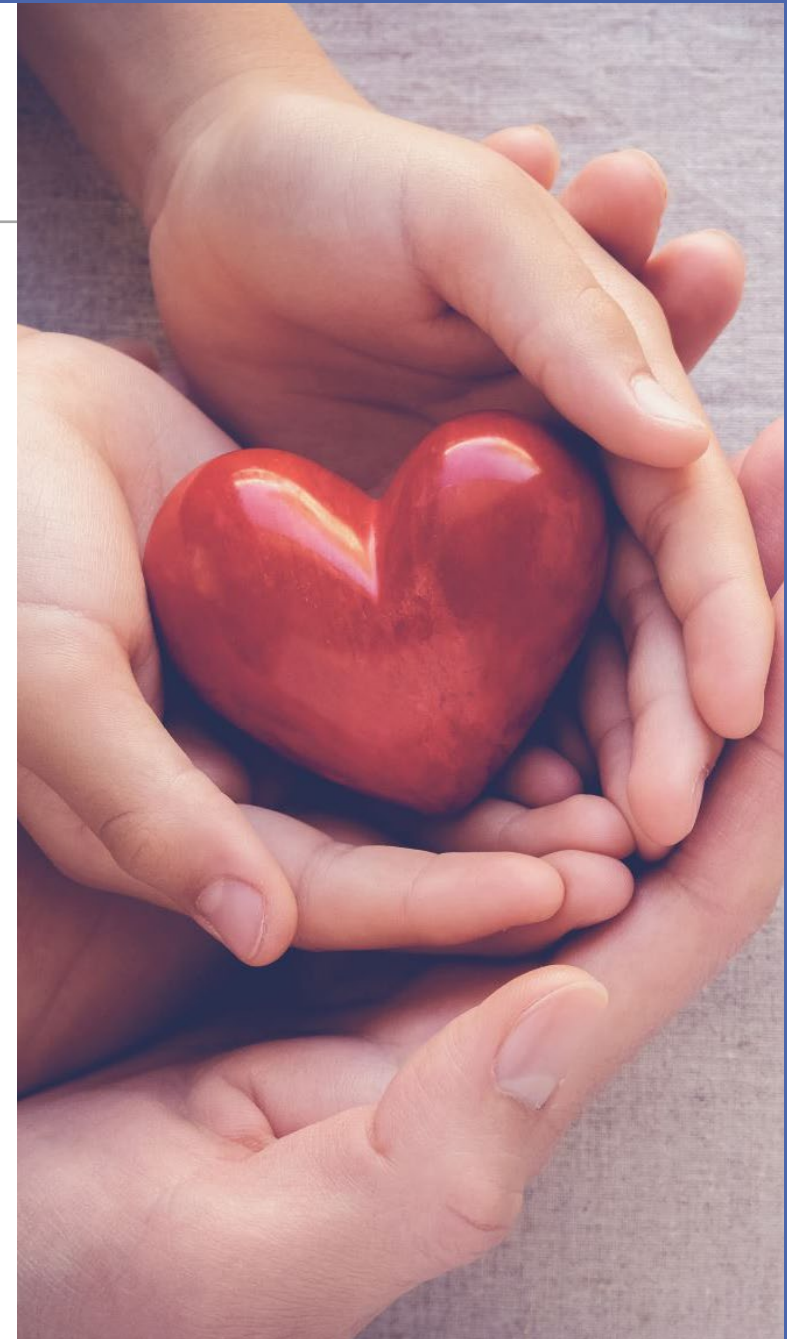
Evaluations

- Consent
- IEEs at public expense

PARENTAL CONSENT

Who is a Parent?

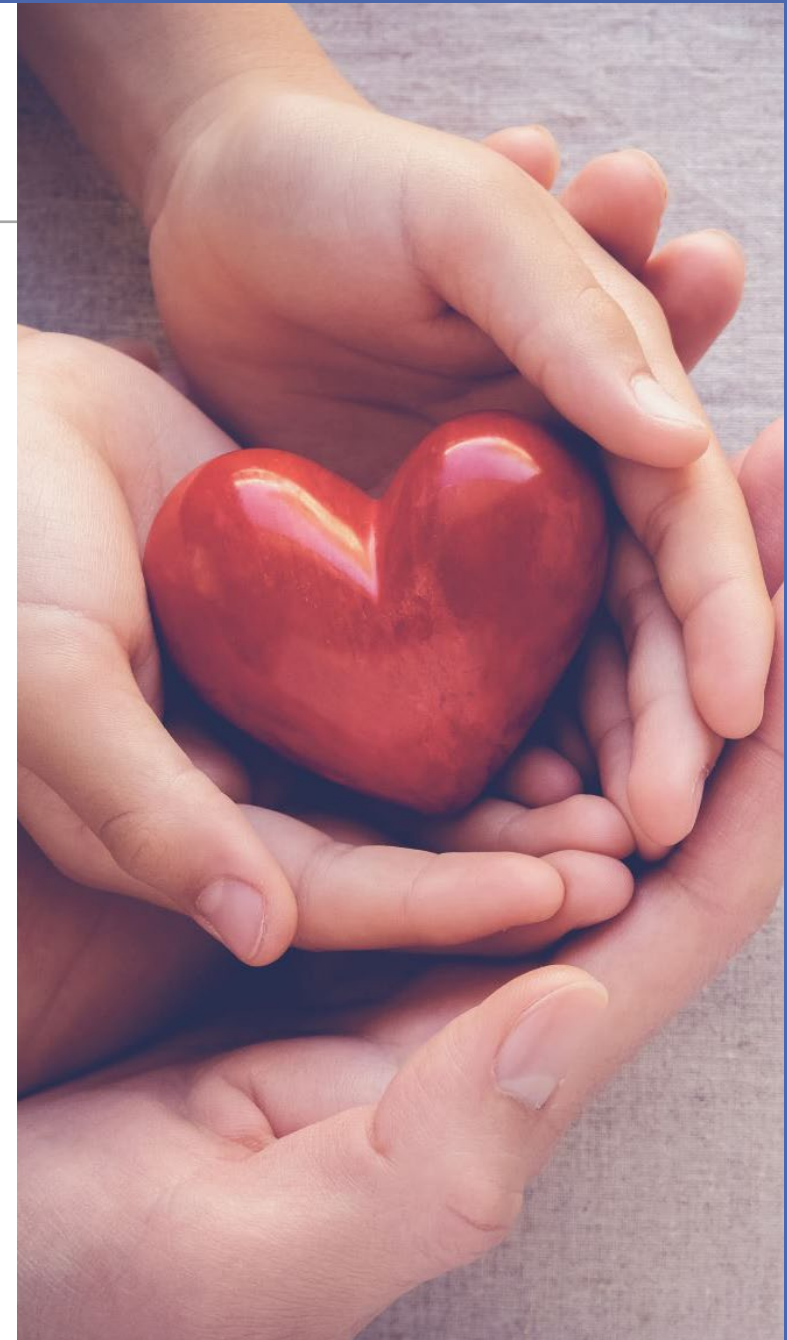
1. Biological or adoptive parent
2. Foster Parent
3. Guardian authorized to act as the parent, or authorized to make parental decisions
4. Individual acting in place of parent – grandparent, stepparent or other relative
5. Person legally responsible for child's welfare
6. Surrogate Parent
 - a. No parent can be identified
 - b. Parent cannot be located after reasonable efforts
 - c. Child is a ward of the state
 - d. Child is an unaccompanied homeless youth



