

# ***Procedural Safeguards Manual for Parents***

**Bureau of Children, Family and Community Services  
April 2000**



**Iowa Department of Education**

**Grimes State Office Building  
Des Moines, IA 50319**

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

**State Board of Education**

Corine A. Hadley, President, Newton  
Sally J. Frudden, Vice President, Charles City  
Gregory A. Forristall, Macedonia  
Gregory D. McClain, Cedar Falls  
Mary Jean Montgomery, Spencer  
Donald L. Roby, Decorah  
Gene E. Vincent, Carroll  
Kay Wagner, Bettendorf  
John C. White, Iowa City

**Administration**

Ted Stilwill, Director and Executive Officer  
of the State Board of Education  
Gail Sullivan, Chief of Policy and Planning

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

Judy Jeffrey, Administrator  
Brenda Oas, Chief, Bureau of Children, Family  
and Community Services

It is the policy of the Iowa Department of Education not to discriminate on the basis of race, color, national origin, gender, disability, religion, creed, age or marital status in its programs or employment practices. If you have questions or grievances related to this policy, please contact: Chief, Bureau of Administration and School Improvement Services, Grimes State Office Building, Des Moines, Iowa 50319, (515) 281-5811.



## Contents

Introduction .....	1
Evaluation .....	3
Prior Notice .....	5
Behavior and Discipline Issues .....	7
Legal Process Options.....	11
The Complaint Process	
Preappeal Conference	
Mediation	
Impartial Due Process Hearing	
Attorney Fees .....	16
Placement of Children by Parents in Private Schools	
When FAPE is an Issue.....	17
Confidentiality of Information .....	19
Child's Rights.....	22
Sample Forms.....	23



## ***Introduction...***

Parents have rights, known as procedural safeguards, which apply to every aspect of the special education process; for example, the evaluation, decisions of educational placement, access to educational records and IEP team participation. State and federal laws and regulations outline what needs to happen to ensure that children with identified disabilities receive a free appropriate public education (FAPE). This document serves as ***your*** procedural safeguards notice and will help you understand the rights available to you and your child through a federal law, the Individuals with Disabilities Education Act Amendments of 1997 (IDEA '97) and the Iowa Administrative Rules of Special Education. Some of the areas that will be reviewed in this document are: Notice, Informed Consent, Recordkeeping, Evaluations, Mediation, Due Process, Attorneys' Fees, Age of Majority and Discipline.

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

- Your local school district Superintendent
- Your Area Education Agency (AEA) Director of Special Education
- Your local AEA Parent-Educator Connection program
- The Bureau of Children, Family and Community Services  
Iowa Department of Education  
Grimes State Office Building  
Des Moines, Iowa 50319-0146  
515-281-3176  
FAX 515-242-6019
- The Iowa Parent Training and Information Center  
321 East 6th Street  
Des Moines, Iowa 50309  
1-800-450-8667  
515-243-1713  
FAX 525-243-1902.
- Iowa Protection and Advocacy, Inc.  
3015 Merle Hay Road, Suite 6  
Des Moines, Iowa 50310  
1-800-779-2502  
515-278-2502
- Other advocacy organizations

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

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

At a minimum upon:

1. Initial referral for evaluation;
2. Each notification of an IEP meeting;
3. Reevaluation of your child; and
4. Receipt of a request for due process hearing under IDEA

## **Are there other sources of information for me to find out more about IDEA '97, the Iowa Administrative Rules of Special Education and other rules and regulations that are important for me to know?**

The following listings are internet addresses of sites you can visit.

- Iowa Administrative Rules of Special Education

<http://www.state.ia.us/educate/index.html>

Search word: special education

- Individuals with Disabilities Education Act

<http://www.ed.gov/gov/offices/OSERS/OSEP/>

Currently IDEA information is at the bottom of the page: IDEAS That Work!

