

Bureau of Indian Education (BIE)  
Albuquerque Service Center  
Division of Performance and Accountability



**SPECIAL  
EDUCATIONAL  
PROCEDURAL  
SAFEGUARDS FOR  
PARENTS OF  
CHILDREN  
WITH DISABILITIES**

Under Provisions of the Individuals with Disabilities Education Act including the  
Amendments of 2004 (IDEA 04)

Revised 2007



*Contents*

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## INTRODUCTION

This booklet describes parent educational rights required under special education federal rules and regulations and the BIE special education eligibility document. *It is important that you, as a parent, understand your rights in special education related to your child.*

These procedural rights are also available for students with disabilities who have reached the age of majority under State and tribal law and have not been determined to be incompetent by a court.

School staff is available to assist you in understanding these rights and is available on request to provide you with any further explanation. *If needed, the school will provide an interpreter or translation to help ensure that you understand your rights under the IDEA.*

TO INCREASE YOUR UNDERSTANDING,  
BEFORE EACH MAIN TOPIC IS A BOX THAT  
CONTAINS A BRIEF SUMMARY OF YOUR RIGHTS IN  
NON-LEGAL LANGUAGE.

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If you have any questions or would like further information please contact

Maryanne Levery

701-672-7274 or 701-672-7230

Name

Telephone

***Note***

*Parents whose language is other than English will need to be provided an oral or written translation in their native language.*

## **KEY SPECIAL EDUCATION DEFINITIONS**

Parents of a child with a disability need a clear understanding of important terms in special education. Listed below are words that will be used throughout this booklet. Read the definitions to gain a better understanding of your rights in special education.

1. **Special Education**—Specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability
2. **Free Appropriate Public Education (FAPE)**—An educational program that meets the unique needs of your child—The program is without charge to the parents and is outlined in your child’s Individualized Education Program (IEP).
3. **Evaluation**—A process to determine if your child is eligible or continues to be eligible for special education services—The school will conduct an individual initial evaluation before special education and related services are provided to any child. The school has 60 days after receiving parent consent to complete the evaluation. This initial evaluation will consist of procedures to determine the following:
  - a. Whether the child has a disability
  - b. Whether the child requires special education and/or related services
  - c. The nature and extent of special education and related services needed by the child
  - d. The least restrictive environment for the child

Evaluation information requires disclosure of evaluation results and recommendations.

4. **Individualized Education Program (IEP)**—The need for special education is documented in each child’s Individualized Education Program (IEP)—It is a written statement for each child with a

disability that serves as a communication vehicle between a parent and the school. It is the product of collaboration between a parent and educators who, through full and equal participation, identify the unique needs of a child with a disability and plan the special education services to meet those needs. It contains statements of goals and short-term objectives (hereafter objectives) to monitor and measure the effectiveness of the services. The IEP also serves as a commitment by the school to provide the resources outlined in the IEP.

5. **Least Restrictive Environment (LRE)**—The Individuals with Disabilities Education Act (IDEA) states that, to the maximum extent appropriate, children with disabilities, including preschool children with disabilities, are to be educated with children who are not disabled. This concept is known as the Least Restrictive Environment (LRE). The Individualized Education Program (IEP) must contain an explanation of the extent, if any, to which the child will not participate in the general education classroom, the general education curriculum, or extracurricular or other nonacademic activities.
6. **Individuals with Disabilities Education Act (IDEA)**—The federal law for special education

**AN EXPLANATION OF PROCEDURAL SAFEGUARDS  
AVAILABLE TO PARENTS OF CHILDREN  
WITH DISABILITIES**

**FREE APPROPRIATE PUBLIC EDUCATION**

*Brief Summary*

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*Free Appropriate Public Education*

*An eligible child with a disability has a right to receive a free appropriate education that is outlined as an Individualized Education Program. The IEP is designed to address your child's unique educational needs. The IEP contains your child's special education goals.*

You have a right to participate in meetings with respect to the identification, evaluation, eligibility, Individualized Education Program planning, placement, and provision of a free appropriate public education of your child. Your child's general education classroom teacher should also be involved with the development of the IEP. You will be provided with notice to ensure your opportunity to participate.