INFORMED PARENTAL CONSENT

WHEN -

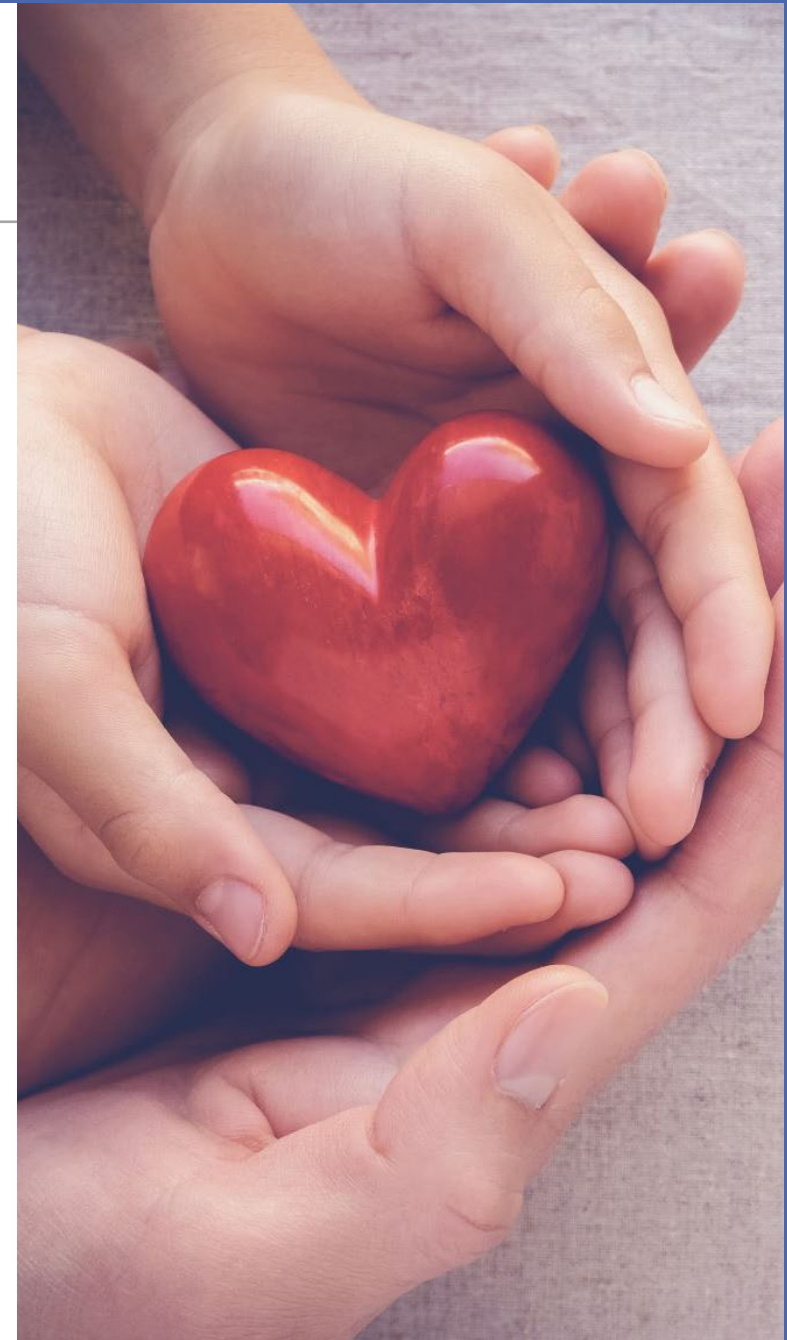
1. Initial evaluation – informed consent
2. Before initial provision of special education and related services
3. Reevaluations
4. Provided in his or her native language or other mode of communication
5. LEA must make reasonable efforts to obtain informed parental consent



INFORMED PARENTAL CONSENT

If parent does not provide consent -

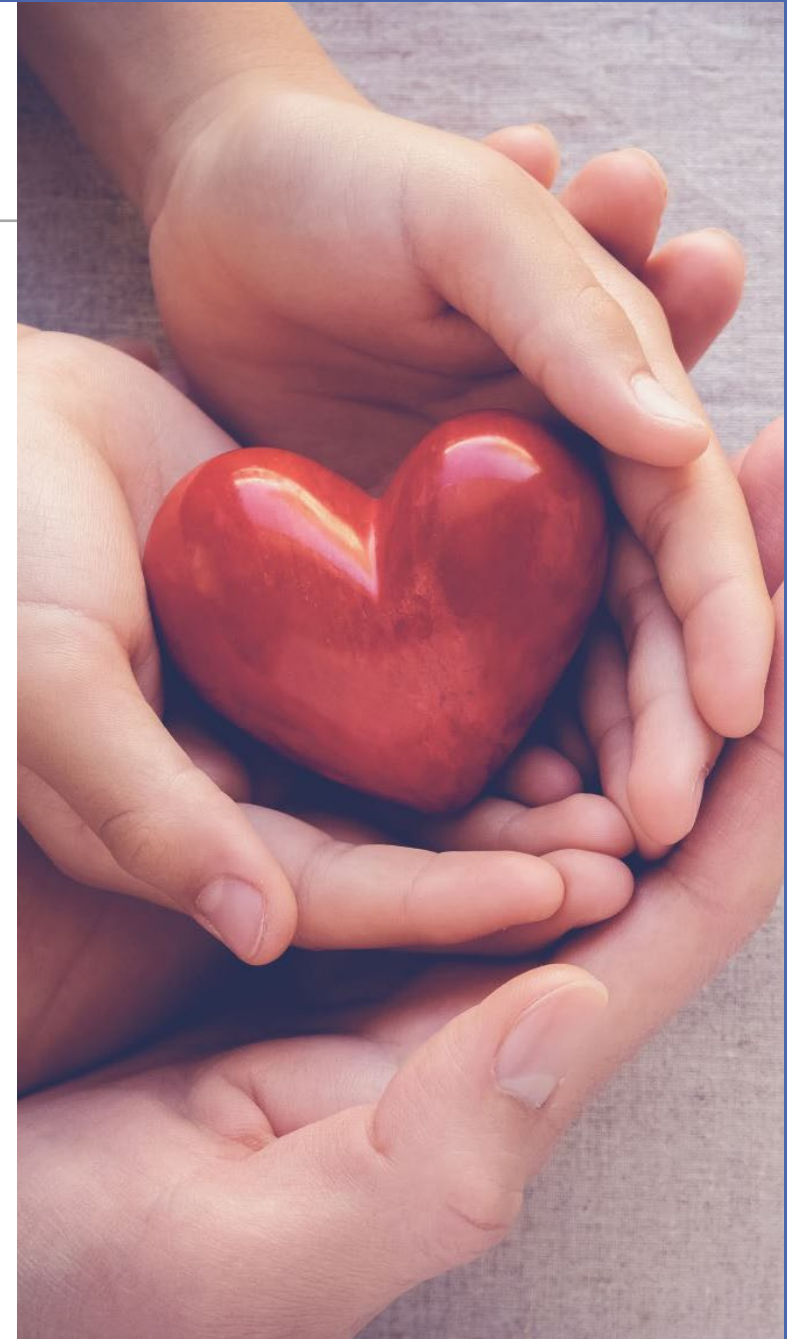
1. Consent is voluntary and may be revoked at any time
2. If no parental consent:
 - a. Evaluations and Reevaluations: Public agency may, but is not required to, seek permission through mediation and due process
 - b. Evaluations - homeschool or private schools funded by parents: Public agency **may not** seek permission through mediation and due process
 - c. Initial provision of special education services: Public agency **may not** seek permission through mediation and due process to provide special education and related services to the child



COVID-19: EVALUATIONS AND INITIAL PROVISION SERVICES

Timelines have not been suspended:

1. 60-days to issue evaluations and reevaluations once consent is received
2. 30 days after ER or RR to complete IEP
3. Reasonable requests for extensions permitted
4. Can LEA re-issue permission forms to restart the 60-dayclock?
PA DOE Guidance: NO
5. Offer Title I or other support services if initial evaluation is delayed



IEEs at PUBLIC EXPENSE



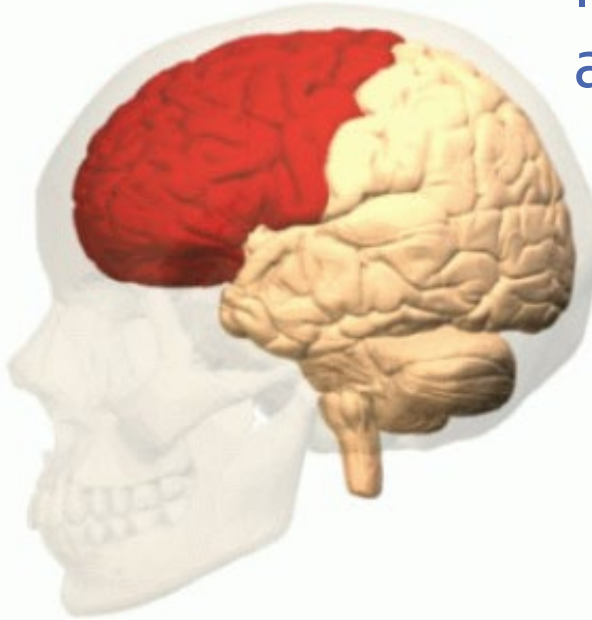
- Conducted by qualified examiner who is not employed by child's LEA
- When LEA receives such request it must provide parent information:
 1. where an IEE may be obtained
 2. agency criteria applicable for IEEs, so long as consistent with right to IEE, such as:
 - a. Same criteria LEA uses for its evaluations
 - b. Location of evaluation
 - c. Qualifications of examiner