- Family Educational Rights and Privacy Act:

<http://www.lrp.com/edfreelib/freeregs/bc3499.htm>

Other resources to refer to:

- *Their Future, Our Guidance, the Iowa IEP Guidebook*  
Check with your child's AEA consultant.
- *Their Future, Our Guidance, IEPs At A Glance*  
Check with your AEA Parent-Educator Connection Program.
- *Working Things Out When Things Go Wrong*  
Check with your child's AEA consultant.

## ***Evaluation...***

### **What is the purpose of an evaluation?**

The purpose of the evaluation is to determine the educational interventions that are required to resolve the presenting problem, behaviors of concern, or suspected disability, including whether the educational interventions are special education.

### **Parental informed consent is required for your child's:**

1. Initial evaluation
2. Reevaluation

### **Parental informed consent is not required before:**

1. Reviewing existing data as part of an evaluation or reevaluation
2. For administering a test or other evaluation that is given to all children, unless consent is required of parents of all children

### **What if I refuse to give consent for evaluation or reevaluation?**

It is the school's responsibility to pursue evaluation by using a preappeal conference, mediation procedures or a due process hearing.

### **What happens if I don't respond to the requests for consent to evaluate or reevaluate my child?**

If the school has taken reasonable measures to obtain consent from you to reevaluate your child, the school may proceed with the reevaluation.

### **When I give consent to the school for evaluation of my child, what do I need to know and what should I find when I read or hear the information in the notice?**

1. The important ideas must be written down.
2. The consent must be written in your native language or presented in a communication mode that works for you.
3. Description of the activity you are consenting to be done.
4. You may revoke your consent at any time, but the revocation is not retroactive, i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked.
5. You need to understand what is being communicated.
6. If the consent is for a record release, the records must be listed as well as to whom the record is being sent.
7. Your agreement to the activity must be in writing.

### **What is an Independent Educational Evaluation?**

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

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

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

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

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

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

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

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

If the evaluation meets the criteria of the public agency, the information must be considered in decisions made with respect to FAPE for your child. The information can also be used in a hearing for the child, if a decision is made to go in that direction.

**Who pays for an IEE?**

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

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

1. If you are seeking an IEE at public expense, the qualifications of the evaluator and the location of the evaluation must be the same as the public agency.
2. The public agency may not impose conditions or timelines, other than their criteria in getting the IEE.
3. The public agency criteria must be consistent with your right to an IEE.

## ***Prior Notice...***

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

### **What is prior notice by a public agency?**

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

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

You may get a form or letter if the school or AEA is refusing to do any of the items listed above.

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

1. A description of the proposed or refused action
2. An explanation of why an action is being proposed or refused
3. What the agency used as basis for a decision to propose or refuse an action
4. Description of other factors that influenced the agency in proposing or refusing an action
5. Description of other options considered and why they were rejected
6. A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposed or refused action
7. A statement that you have protection under the procedural safeguards in the law and, if this notice is not an initial referral for evaluation you will be referred to this document for a description of your procedural safeguards

8. There are sources in this document for you to contact for assistance in understanding the provisions

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

It will be a form or written letter, using language that is as understandable as possible. It will be in your native language, or presented in another reasonable and feasible way that is understandable to you. For example, it could be an oral translation by someone going over the letter with you or it could be on tape. There may also be written documentation presented that indicates you understand what the public agency is presenting to you, which means it may require your signature. (This only applies to times if the native language or other mode of communication is not a written language.)

## ***Behavior and Discipline Issues...***

When a code of conduct that is described in a school district's policies and/or in a student handbook is broken by a student, there are specific steps that need to be taken in examining the situation. The first step is to look at the child's IEP.

### **Assessment Plan to Address Behavior**

*If the school district did not* conduct a functional behavior assessment or implement a behavioral intervention plan for your child before the behavior that resulted in a disciplinary action that is considered to be a change in placement (as described below), the school district shall convene an IEP meeting to develop an assessment plan.