However, if you choose not to participate, the school may be able to hold a meeting and make decisions for your child without you.

**PRIOR WRITTEN NOTICE TO PARENTS**

*Brief Summary*

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*Prior Written Notice*

*The school will notify you by letter (or by phone when the native language or other mode of communication of the parent is not a written language) if they are proposing to change or refuse to change your child's special education program. The notice must be simple and easy to understand. You must also receive notice about meetings for your child in a reasonable time so you can attend.*

The school must provide you with prior written notice each time it proposes or refuses to initiate or change the identification, evaluation program, or educational placement of your child or the provision of a free appropriate public education.

If you need assistance in understanding your procedural safeguards or anything else relating to your child's education, please contact the school principal of your school.

**A copy of these procedural safeguards must be provided upon the first referral for evaluation, at your request for an evaluation, upon receipt of a complaint, upon receipt of a due process hearing request, in accordance with the discipline procedures, or upon your request.**

The notice must be written in language understandable to the general public and provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, the school must take steps to ensure that the notice is translated orally or by other means to you in your native language or other mode of

communication so that you understand the content of the notice, and that there is written evidence that these requirements have been met.

**The notice must include the following:**

1. A description of the action proposed or refused by the school
2. An explanation of why the school proposes or refuses to take the action
3. A description of any other options that the school considered and the reasons why those options were rejected
4. A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action
5. A description of any other factors that are relevant to the school's proposal or refusal
6. Sources for parents to contact to obtain assistance in understanding the provisions of this section

**PARENT CONSENT**

*Brief Summary*

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*Parent Consent*

*Your written permission is required before your child is first evaluated, reevaluated, and given special education services.*

The school must obtain your consent before conducting the first evaluation, the initial provision of special education and related services, and a reevaluation of your child. The school may use the dispute resolution procedures (described later) to pursue the initial evaluation. However, those same procedures cannot be used if you refuse to give your consent for initial services. The school cannot provide special education for the first time without your consent.

For a reevaluation, if the school makes reasonable efforts to obtain your consent but you fail to respond, the school may proceed with the reevaluation.

Consent for the initial evaluation does not mean that consent is given for initial placement. Also, parental consent is not required before reviewing existing data as part of an evaluation or reevaluation or giving a test that is given to all students for which consent is not required. Informed consent need not be obtained for reevaluation if the agency can show that it took reasonable measures to obtain consent and you failed to respond.

Written information regarding consent must be in your native language or other mode of communication. You should understand the reason the school is asking for your written consent and understand that your consent can be revoked at any time.

### INDEPENDENT EDUCATIONAL EVALUATION

#### *Brief Summary*

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#### *Independent Evaluation*

*If you disagree with the school's evaluation of your child, you can request an independent evaluation conducted by someone other than the school staff and paid for by the school. If the school disagrees, you can find a qualified person to conduct the evaluation.*

You have the right to request an independent educational evaluation for your child at public expense if you disagree with an evaluation obtained by your school. An independent educational evaluation is an evaluation conducted by a qualified examiner who is not employed by the school. If you request an independent educational evaluation after the school evaluates your child, the school must either

provide the evaluation at no expense to you or file a due process hearing request to show its evaluation was appropriate. The school will provide, upon your request, information about where an independent educational evaluation may be obtained.

If you obtain an independent educational evaluation at private expense, the results of the evaluation must be considered by your school in any decision made with respect to the provision of a free appropriate public education to your child and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at the school's expense. Whenever an independent evaluation is at school expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualification of the examiner, must be the same as the criteria that the school uses when it initiates an evaluation. Your school may initiate a due process hearing to show that the evaluation obtained by you does not meet reasonable criteria of the school.

<b>EDUCATIONAL SURROGATE PARENTS</b>
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<i>Brief Summary</i>
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<i>Educational Surrogate Parents</i>
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<i>Some children do not have parents to represent them in educational matters. An educational surrogate parent is someone appointed by the school to represent the child at school meetings.</i>
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Each school shall ensure that an individual is assigned to act as an educational surrogate parent for a child whenever the parents of a child are not known and/or the school cannot, after reasonable efforts,

locate the parents or if the child is a ward of the tribe or State under the laws of the tribe or State. **The school has 30 calendar days to make the appointment.** The school must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.