IEEs at PUBLIC EXPENSE



- LEA may not impose conditions or timelines
- LEA may ask why parent disagrees with the evaluation, but may not require that the parent give a reason
- Parent may obtain one IEE at public expense each time LEA conducts an evaluation
- IEE could be requested by a Hearing Officer as part of hearing on a due process complaint

IEEs at PUBLIC EXPENSE



If parent disagrees with LEA's evaluation/reevaluation and requests an IEE at public expense:

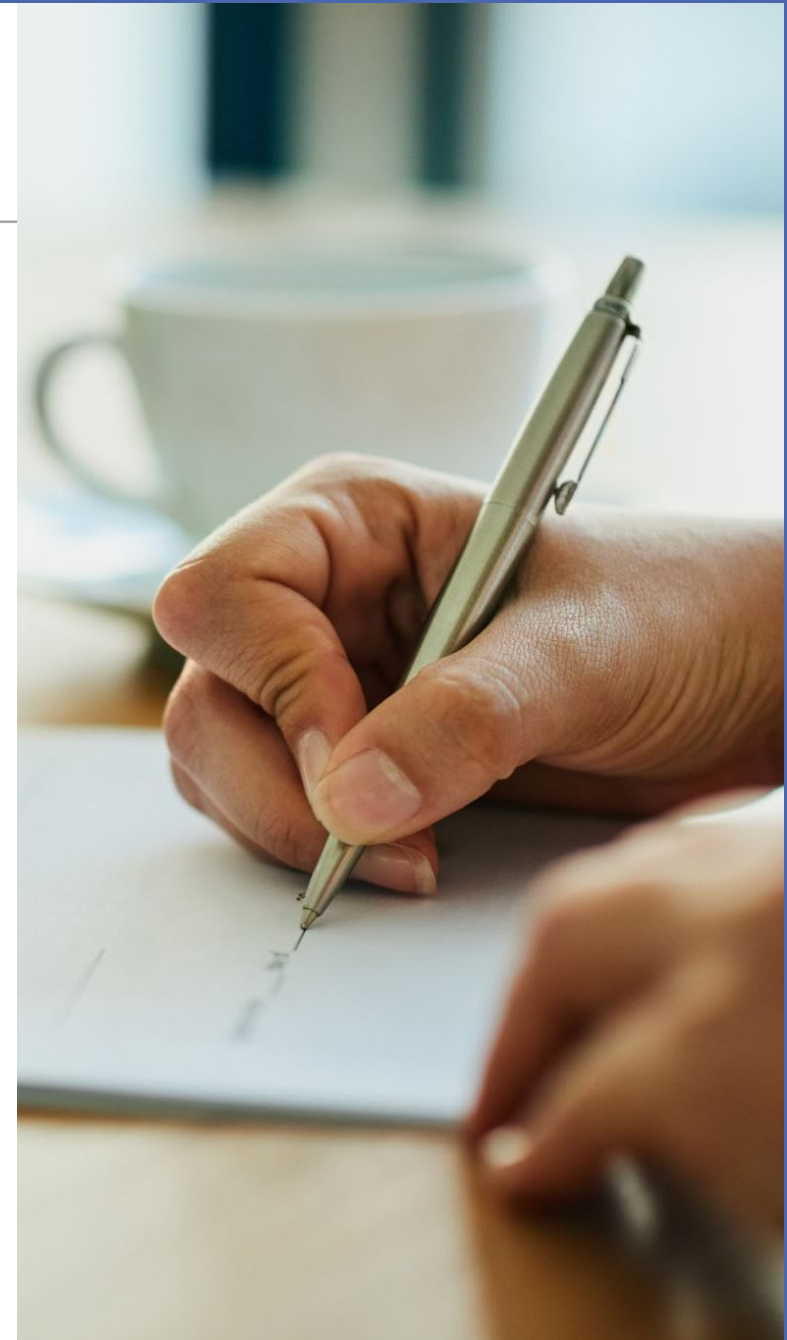
1. LEA must, without unnecessary delay:
 - a. File a due process complaint OR
 - b. Fund the IEE at public expense
 - i. unless shows at a due process hearing that the evaluator did not meet agency criteria
2. If due process decision determines that LEA's evaluation is appropriate, family can obtain IEE but not at public expense

Notice & IEPs

- Prior Written Notice/NOREPs
- Receipt of Documents via Electronic Mail

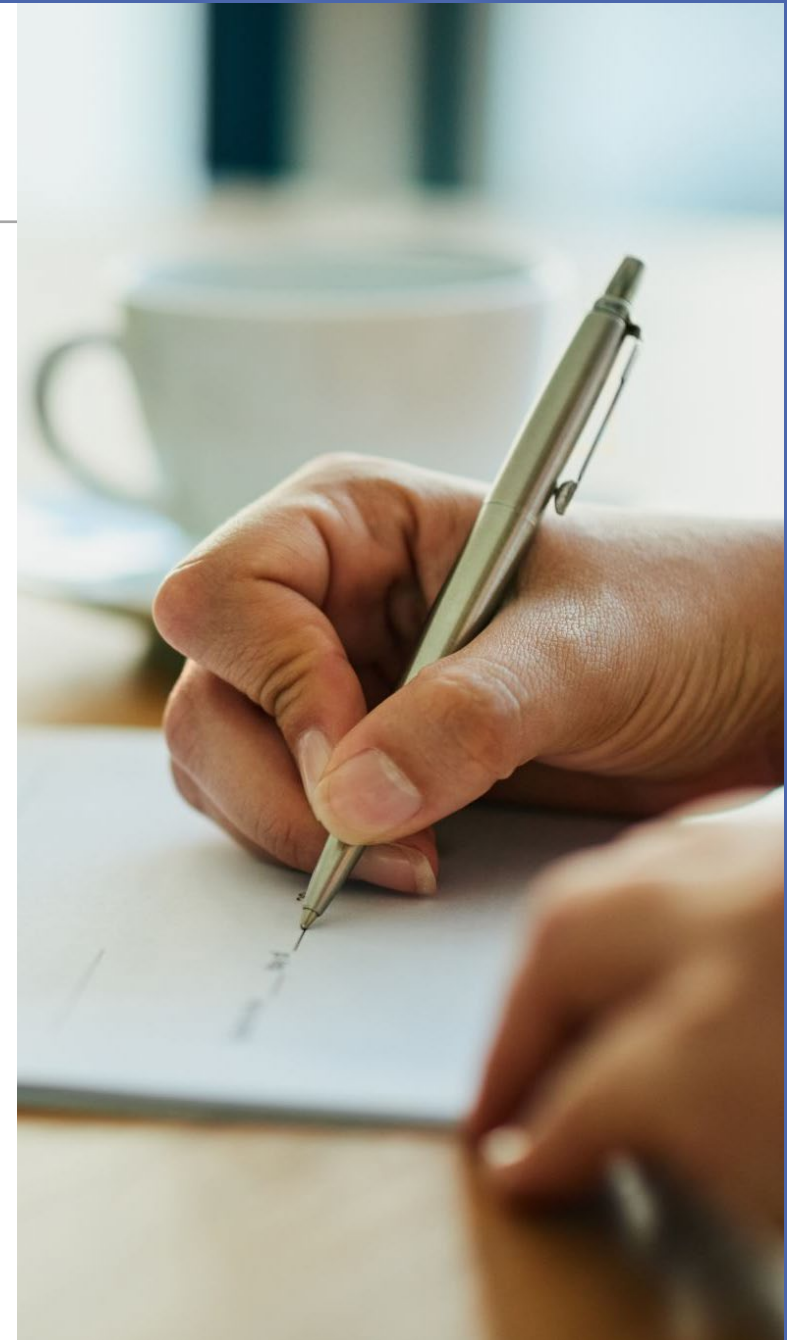
Prior Written Notice - NOREPs

- Must be given to a parent a “reasonable time” before
 1. Initiate or change identification, evaluation or placement, or FAPE (educational program)
 2. Refuses to initiate or change identification, evaluation, placement or FAPE
- Statement that Parents have protections under procedural safeguards
- Sources to contact to obtain assistance and understanding of the notice and parental rights