As soon as practical after developing an assessment plan and completing the assessments required by the plan, the school district will convene the IEP team. The IEP team must develop behavioral interventions to address the behavior, and implement those interventions with the child.

*If the school district already has* conducted a functional behavior assessment and implemented a behavioral intervention plan for the child, the IEP team will meet to:

1. Review the plan – what did the IEP team plan to do?
2. Review implementation of the plan – was the plan followed through?
3. Modify the plan – did the plan work?
4. Modify implementation – would another strategy work better?
5. Address the behavior – what are you going to do for this specific behavior?

There may be instances when your child's behavior requires the school district to use special methods of discipline that requires removal of your child to an interim alternative educational setting.

### **What is considered a 'change in placement' when removal from education is for disciplinary reasons?**

For purposes of removal of your child from his or her current educational placement, a change of placement occurs if:

1. Removal is for more than 10 consecutive school days in the same school year, or
2. There is a series of removals that constitutes a pattern because they accumulate to more than 10 school days in a school year and because of the factors listed below:
  - Length of each removal
  - Total amount of time the child is removed
  - Proximity of removals one to another

### **For Short-Term Removals:**

Short-term removal from your child's normal educational setting may happen up to the point at which it would be considered a change in placement as previously described. School personnel may use short-term removals for your child in the same way the option is used with children who do not have disabilities. The removals may not establish a pattern of removal that denies your child free appropriate public education (FAPE).

**For Longer Removals:**

If the school district is considering a removal that is a change of placement, the district must inform you on the date that decision is made and give you a written copy of the notice. There must be an IEP meeting within 10 days of the decision by the district. The IEP team, of which you are a participant, will make a 'manifestation determination'.

**What information does the IEP team first look at to make a 'manifestation determination'?**

The IEP team, including you, reviews all the information in terms of the behavior that is subject to the disciplinary action including:

1. Evaluation results, and any independent educational evaluations
2. Information provided by you
3. Observations of your child
4. Your child's IEP and placement

**What can the IEP team decide using all of this information?**

The IEP team could decide that in light of the behavior:

1. Your child's IEP and placement were appropriate
2. The special education services, supplementary aids and services, and behavior intervention strategies were provided as described on your child's IEP
3. Your child's disability did not impair the ability to understand the impact and consequences of the behavior
4. Your child's disability did not impair the ability to control the behavior

**If all of these determinations are made, then the behavior is not a manifestation of your child's disability.**

When the IEP team concludes that the behavior was not a manifestation of your child's disability, the school district may take disciplinary action in the same manner it would for children without disabilities. If the parents disagree with the determination, the state education agency or the school district arranges an expedited hearing, which will be discussed later in this section.

**What happens if the "behavior" involves weapons\* or drugs\*\*?**

School personnel may move your child to an interim alternative educational placement for not more than 45 days if:

1. The child carries a weapon to school or to a school function
2. The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function

3. The interim alternative placement meets the following requirements
  - a. allows your child to continue to participate in the general curriculum, although in another setting
  - b. allows your child to continue to receive special education and related services and modifications, including those described in your child's IEP, to enable your child to meet their IEP goals
  - c. includes services and modifications designed to address your child's behavior that are designed to prevent the behavior from recurring

The school district must complete the manifestation determination for this behavior within 10 days after the decision to take the disciplinary action. You may appeal the placement of your child by the school in an interim alternative educational placement. However, your child must remain in the interim alternative educational setting for up to 45 days or until the administrative law judge makes a determination, whichever happens first. After the 45 days have elapsed, your child shall return to the placement prior to the interim alternative educational placement. An exception to this would be if you and the school district come to an agreement together about what will happen.

**\* For the purposes of IDEA, the definition of weapons is found in the U.S. Code.**

**\*\* For the purposes of IDEA, the definition of drugs is 'drugs or other substance identified under schedules I, II III, IV or V, illegal drugs or controlled substance'. It does not include substances that are legally possessed or used under the supervision of licensed health care professional.**

### **Determination of Setting**

The IEP team must determine an interim alternative educational setting. Any interim alternative educational setting must enable your child to continue to progress in the general curriculum, although in another setting and continue to receive those services and modifications in the current IEP that will enable your child to meet the goals in the IEP.