The person assigned as the educational surrogate parent may not be an employee of the BIE or any other agency that is involved in the education or care of the child and has no interest that conflicts with the interest of the child he/she represents.

The educational surrogate parent may represent the child in all educational matters relating to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education. He/she must have knowledge and skills to ensure adequate representation of the child.

#### TRANSFER OF PARENTAL RIGHTS AT AGE 18

When a student with a disability reaches the age of majority (age 18), (1) the school shall provide any required notices to both the student and the parents, (2) all other rights given to parents under IDEA-B transfer to the student, and (3) all rights given to parents under IDEA-B transfer to students who are incarcerated in a State or local correctional institution, for either adults or juveniles. Whenever the BIE or school transfers such parental rights, the agency shall notify both the student and the parents of the transfer of rights.

If a student with a disability, age 18 or over, is determined, by the court to be incompetent to provide informed consent regarding his/her educational program, the school shall establish procedures for appointing the parent or, if the parent is not available, another appropriate individual, to represent the educational interests of the student throughout the remainder of his eligibility under IDEA-B. The school will use its surrogate parent procedures to meet this requirement.

The parent still retains the right to any required notice, along with the student.

A statement is required on the student's IEP, beginning at least one year before the student's eighteenth birthday that the student and parents have been informed of their rights under IDEA that will transfer to the student on reaching the age of 18. Although the parent retains the right to any required notice, all other parental rights transfer to the student.

## **STUDENT RECORDS**

### *Brief Summary*

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### *School Records*

*You have the right to see or request copies of your child's school records. If you disagree with items in the records, you can request that they be changed or removed.*

#### **ACCESS TO RECORDS**

Your school must permit you to inspect and review any education records that are collected, maintained, or used by the school under special education relating to your child with respect to the identification, evaluation, and educational placement of your child and the provision of a free appropriate public education to your child. The school must comply with the request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, and placement of your child and in no more than 45 days after the request has been made.

Your right to inspect and review education records under this section includes the following:

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

The school may presume that you have authority to inspect and review records relating to your child unless the school has been advised that you do not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

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

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

#### FEES FOR SEARCHING, RETRIEVING, AND COPYING RECORDS

The school may not charge a fee to search for or retrieve information under this part but may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. Copies of the IEP must be provided at no cost to the parents.

#### RECORD OF ACCESS

The school must keep a record of parties obtaining access to education records collected, maintained, or used under this part (except access by parents and authorized employees of the participant 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.

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AMENDMENT OF RECORDS AT PARENT'S REQUEST

If you believe that information in education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of your child, you may request that the school that maintains the information amend the information.

The school must decide whether to amend the information in accordance with your request within a reasonable period to the time of receipt of the request. If the school decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

The school shall, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of privacy or other rights of the child.

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and inform you in writing.

If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform you of the right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the hearing. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school; if the records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the parent.

CONFIDENTIALITY

Parental consent must be obtained before personally identifiable information is disclosed to anyone other than participating agencies collecting or using the information under IDEA requirements. Parental consent is not required, however, if the records are to be sent to other school officials, including teachers, in the school or agency who have valid educational interest or to officials of another school or school system in which the student seeks or intends to enroll. Under those circumstances, it is the policy of the BIE schools to forward the education records of students, or when the parents or students request the records to be forwarded.

The school will protect the confidentiality of student records. The school will designate one person responsible for ensuring the confidentiality and will train all those using the information to protect its confidentiality. A list will be maintained of all those accessing the records.

When a student's special educational records are no longer needed to provide educational services to the student, the school will inform the parents. The information may be given to the parents or must be destroyed at the request of the parents. However, the school/BIE may maintain a permanent record, without time limitation.

**MEDIATION**

*Brief Summary*

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*Mediation*

*Mediation is an effective way to resolve differences with the school. Mediation is voluntary, free, and conducted by someone not employed by the school.*

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If you have a dispute involving the identification, evaluation, placement, or provision of a free appropriate public education, you must be allowed to resolve the dispute through a mediation process that, at a minimum, must be made available whenever a due process hearing is requested.