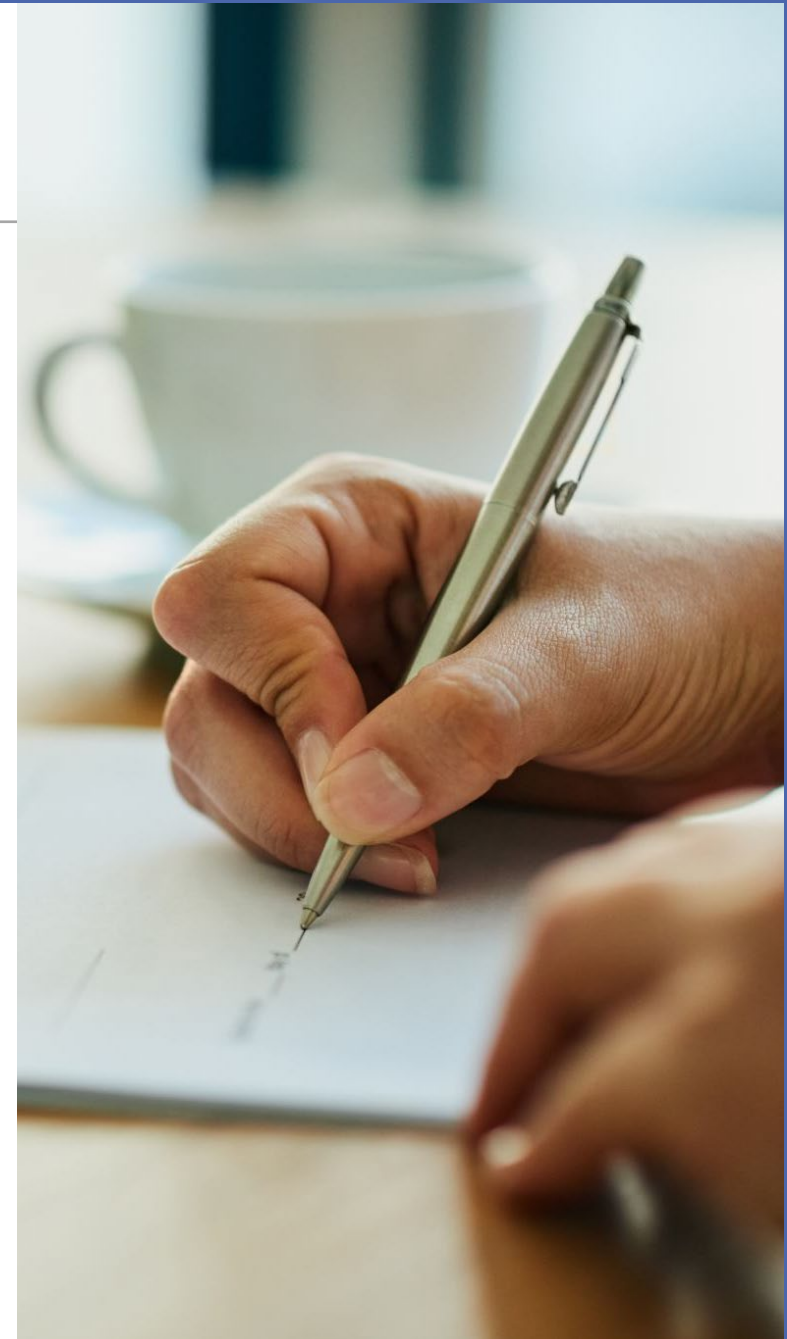
Prior Written Notice - NOREPs

- Content
 1. Description of LEA action or refusal
 2. Explanation as to why taking action or refusal
 3. Description of each evaluation procedure, assessment, record or report that was basis of action/refusal
 4. Description of other options considered and why rejected
 5. Statement that parents have protections under procedural safeguards



Prior Written Notice - NOREPs

- Understandable Language
 1. Written in language understandable to the general public
 2. Native language of the parent or other mode of communication used by parent, unless clearly not feasible
 3. If mode of communication of parent is not written, ensure:
 - a. Translate notice orally or by other means in parent's native language or other means of communication
 - b. Parent understands the content of the notice
 - c. There is written evidence that these steps have been met



Receipt of Documents via Electronic Mail

- Parents may elect to receive the following via electronic mail:
 - Prior Written Notice (NOREP)
 - Procedural Safeguards Notice
 - Due Process Complaint
- Equity considerations:
 - Be mindful of parents who are not technologically savvy
 - Parents who have limited resources (like wifi access, printers, etc.)

Receipt of Documents via Electronic Mail - COVID

- LEAs are permitted to accept electronic signatures from parents on:
 - Prior Written Notice (NOREP)
 - Consent to Evaluate forms
 - Invitations to IEP meetings

Private School Tuition

- Tuition Reimbursement

Parent decides to place in private school and asks LEA to pay tuition



TWO WAYS COULD GET PRIVATE SCHOOL PLACEMENT

School district agrees to place

- school district pays tuition
- school district must provide transportation *regardless of distance*

Example: the IEP meets with the parent and offers to place student in an out-of-district school. The school district is required to provide bus transportation regardless where the school is located.

OR ...



TUITION REIMBURSEMENT:

Parent Decides to Place on their own

- School district only required to transport within 10 miles of the district boundaries
- School district is NOT required to pay unless ...
 1. Child previously received special education and related services from LEA

a. Unless the child should have received these services and did not (Forrest Grove School District v. T.A., 557 US -- (2009)).

Example: The school district evaluated the student and determined s/he/they was not eligible and did not have an IEP. but student should have been found eligible.

AND ...



TUITION REIMBURSEMENT:

Parent Decides to Place on their own

b. a court or a hearing officer may require reimbursement if finds that the school district did not offer FAPE in a timely manner prior to that enrollment;

AND

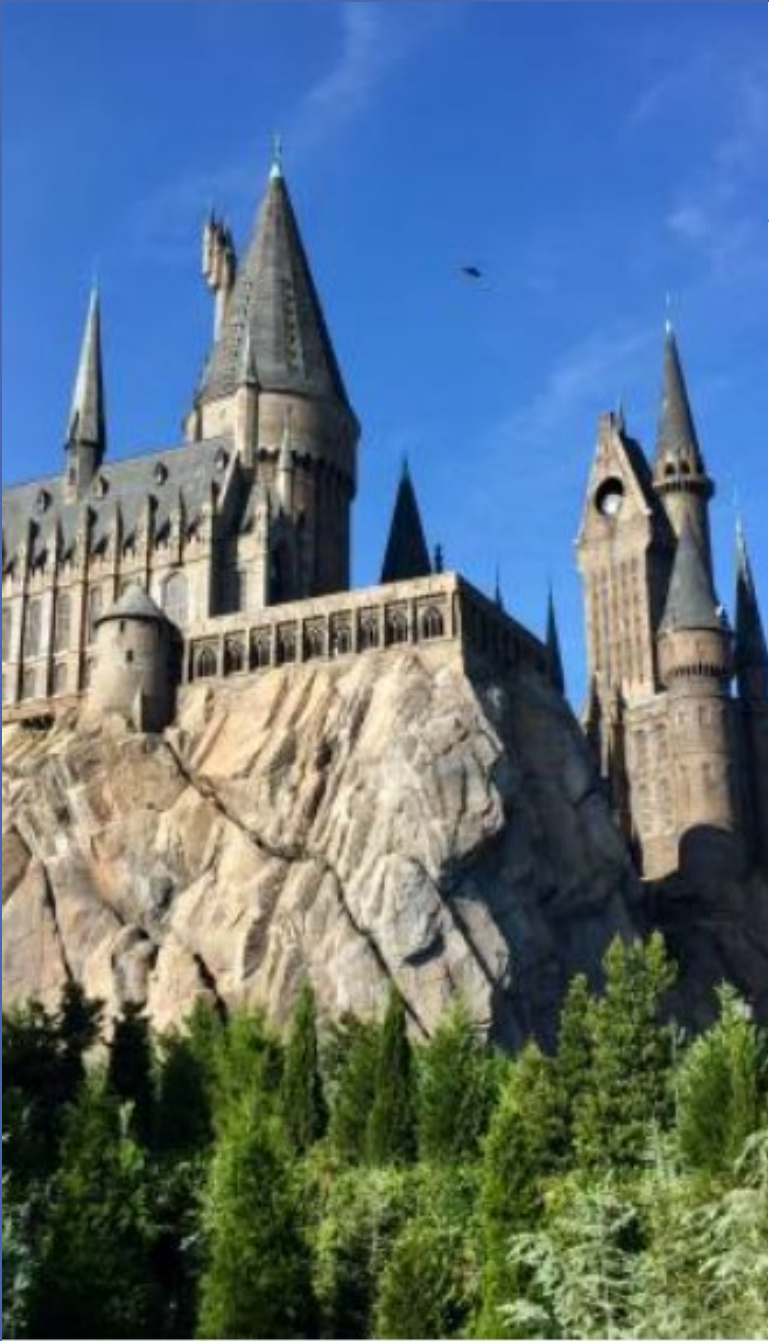
Example: the school district did not offer an appropriate or complete IEP before the student began attending private school