### **Expedited Due Process Hearing**

A administrative law judge may order change of placement of your child to an appropriate interim alternative educational setting for not more than 45 days when the school district has demonstrated by substantial evidence to the administrative law judge that maintaining the current placement of the child is substantially likely to result in injury to the child or others. The administrative law judge must:

1. Consider the appropriateness of your child's current placements
2. Consider whether the school district has made reasonable efforts to minimize the risk of harm to children in your child's current placement, including the use of supplementary aids and services

3. Determine whether the interim alternative educational setting that is proposed by school personnel who have consulted your child's special education teacher meets the requirements described above

Decisions made at an expedited due process hearing are appealable.

**What about children who are not yet identified eligible for special education and related services? May the protections of IDEA be asserted?**

Yes, if the school district had knowledge that a child had a disability before the behavior that precipitated the disciplinary action.

**What determines a 'basis of knowledge' regarding a child having a disability?**

**The school district is deemed to have knowledge if:**

1. You have expressed concern in writing (or orally if the parent does not know how to write or has disability that prevents writing) to appropriate personnel of the school district that the child is in need
2. Behavior or performance of your child demonstrates the need of these services
3. You have requested an evaluation of your child to determine their eligibility for special education
4. The child's teacher or other personnel expressed concern about the behavior or performance of child to the AEA director of special education or other personnel in accordance with AEA established child find or special education referral system

**School districts are deemed to NOT have knowledge if:**

1. Conducted an evaluation and determined that the child was not eligible for special education, or
2. Determined the evaluation was not necessary, and provided notice to the parents of the determination.

**Conditions that apply if 'no basis of knowledge' by school district exist.**

If the school district does not have knowledge that the child has a disability prior to taking disciplinary measures, the child may receive the same measures as children without disabilities who engaged in the same or similar behavior.

If a request is made for an evaluation during the time a child is being disciplined, the evaluation must be conducted in an expedited manner. Until the evaluation is done, the child remains in the educational placement determined by the school.

## ***Legal Process Options...***

### **The Complaint Process**

An organization or individual may file a signed written complaint with the Iowa Department of Education (DE). The complaint must include a statement:

1. That the public agency has violated a requirement of Part B of IDEA, i.e., the Iowa Administrative Rules of Special Education
2. Facts on which the statement is based

The complaint must allege a violation occurred not more than one year prior to the date that the complaint is received by the DE. A period longer than one year is reasonable when:

1. The violation is continuing
2. There is a request for compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

The Iowa DE may carry out an independent on-site investigation if it determines that such an investigation is necessary. Within 60 calendar days, the DE must:

1. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint
2. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of IDEA
3. Issue a written decision to the complainant that addresses each allegation in the complaint and includes:
  - findings of fact and conclusions
  - the reasons for the DE's final decision

The time limit may be extended if exceptional circumstances exist.

### **Preappeal Conference**

A preappeal conference is a proven beneficial way to resolve differences between parents and the district or AEA. It is a process that promotes communication, mutual respect, and identification of common ground. The desired outcome of the preappeal conference is a written agreement that is appropriate for the child's individual needs, and is acceptable to all parties.

A parent, a district, or an AEA may request a special education preappeal conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE. Participation in the preappeal process is voluntary. A letter requesting a preappeal conference must be mailed to the Iowa DE. The letter must identify the student, district,

and AEA, and describe the issues or concerns. The conference will be scheduled and held at a time and place reasonably convenient to all parties involved. A trained, neutral mediator for the preappeal will be paid for by the DE. If the results are not satisfactory, a party may still request a mediation, request a due process hearing, or request the DE investigate a complaint.

## **Mediation**

The public agency (school district or AEA) must ensure that procedures are established and implemented to allow parties to disputes enter into mediation before taking the steps to a due process hearing.