*It is important for you to know that mediation is voluntary and conducted by a qualified/impartial mediator at no cost to you. Mediation cannot delay or deny your right to a due process hearing if you have also requested a hearing. Discussions during mediation are confidential and may not be used as evidence during a due process hearing or civil proceedings. The parties to mediation may be required to sign a confidentiality pledge.*

If you reach an agreement with the school during mediation, the agreement must be in writing. The written, signed mediation agreement is enforceable by a judge in any State or federal court.

The BIE maintains a list of impartial, qualified mediators, and will pay costs of the mediation process. Each session must be scheduled in a timely way and at a location convenient to both parties. Any agreement reached must be set forth in writing.

If parents choose not to use the mediation process, the BIE procedures may require parents to meet, at a time and location convenient to parents, with a disinterested party who is under contract with the parent and training information center who would explain the benefits of mediation and encourage the parents to use the process. The BIE may not delay or deny the right to due process if the parent fails to participate in the meeting.

## COMPLAINT PROCEDURES

### *Brief Summary*

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### *Complaint Procedures*

*If you feel the school is violating special education requirements for your child, you can file a written complaint with the Bureau of Indian Education—Division of Performance and Accountability (BIE/P&A) to resolve the problem.*

It is the right of any organization, individual, or parent to file a signed written complaint with the Bureau of Indian Education—Division of Performance and Accountability (BIE/P&A) if you feel the school has violated a requirement of special education laws or regulations. The complaint must be filed in writing to the BIE explaining the alleged violations, including a statement that the school has violated a requirement of BIE /federal special education laws, and the facts of the matter.

The complaint must allege a violation that occurred within the last year.

The BIE will have 60 calendar days after the complaint is filed to complete the following:

1. Carry out an independent investigation.
2. Give the parent an opportunity to submit additional information about the allegations, either orally or in writing.
3. Give the school an opportunity to respond to the complaint, including an opportunity to resolve the complaint or request mediation.
4. Review all the information and make an independent determination of whether a violation has occurred.
5. Issue a written decision to the school and parent of the findings, conclusions, timelines, and reasons for the final decision.

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The BIE may permit an extension of the time limit only if exceptional circumstances exist or if the parties agree to extend the time to engage in mediation. The BIE must have procedures for implementing the complaint decision, including technical assistance activities, negotiations, and corrective actions, if necessary, to achieve compliance.

To file a written complaint, contact the Bureau of Indian Education—Division of Performance and Accountability, 1011 Indian School Road NW, PO Box 1088, Albuquerque, NM 87104-1088.

**IMPARTIAL DUE PROCESS HEARING**

*Brief Summary*

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*Impartial Due Process Hearing*

*On rare occasions, you might disagree with the special education testing, services, or placement for your child and request a due process hearing. Try to resolve your disagreements by being involved in a resolution session, which is a free service, or mediation, where a mediator will assist to resolve difference between you and the school. If no agreement is reached, the due process hearing will proceed. Please have the school explain the process before you make a final decision.*

You or the school may initiate a due process hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education. A school may not initiate a due process hearing to override a parent's refusal of consent for an initial placement in special education.

When requesting a hearing, you or your attorney must provide written notice to the agency, providing the following information:

1. Name and address of your child
2. Name of school your child is attending
3. Description of the problem(s), including as many facts as possible
4. Proposed resolution to the problem to the extent known at the time

The school has the right to challenge the due process complaint if all the required information is not present. The school will have a form available for you to use to file the written notice. Also, the school will inform you of the availability of mediation to resolve the dispute as described in this booklet.

#### RESOLUTION SESSION

**Resolution meeting**—Prior to the opportunity for an impartial due process hearing, the school shall convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint—

- a) within 15 days of receiving notice of the parents' due process complaint;
- b) which shall include a representative of the school who has decision making authority on behalf of the school;
- c) which may not include an attorney of the school unless the parent is accompanied by an attorney; and
- d) where the parents of the child discuss their complaint and the facts that form the basis of the complaint, and the school is provided the opportunity to resolve the complaint, unless the parents and the school agree in writing to waive such meeting, or agree to use the mediation process.