c. the private placement is appropriate.



TUITION REIMBURSEMENT: Parent Decides to Place on their own

The private school placement is not required to meet the State standards that apply to education provided by the State Educational Agency and LEAs.



TUITION REIMBURSEMENT:

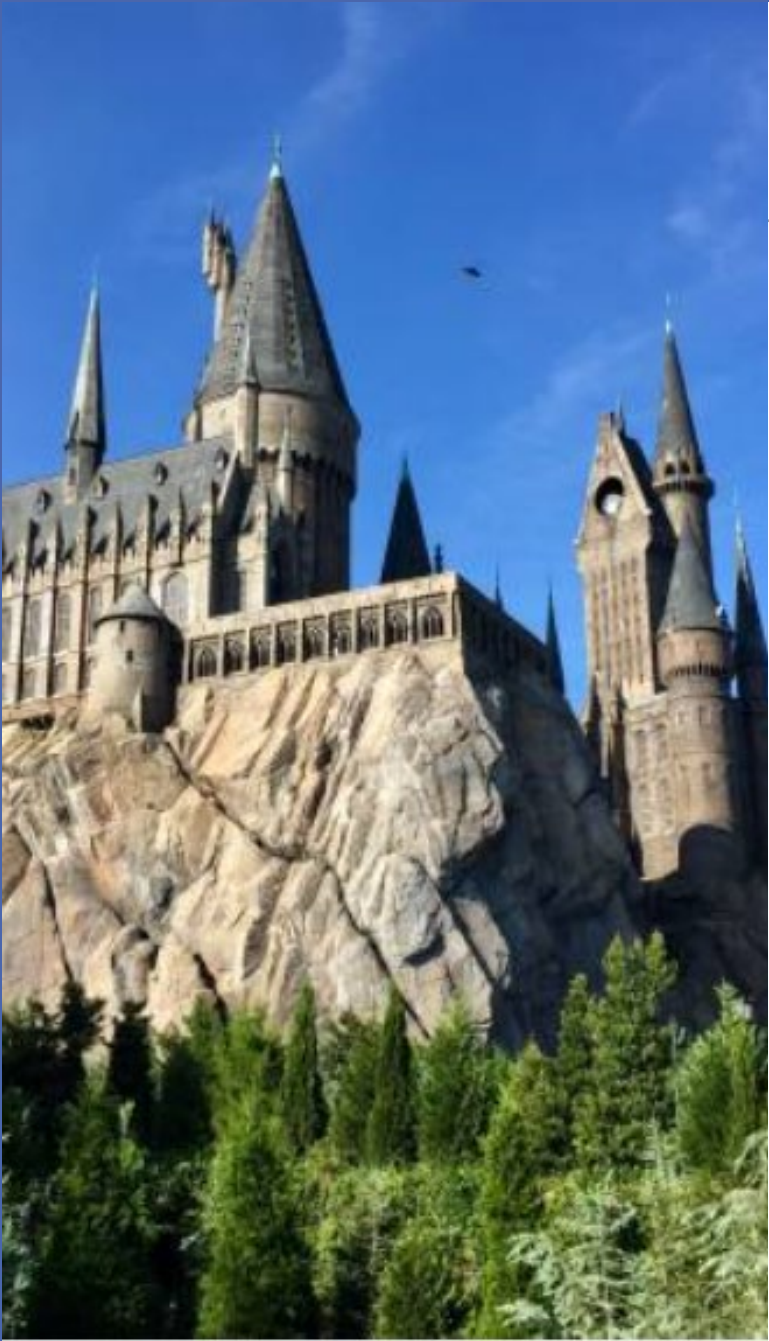
Can be denied or reduced if ... (NOTICE to LEA)

At the most recent IEP meeting BEFORE removing the child from the public school, the parent did not

- a. inform the IEP Team that the LEA's proposed placement is rejected;
- b. state your concerns about the IEP; and
- c. tell the IEP Team that you intend to enroll your child in a private school at public expense;

OR ...

Example: at the end of the IEP meeting, the parent tells the team that they disagree with the IEP, state concerns with it, and ask that the LEA pay for the private school selected by the parent



TUITION REIMBURSEMENT:

Can be denied or reduced if ... (NOTICE to LEA)

No Written Notice: least 10 business days (including any holidays that occur on a business day) BEFORE removing your child from the public school that:

- a. the LEA's proposed placement is rejected;
- b. state your concerns about the IEP; and
- c. tell the LEA that you intend to enroll your child in a private school at public expense

Example: More than 10 days before the student begins attending private school, the parent sends a letter to the LEA stating that they disagree with the IEP, state concerns with it, and ask that the LEA pay for the private school selected by the parent



TUITION REIMBURSEMENT:

Can be denied or reduced if ... NONCOOPERATION

If, prior to your removal of your child from the public school, the LEA gave a Permission to Evaluate form to the parent (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent did not make the child available for the evaluation

Example: The LEA gives parent a Consent to Evaluate form and the parent does not give consent or does not make the child available for the evaluation.



TUITION REIMBURSEMENT:

Can be denied or reduced if ... NONCOOPERATION

... OR

Upon a court finding that the parent's actions were unreasonable.

Example: The LEA gives parent a Consent to Evaluate form and the parent does not give consent or does not make the child available for the evaluation.



TUITION REIMBURSEMENT:

No Notice and Noncooperation Excused if:

Must not be reduced or denied for failure to provide the notice if:

- a. The school prevented you from providing the notice;
- b. Parent did not receive notice of the responsibility to provide the notice described above (not receive PSN); or
- c. Compliance with the requirements above would likely result in physical harm to the child; and



TUITION REIMBURSEMENT:

No Notice and Noncooperation Excused if:

The Hearing Officer or Court finds:

- (a) The parent is not literate or cannot write in English; or
- (b) Compliance with the above requirement would likely result in serious emotional harm to the child.