### **Mediation is:**

1. Voluntary
2. Conducted by a qualified, impartial and trained mediator

### **Where can I find out about people who are mediators and who pays for a mediation?**

The Iowa DE maintains a current listing of qualified individuals who are impartial and trained to be mediators. The Iowa DE will pay for the mediation process.

### **Other information to know about mediation:**

1. Mediations need to be scheduled in a timely manner
2. An agreement from the mediation must be in writing
3. The place where the mediation is held must be convenient for both parties
4. Any discussion during mediation is confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; the mediator and the parties involved must sign a confidentiality pledge before the beginning of mediation.

### **An impartial mediator must:**

1. Not be an employee of the school district, AEA or Iowa DE that is providing direct services to the child
2. Not have a personal or professional conflict of interest
3. The person who is otherwise qualified is not an employee of the DE because he or she is being paid to be the mediator

### **If I don't want to go through a mediation, what may happen?**

The AEA may establish procedures to assist those who elect not to use the mediation process to meet with a disinterested third party at a time and location that is convenient to both parties. At that meeting, discussion of the benefits of the mediation process will be detailed and the parties will be encouraged to use the process. However, the public agency may not deny or delay your right to a due process hearing if you fail to participate in the mediation meeting.

## **Impartial Due Process Hearing**

### **Who can start the process for an impartial due process hearing?**

You, the parent, or the school or AEA can start the process for an impartial due process hearing.

### **If I start the process for an impartial due process hearing, what happens?**

The public agency shall inform you of

1. Mediation
2. Free or low cost legal services
3. Other relevant services that are available in the area

### **Who do I need to have communication with if I make a decision to go through a due process hearing?**

Either you or the attorney representing your child must provide notice to the DE that you are requesting a hearing. The notice to the DE must include:

1. Child's name
2. Child's address
3. The school attendance center
4. Description of the nature of the problem relating to the proposed or the refused initiation or change in services to your child
5. Any facts relating to the problem
6. Proposed resolution of the problem to the extent known and available to the parent at the time

However, the DE may not deny or delay your right to due process for failure to provide the proper notice. (A form is provided at the end of the manual.)

### **Who can be an impartial administrative law judge for a due process hearing?**

The Iowa DE will maintain a list of people who are qualified and trained to be impartial administrative law judges.

The law says that a hearing may not be conducted by a person:

1. Who is an employee of the school district, AEA or DE that is involved in providing direct services to the child
2. Who has a personal or professional interest that would conflict with his or her objectivity

The fact that an administrative law judge is paid by the DE for being the administrative law judge does not render him or her an employee of the DE.

### **Are there specific rights I need to consider when there is a hearing?**

Yes, there are. Any party to a hearing has the right to be accompanied and advised by an attorney and by individuals with special knowledge or training with respect to the problems of children with disabilities. As a participant in a hearing, you can present evidence and confront, cross-

examine and compel by subpoena the attendance of witnesses. In following the procedures of a formal legal process, one of the rules states that evidence which has not been disclosed to the other party at least 5 business days before the hearing can be prohibited from being introduced as evidence at the hearing.

**What type of information could be considered ‘evidence’ that needs to be disclosed to the ‘other’ party at least five business days before a hearing?**

All evaluations completed and the recommendations based on the evaluation that the party intends to use at the hearing must be disclosed. The administrative law judge may bar any party that fails to comply with the requirement from introducing the relevant evaluation or recommendations without the consent of the other party.

**What can I expect to happen after the hearing?**

1. You have the option of obtaining either a written or an electronic, verbatim record of the hearing
2. You have the option of obtaining either a written or electronic findings of fact and the decisions of the administrative law judge.

**As a parent, are there other rights about the hearing I need to know?**

Yes, there are. You have the right to open the hearing to the public and you have a right to have your child present at the hearing.

**Is the decision of a hearing final?**

Yes it is, but any party can appeal the decision in any state court or in a district court of the U.S.

**What does IDEA tell me about timelines and convenience of hearings?**

The hearing must be conducted at a time and place that is convenient to parties involved in this process.

A public agency shall ensure that 45 calendar days after the receipt of a request for a hearing:

1. A final decision is reached in the hearing.
2. A copy of the decision is mailed to each party.
3. The administrative law judge may grant specific extension of time beyond the 45 calendar days for a good cause.

**Where does my child attend school while we are involved in a due process proceeding?**

Unless the local school district and AEA and you agree otherwise, the child involved in the hearing *must* remain in his or her current educational placement. If the hearing involves an application for initial admission to public school, the child, with your consent, must be placed in the public school until the completion of all the proceedings.

If the decision of the administrative law judge agrees with you that a change of placement is appropriate, the placement must be treated as an agreement between school district/AEA and the parents. While the placement may not be changed, this does not preclude the agency from using its normal procedures for dealing with individuals who are endangering themselves or others.

**Any party harmed by the finding and decisions has the right to bring civil action in district court within 30 calendar days in respect to the complaint presented.**

In that instance, the court shall:

1. Receive the records of the administrative proceedings.
2. Hear additional evidence at the request of a party.
3. Make its decision on the preponderance of the evidence.
4. Grant the relief the court determines to be appropriate.

The action may be brought in any state of competent jurisdiction or in a district court of the U.S.

## ***Attorney Fees...***

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

A court *may* award, at its discretion, reasonable attorney fees as part of the costs to parents of a child with a disability when they are the 'prevailing party'. When calculating 'reasonable attorney fees', the prevailing rates in the community where the proceeding arose is considered, along with the kinds and quality of the legal services provided. No bonus or multipliers may be used in calculating the attorney fees.

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

IDEA states that attorney fees and related costs may not be awarded or related costs may not be reimbursed for services:

1. If an offer to settle the dispute is made more than 10 calendar days before the proceeding begins, in accordance with Rule 68 of the Federal Rules of Civil Procedure
2. If the offer is not accepted within 10 calendar days
3. If the court or administrative law judge finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement
4. No fees can be collected relating to any meeting of the IEP team unless the meeting was convened as a result of an administrative proceeding or judicial action

### **Exception to prohibition on attorney fees and related costs.**

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

### **The court can reduce the amount of the attorney fees if the court finds:**

1. The parents unreasonably protracted the final resolution of the controversy.
2. The amount unreasonably exceeds the hourly rate prevailing in the community.
3. The time spent and legal services furnished were excessive considering the nature of the action.
4. The attorney did not provide the DE the appropriate information in the due process complaint.

### **Exception to reduction in amount of attorney fees.**

Provisions of reducing attorney fees do not apply if the court finds the school district, AEA or the DE unreasonably protracted the final resolution of the action or there was a violation of Section 615 of the Act.

## ***Placement of Children by Parents in Private Schools when FAPE is an Issue...***

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

1. The school made FAPE available to the child, and
2. Parents elect to place the child in a private school or facility.

If there is a disagreement between parents and school regarding the availability of an appropriate program for the child, the question of financial responsibility is subject to the due process procedures.

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

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

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

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

### **Reimbursement for private school placement may be reduced or denied if:**

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

**There are exceptions to the reduction or denial of reimbursement to the parents and those are:**

1. If you are illiterate and unable to write in English
2. If compliance would likely result in physical or serious emotional harm to the child
3. If the school prevented you from providing the notice
4. You had not received notice of the notice requirements

## ***Confidentiality of Information...***

### **May I have access to my child's educational records?**

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

### **What does the 'right to inspect' include?**

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

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

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

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

1. Names
2. Date access was given
3. Purpose for which the party is authorized to use the records

If the record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of that specific information. The participating agency shall provide you, on request, a list of the types and locations of educational records collected, maintained or used by the agency. The participating agency may charge a fee for copies of records that are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records. The agency may not charge a fee for the search or retrieval of the information.