MUST INCLUDE A FULL EXPLANATION OF:

Conflicts

- Mediation
- State complaint procedures (Complaints with PDE)
- Due process and appeals
- Pendency

Mediation

- Resolve disagreement – can use at any time
- Voluntary – both parties want to mediate
- Cannot delay due process or any other rights
- FREE to the parent
- Scheduled at a convenient date and time
- Discussions during the mediation are confidential and cannot be used as evidence in due process, state or federal court



Mediator

- Mediation Techniques
 - Qualified
 - Impartial (no relationship with student, LEA or parent, or have interest in the outcome)
 - Trained in effective mediation techniques
 - Knowledgeable about special education laws and regulations
- Assigned randomly by the State
- Cannot be an employee of the LEA



Mediation: Agreement

- Legally binding and describes the resolution
- Agreement must state that all discussions will remain confidential
- Must state that discussions may not be used as evidence in any due process hearing or in court; and
- Agreement must be signed by Parent and LEA



Due Process vs. State Complaint Procedures



Due Process

- Who May File: Only parent or LEA
- Issues Addressed: 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 FAPE to the child.
- How soon get decision: 60 calendar days (15 day resolution period + 45 calendar days), unless extension requested by parent or LEA
- Pendency applies



State Complaint Procedures

- Who may File: Any individual or organization
- Issues addressed: Violation Part B (IDEA) by LEA, State, or other public agency
- How soon get decision: within 60 calendar days, unless extended
- Pendency DOES NOT apply

State Complaint Procedures: How to File

- Written State Complaint *Must be Signed*
- *Must include:*
 - a) A statement that a LEA or other public agency has violated a requirement of Part B of the IDEA or its regulations;
 - b) The facts on which the statement is based;
 - c) The signature and contact information for the complainant; and
 - d) If alleging violations regarding a specific child:
 1. the name of the child
 2. Address of the residence of the child;
if a homeless, available contact information for the child
 3. The name of the school the child is attending;
 4. A description of the nature of the problem of the child, including facts relating to the problem; and
 5. A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.



State Complaint Procedures

- One Year: Violation occurred not more than ONE YEAR before complaint is received as described under the heading Adoption of State Complaint Procedures
- Copy: A copy must be provided to LEA/SEA or other agency *at the same time* the complaint sent to State
- Sent to:
 - Chief, Division of Compliance, Monitoring and Planning
 - Bureau of Special Education
 - Pennsylvania Department of Education
 - 333 Market Street, 7th Floor
 - Harrisburg, PA 17126-0333



State Complaint Procedures: After Complaint is filed

- Within 60 calendar days:
 1. Conduct an independent on-site investigation, if necessary;
 2. Give the opportunity to submit additional information, orally or in writing, about the allegations in the complaint;
 3. Give LEA or other public agency a chance to respond to the complaint, including, at a minimum:
 - (a) an option to propose a resolution to the complaint; and
 - (b) engage in mediation if both parties agree
 4. Review all relevant information and determine whether the LEA or other public agency is violating a requirement of Part B of the IDEA; and
 5. Issue a written decision to the complainant that address each allegation in the complaint and contains:
 - (a) findings of fact and conclusions; and
 - (b) the reasons for the State Educational Agency's final decision.



State Complaint Procedures: Timeline Extension

The 60 day timeline may be extended only:

- (a) exceptional circumstances; or
- (b) all parties involved agree to extend to try to resolve through mediation or alternative means of dispute resolution, if available in the State.



State Complaint Procedures: The Final Decision

Shall contain effective implementation procedures, if needed, including:

- (a) technical assistance activities;
- (b) negotiations; and
- (c) corrective actions to achieve compliance.

Remedies for denial of appropriate services, must address:

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



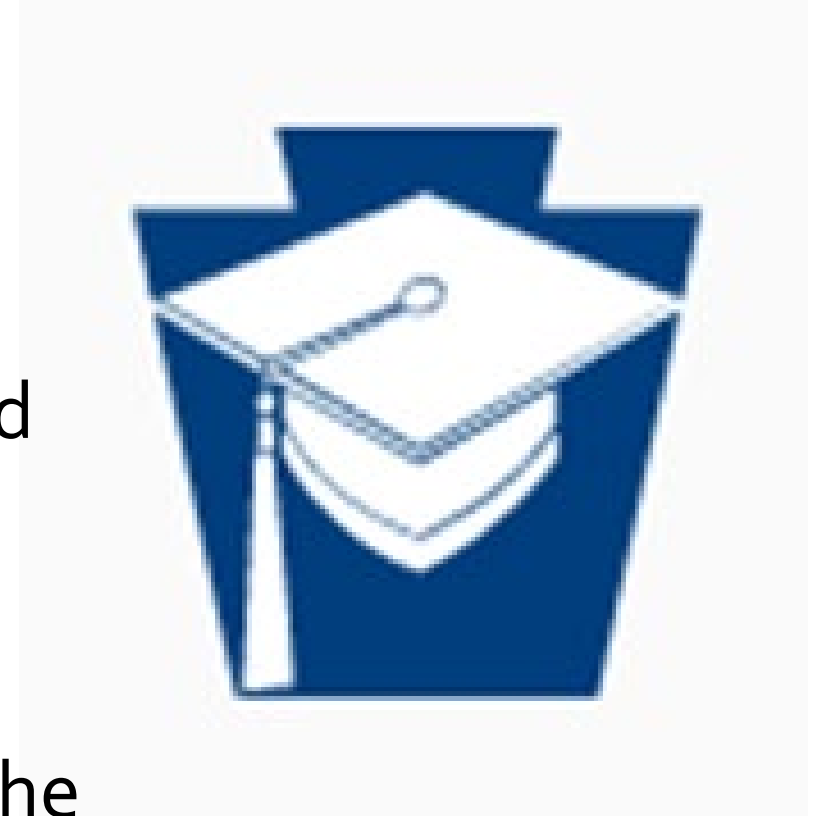
State Complaint Procedures and Due Process Complaint Overlap

a) State complaint is also the subject of a due process hearing, OR

b) State complaint contains multiple issues, and one or more are part of a due process hearing



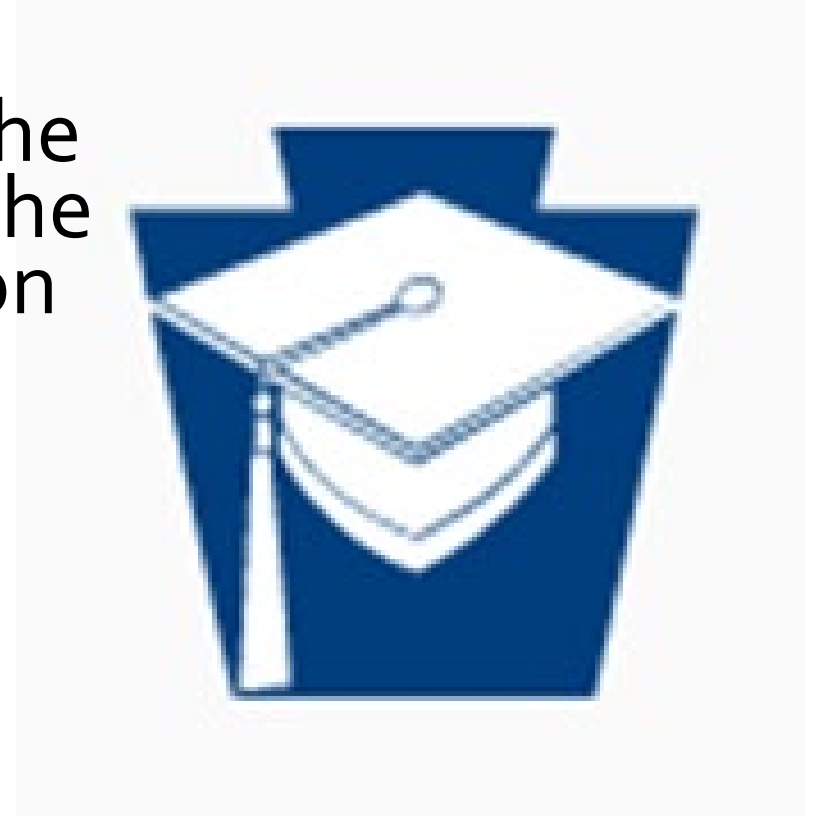
The State stops pursuing the complaint, *or relevant part of the complaint*, that is being address in the due process hearing until the hearing is over. The other parts of the state complaint must be resolved within timelines.



State Complaint Procedures and Due Process Decisions

If a due process decision already decided the issue involving the same parties (you and the LEA), then the due process hearing decision is binding. The State cannot investigate it.

If the complaint is a failure to implement a due process hearing decision, it must be resolved by the State Educational Agency according to the above-described procedures.





Due Process Complaint

1. Must allege a violation that occurred not more than two years before the date you or the LEA knew or should have known about the alleged action that forms the basis of the due process complaint.

2. *Unless:*
 - a. LEA specifically misrepresented that it had resolved the issues identified in the complaint; or
Hard to prove, must show it was intentional
 - b. The LEA withheld information from you that was required to be provided to you under Part B of the IDEA.
Parent did not receive NOREP, PSN

Example: the due process complaint is filed on January 15, 2020. The period of the complaint is automatically from January 15, 2018.



Due Process Complaint

When it is filed, you must at the same time:

- 1) Send the Complaint to the Office for Dispute Resolution odr@odr-pa.org; AND
- 2) To the other party (LEA or parent)



Due Process Complaint: Content

Must include:

- a. The name of the child;
- b. The address of the child's residence;
- c. The name of the child's school;
- d. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
- e. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; and
- f. A proposed resolution of the problem to the extent known and available to you or the LEA at the time.

Hearing cannot proceed until a due process complaint that includes this information



Due Process Complaint: Responses

1. Sufficiency: if other party believes there is not enough information, they notify Hearing Officer within 15 days. Hearing Officer decides within 5 days. If agrees, other party gets a chance to add information.
2. Amendment:
 - a. Can amend if other party agrees, or
 - b. Hearing Officer permits
 - c. No more than five days before the hearing date
 - d. Amendment resets all timelines



Due Process Complaint: Responses

Response due within 10 calendar days of receiving the complaint. Must include:

- a. an explanation of why the LEA proposed or refused to take the action raised in the due process complaint;
- b. A description of other options that your child's IEP Team considered and the reasons why those options were rejected;
- c. A description of each evaluation procedure, assessment, record, or report the LEA used as the basis for the proposed or refused action; and
- d. A description of other factors that are relevant to the LEA's proposed or refused action.

For LEA, a NOREP is sometimes enough to satisfy these requirements



Due Process Complaint: Resolution Process

- Resolution meeting: Within 15 calendar days of receiving notice of your due process complaint
- Not necessary if:
 - Mutually waive;
 - Mutually agree to use mediation

Due Process Hearing cannot occur unless have resolution meeting or waive it.

- Parent Non-participation: LEA can ask that complaint be dismissed after 30 days if documentation of attempts to reach you are met.
- LEA Non-Participation: Parent can ask the Hearing Officer to proceed with the hearing



Due Process Complaint: Resolution Process

- **Resolution meeting**: If not reach an agreement, the 45-calendar day timeline for the due process hearing starts the next day.
- **Mediation**: if not reach agreement, can mutually agree to extend 30-day mediation period. If either party no longer wants to mediate, the 45-calendar day timeline for the due process hearing starts the next day.
- **Written settlement agreement**:
 - Signed by you and a representative of the LEA who has the authority to bind the LEA; and
 - May be voided within 3 business days of both signatures



Due Process Complaint: Hearing Rights

- Have a Lawyer
- Advocate or someone with special knowledge or training regarding the problems of children with disabilities;
- Present evidence and confront, cross-examine, and require the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing not disclosed at least five business days before the hearing;
- Written or electronic word-for-word record of the hearing; and
- Written or electronic findings of fact and decisions.



Due Process Complaint: Decision

- Must be based on substantive grounds.
- Can get remedy for Procedural Violations only if
 - 1) Interfered with your child's right to FAPE;
 - 2) Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; or
 - 3) Caused a deprivation of an educational benefit.
- If Parent prevails, they are entitled to reasonable attorneys fees and costs



Due Process Complaint: Appeal

- 90 calendar days from date of the decision:
 - Can appeal to State or Federal Court

Pendency: Stay Put

Your child will stay in the same placement before the disagreement

- Only applies during Mediation and Due Process (does not apply to state complaints)
 - *10 day limit: BUT only if you ask for Mediation or Due Process within 10 days of receiving the NOREP*
- Will continue until mediation is over and/or until you receive the Due Process decision



Pendency: Specific Situations

- What if due process complaint involves:
 - student's first admission to public school:
 - The child is placed in the public school with parent's permission
 - Child who turns 3 years-old: Child was receiving services for ages 0-2 years-old, and is now transitioning to Early Intervention (usually with the IU):
 - Services from 0-2 are pendent
 - IU has to newly evaluate child
 - If found eligible, and parent consents to receive special education services, then pendency continues



Pendency: Exceptions

- Pendency placement can be changed only if parent and LEA mutually agree
- Disciplinary Reasons – pendency may not apply



Discipline

- **Discipline Procedures**
- **Manifestation Determination**



DISCIPLINARY EXCLUSION

- VIOLATIONS OF SCHOOL CODE OF CONDUCT
- Students can be disciplined by schools, with a few exceptions
 - Schools can consider **unique circumstances of the child** when considering whether a change of placement is necessary
- Question is:
 - **HOW LONG**, and what happens?
 - When does disciplinary exclusion *become a change in placement?*
 - When is it permitted?
 - When is it NOT permitted?
 - When is student required to receive educational services?



DISCIPLINARY EXCLUSION: EXCEPTIONS

- CANNOT REMOVE OR EXCLUDE CHILD IF:

- **Intellectual Disability:** *Any suspension or removal = a change of placement, even for one day*
- *If the behavior is part of a **Positive Behavior Support Plan***
 - *Child should not be disciplined, but behavior plan should be implemented*
 - *Exception for serious behavior*
- **Manifestation of a Disability**
- *Students without IEPs: if student is **thought-to-be eligible** for special education*
- **Unique Circumstances:** *Can be considered when deciding whether to change placement*



DISCIPLINARY EXCLUSION:

How many days dictates when it become a change in placement

Before

During

After



DISCIPLINARY EXCLUSION: What is Permitted

- **Time limits:**
 - Up to **10 consecutive school days** , OR
 - Up to **15 total school days in the same school year** (a pattern)
 - As long as these are not a change in placement
- **Schools can temporarily remove a child to:**
 - Appropriate Interim Alternative Educational Setting (IEP team must meet)
 - Another Setting
 - Suspension
- **Educational Services:**
 - No educational services are required
 - Your child may be required to make up school work and exams

BEFORE

As long as all other students are treated the same way



DISCIPLINARY EXCLUSION: After 10 school days

Non-consecutive days in the same school year:

Services Required: the LEA *MUST* provide educational services during days exceeding 10 school days

- LEA, and at least one of the child's teachers, decide what educational services are necessary
 - So child can continue to participate in the general education curriculum, and
 - make progress toward meeting IEP goals

DURING



DISCIPLINARY EXCLUSION = Change of Placement

- **IS A CHANGE OF PLACEMENT**

- On the 11th consecutive day
- On the 16th day total for the school year if non-consecutive

For example, if your child is being suspended, ask yourself:

- Is it for more than 10 school days in a row? OR
 - Do they have many 1, 2, or 3+ day suspensions that have added up to more than 15 days in the same school year?
-
- **If time limits are exceeded and procedures are not followed = illegal change of placement**
 - even if student is still in the same school
 - **In-school suspensions count as suspensions**

AFTER



DISCIPLINARY EXCLUSION: Services

- **IEP Meeting:** The IEP team *MUST* meet to determine appropriate services
- **Functional Behavioral Assessment and Positive Behavior Support Plan:** must be conducted so that behavior violation does not recur
- **NOREP:** The LEA must issue a NOREP for the days that exceeds the time limits

AFTER



DISCIPLINARY EXCLUSION: Is it a Manifestation of a Disability?