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

If you believe that the information collected, maintained or used is inaccurate or misleading or violates the privacy or other rights of your child, you may request the agency that maintains the information to amend the record. The agency shall decide whether to amend the information in accord with the request within a reasonable amount of time. If the agency decides to refuse to amend the information, it shall inform you of the refusal and advise you of the right to a hearing.

As a result of the hearing:

1. If decision is that the information is misleading, inaccurate or otherwise in violation of the privacy or other rights of your child, it shall amend the information accordingly and inform you in writing.
2. If the decision is that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, the agency will inform you of the decision. The agency will also inform you of your right to place in the records it maintains on your child, a statement commenting on the information and setting forth your reasons for disagreeing with the decision of the agency.
3. Any explanation you placed in the records of your child must be maintained by the agency as part of the record as long as the record or contested portion is maintained by the agency. If the record or the contested portion of the record is disclosed by the agency to any other party, your explanation must also be disclosed.

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

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

### **Why would I want to examine my child's education records or why would someone else ask to look at the records?**

One reason would be to look at the information that is gathered in your child's education record that identifies, evaluates and determines where your child is going to be placed to receive services. By looking at the records, some information could indicate whether or not your child is receiving a free appropriate public education (FAPE), one of the provisions in IDEA.

### **Does the agency that has my child's educational records need to ask me for permission to release the information?**

Yes, parental consent must be obtained before personally identifiable information is disclosed to anyone other than officials of participating agencies (e.g., another district in which you are going to enroll your child). An education agency or institution may not release information from education records to participating agencies without parental consent

unless authorized to do so according to FERPA. (The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.)

**Are there other steps a public agency takes to protect and safeguard my child's confidentiality and privacy?**

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

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

There is some information in your child's record that is kept as part of a permanent record. That information would be things such as: name, grades, attendance records, classes attended and so forth. The public agency shall inform you when personally identifiable information collected, maintained or used under IDEA '97 is no longer needed to provide educational services to your child. The information must be destroyed at your request.

## ***Child's Rights...***

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

### **When do the procedural rights under IDEA '97 transfer to my child?**

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

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

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

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



# Request for a Due Process Hearing under IDEA, Part B

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

_____ Child's name	_____ Parent's name
_____ Address of the residence of the child	_____ Parent's address
_____ Child's resident district, school, and AEA (and district and/or AEA child attends if different)	_____ Parent's phone number

**This problem results from the:**

*Proposal to initiate or change*

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

*Refusal to initiate or change:*

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

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

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

I hereby swear that the foregoing is the full truth as I know it.

I/we agree to participate in a mediation process: \_\_\_\_\_YES \_\_\_\_\_NO  
(This will not delay or deny the opportunity for a hearing.)

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

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

**Send the completed form to:** Director, Iowa Department of Education  
Grimes State Office Building  
Des Moines, IA 50319-0146

# Form for filing a complaint

A complaint process can be used when you believe a district or area education agency **violated a requirement** of Part B of the Individuals with Disabilities Education Act (IDEA). (The complaint process is not the avenue to use when you are having differences of opinion with educators, such as the type of reading program to use or the amount of support services you believe should be provided for a child. For information resolving differences of opinion, see the "Preappeal Conference" and "Impartial Due Process Hearings" sections of this brochure.)

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

If child-specific, name of child:

The facts on which the statement is based: (Use additional sheets of paper if more space is needed.)

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

If the alleged violation occurred more than a year prior to the date that the complaint is received by the Department of Education:

\_\_\_ I believe a longer period is reasonable because I believe the violation is continuing,

**OR**

\_\_\_ I am seeking compensatory services for a violation that occurred not more than three years prior to the date the complaint is received.

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

Address \_\_\_\_\_

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

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

**Send the completed form to:** Director, Iowa Department of Education  
Grimes State Office Building  
Des Moines, IA 50319-0146