- **NO:**
 - Can Change Placement:
 - child can be treated the same as other students without disabilities
 - More suspensions
 - Change of school/Change of placement
 - Child receives educational services including IEP services
 - FBA and PBSP
- **YES**
 - **CANNOT change placement**
 - See protections under Manifestation of Disability

AFTER

DISCIPLINARY EXCLUSION: Manifestation Determination Meeting



- If more than **10 consecutive days** or **15 non-consecutive days**:
 - Meeting within 10 school days
 - LEA, Parent, relevant members of IEP team
 - Review ALL relevant information
 - IEP
 - Teacher observations
 - Disciplinary write up
 - Code of Conduct
 - Information provided by the parent

AFTER



DISCIPLINARY EXCLUSION: Manifestation Determination Meeting

- Determine at the meeting if the conduct:
 - a. was caused by, or had a direct and substantial relationship to, the child's disability; or
 - b. was the direct result of the LEA's failure to implement the child's IEP.
- If **caused by/relationship to disability**
 - = a manifestation of the child's disability.
- If **failure to implement IEP**
 - LEA must take immediate action to remedy those deficiencies

AFTER



DISCIPLINARY EXCLUSION: Manifestation Determination Meeting

- If a manifestation of the child's disability, the IEP Team must either:
 - a. Conduct an FBA (unless just had one) and implement a behavioral intervention plan; or
 - b. If already has a behavioral intervention plan, review and modify it as necessary to address the behavior.
- Return the child to previous placement
 - unless the parent and the district agree to a different placement

AFTER

DISCIPLINARY EXCLUSION: NOREP

Any change of placement must be accompanied by

- *a NOREP; and*
- *Procedural Safeguards Notice*

AFTER



DISCIPLINARY EXCLUSION: Children without IEPs and Thought to be Eligible

- Have the same protections if:
 - LEA has knowledge before the behavior occurred that the child was a child with a disability.
- LEA must be deemed to have prior knowledge if:
 - a. The parent
 - i. expressed concern *in writing*
 - ii. that the child needs special education (an IEP)
 - iii. to the teacher or supervisory/administrative personnel

OR

 - a. The parent requested a special education evaluation

OR

 - c. The teacher, or other school personnel
 - i. expressed specific concerns
 - ii. about a pattern of behavior
 - iii. directly to the director of special education or to other supervisory personnel

DISCIPLINARY EXCLUSION: Children without IEPs: Thought to be Eligible



- LEA cannot be deemed to have such knowledge if:
 - a. the LEA wanted to evaluate, but the parent did not give consent;
 - b. The parent refused special education services; or
 - c. The child was evaluated and is not eligible for special education
- If prior knowledge not established, then the child may be disciplined like all other students
 - If parent asks for an evaluation during period of discipline, the evaluation must be conducted in an expedited manner.
 - If the child is found to be eligible, then gets protections going forward.

DISCIPLINARY EXCLUSION: Referral to Law Enforcement and Court



- **IDEA does not**
 - prevent the school from reporting a crime by a child with a disability to appropriate authorities; or
 - Prevent law enforcement or judges from applying criminal law to child
- **If an LEA reports a child to law enforcement, it:**
 - *MUST* update the FBA and PBSP
 - *MUST* ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
 - *May* transmit copies of the child's special education and disciplinary records only to the extent permitted by FERPA.

DISCIPLINARY EXCLUSION: Weapons

3 Unforgivable Acts:

1. **Weapons**
2. **Illegal Drugs/Controlled Substance**
3. **Serious Bodily Injury**

*Student can be automatically removed for up to 45 days
whether or not a manifestation of disability*





DISCIPLINARY EXCLUSION: Automatic Removal

Weapons:

- Carries weapon to school
- Has a weapon:
 - in school
 - on school premises
 - at a school function under the jurisdiction of the LEA



DISCIPLINARY EXCLUSION: Weapons

Weapons definition (as of date of this presentation):

- “Dangerous weapon” United States Code, Title 18 Section 930(g)(2):
 - 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 2½ inches in length.

DISCIPLINARY EXCLUSION: Illegal Drugs/Controlled Substance



Illegal Drugs/Controlled Substance:

- Knowingly
 - has or uses illegal drugs
 - sells or solicits the sale of a controlled substance
 - while at school
 - On school premises, or
 - at a school function under the jurisdiction of the LEA



DISCIPLINARY EXCLUSION: Illegal Drugs/Controlled Substance

- *Controlled substance/illegal drug means (as of date of this presentation):*
 - 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)).
 - <https://www.deadiversion.usdoj.gov/21cfr/21usc/812.htm>
- *does not include*
 - 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 that Act or under any other provision of Federal law.



DISCIPLINARY EXCLUSION: Serious Bodily Injury

Serious Bodily Injury:

- Inflicted serious bodily injury
 - upon another person
 - while at school
 - on school premises
 - or at a school function under the jurisdiction of the LEA



DISCIPLINARY EXCLUSION: Serious Bodily Injury

- *Defined under United States Code title 18, Section 1365 (h) (3) (as of date of this presentation):*
 - a substantial risk of death;
 - extreme physical pain;
 - protracted and obvious disfigurement; or
 - protracted loss or impairment of the function of a bodily member, organ, or mental faculty

MUST INCLUDE A FULL EXPLANATION OF:

Confidentiality and Access to Records

- Confidentiality, Parent access to records, Student Records

Confidentiality

Student Records must be kept confidential and cannot be released or disclosed.

Consent Required

- Parent *must* consent to release personally identifiable information about your child, unless
 - *the information is contained in education records, and*
 - *the disclosure is authorized without parental consent under FERPA*
- If child attending private school outside of your home school district, before educational records are shared between the LEA where the private school is located and home LEA



Confidentiality, Parent access to records, Student Records

Disclosure of Personally Identifiable Information: Consent NOT Required

- *Officials of participating agencies to meet special education requirements (S/L, OT, PT if contracted)*
- *Officials of participating agencies providing or paying for transition services (after high school)*



Parent access to records

- **Parent Access**
 - LEA must permit inspection and review education records about your child
 - Collected, maintained or used
 - LEA must comply with your request to inspect and review any education records on your child
 - without unnecessary delay, or
 - before any meeting regarding an IEP, or
 - before any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and
 - in no case more than 45 calendar days after you have made a request.



Parent access to records

- **Your right to inspect and review education records includes:**
 - A response from the participating agency to reasonable requests for explanations and interpretations of the records;
 - Your request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; and
 - Your right to have your representative inspect and review the records
- **LEA can assume a parent has authority to inspect and review the records, unless notified that the parent does not (guardianship, separation or divorce)**
- **Parent cannot review records that include information about other students**
 - Can only the information relating to their child or
 - be informed of that specific information
- **Parent can request a list of the types and locations of education records collected, maintained, or used by the LEA.**



Parent access to records

- Each LEA and participating agency must keep a record of parties obtaining access to the educational records
 - Except access by parents and authorized employees of the LEA
- **List must include:**
 - the name of the party
 - The date access was given, and
 - the purpose for which the party is authorized to use the records
- **Fees**
 - May charge a fee for copies
 - Unless the fee prevents you from exercise right to review and inspect
 - Cannot charge a fee to search for or retrieve special education information



Parent access to records

- **Amendment of Records at Parent's Request**
 - If you believe that information is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.
- **Within a reasonable period of time, the participating agency must decide whether to change the information**
 - If refuses, it must:
 - inform you of the refusal, and
 - advise you of the right to a hearing for this purpose



Parent access to records

- **Hearing (follows FERPA regulations):**
 - Held within a reasonable time
 - Shall give reasonable advanced notice of the date, time, and place
 - Conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome
 - Parent has full and fair opportunity to present evidence that the content of the student's education records is inaccurate, misleading, or in violation of the privacy rights of the student
 - Parent may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney
 - Written decision made within a reasonable time
 - Decision must:
 - Be based solely on the evidence presented at the hearing, and
 - Include a summary of the evidence and the reasons for the decision



Parent access to records

- **Decision of Hearing**
 - If the parent is accurate, LEA must correct the information and inform the parent in writing
 - If the parent not correct, parent may add to the student's records a statement that disagree with the decision and reasons why believe the record is not accurate
 - Parent statement will be kept in records as long as the document to which parent disagrees is in the student's file; and
 - If LEA provides document to another party, also provide parent's comments



Student Records

- **Maintenance of Records with Personally Identifiable Information**
 - Each agency must protect the confidentiality at collection, storage, disclosure, and destruction stages
 - One official at the agency is assigned this responsibility
- **All persons collecting or using records must be trained or instructed about state's policies and procedures regarding confidentiality under IDEA and FERPA**
- **Each agency must keep for public inspection:**
 - A list of names and positions of employees who have access to personally identifiable information



Student Records

- **Destruction of Information**
 - Your LEA must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child, and
 - the information must be destroyed at your request
 - Some LEAs inform parents when these records will be automatically destroyed
- **However, a permanent record will be kept indefinitely of your child's:**
 - name, address, and phone number
 - attendance record
 - grades, classes attended
 - grade level completed
 - year completed





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- ❖ *Free Consultations* and reviews of evaluations and IEPs
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