**Hearing**—If the school has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable timelines for a due process hearing shall commence.

If the school fails to convene the resolution meeting within 15 days of receiving your due process complaint, you may request that the

hearing begin. If you fail to attend the resolution meeting in the 30-day time period, the school can request that your due process complaint be dismissed.

**Written settlement agreement**—If a resolution is reached, resolving the due process complaint at a meeting, the parties shall execute a legally binding agreement that is—

- a) signed by both the parent and a representative of the school and
- b) enforceable in any State court of competent jurisdiction or in a district court of the United States.

**Review period**—If the parties execute an agreement, a party may void such agreement within three business days of the agreement's execution.

**Other Hearing Requirements**—At least five business days before a hearing, each party must disclose to all other parties all evaluations completed by that date and recommendations based on the evaluations that the party intends to use at the hearing. Failure to do so could result in the hearing officer prohibiting the introduction of the evidence at the time of the hearing without the consent of the other party.

The hearing will be conducted by the BIE at a time and place reasonably convenient to the parents and child.

The school must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or you or the school initiate a due process hearing.

The hearing cannot be conducted by an employee of the BIE or of the school involved with the education of your child or by any person having a personal or professional interest that would conflict with his or her objectivity in the hearing. (A person who otherwise qualifies to conduct a hearing is not an employee of the school solely because he or she is paid by the school to serve as hearing officer.)

The BIE shall ensure that a final hearing decision is reached and mailed to the parties within 45 days after the receipt of a request for a

hearing unless the hearing officer grants a specific extension at the request of either party.

A hearing officer may grant specific extensions of time beyond the timelines above at the request of either party.

The decision made in a due process hearing is final unless a party to the hearing appeals the decision to Federal Court in a civil action. A civil action is a judicial action that any party who is aggrieved by the final decision of a due process hearing officer may bring in either Tribal court or federal district court.

#### DUE PROCESS HEARING RIGHTS

Any party to a hearing has the right to the following:

1. To be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities
2. To present evidence and confront, cross-examine, and compel the attendance of witnesses
3. A parent, a school, and their respective representatives have a right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing; failure to disclose information could result in the hearing officer prohibiting the introduction of the evidence at the time of the hearing without the consent of the other party.
4. To obtain a written or electronic verbatim record of the hearing
5. To obtain written findings of fact and decisions at no cost

You must be given the right to have your child present and to open the hearing to the public. Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

#### CHILD'S STATUS DURING PROCEEDINGS

During the pendency of any administrative or judicial proceeding regarding a complaint, unless you and the agency agree otherwise, your

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child must remain in his or her present educational placement (“stay put”) unless special circumstances exist. If your child

1. carries a weapon to or possesses a weapon on school premises or at a school function;
2. knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function; or
3. has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function

the school can remove your child to an interim alternative educational setting for not more than 45 school days. Even if this decision is appealed, your child must remain in the alternative setting.

If a hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings. If the decision of the hearing officer agrees with the child’s parents that a change of placement is appropriate, that placement must be treated as an agreement between the school and the parents for purposes of “stay put” during the pendency of any appeal of the hearing officer’s decision.

**ATTORNEYS' FEES**

In any action or proceeding brought under the IDEA, a court may award reasonable attorneys' fees to 1) the parents or guardians of a child or youth with disabilities who is the prevailing party, 2) the school if the school is the prevailing party against the attorney of a parent who files a frivolous or unreasonable complaint or if the attorney continued to litigate needlessly or unreasonably, or 3) the school if the school is the prevailing party against the parent or the attorney for the parent if the due process complaint was presented for any improper purpose.

Attorneys' fees may not be awarded relating to any meeting of the IEP team unless such a meeting is convened as a result of an administrative proceeding or judicial action.

Attorneys' fees may not be awarded for participation in a resolution meeting described above.

Attorneys' fees or related costs may not be awarded for services performed after the time of a written offer of settlement to a parent if (a) the offer is made at any time more than 10 days before the proceeding begins (b) the offer is not accepted within 10 days and (c) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement. An exception is that an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

The court may reduce the amount of the attorneys' fees awarded if the court finds that (a) the parent, during the action, unreasonably delayed the final resolution of the controversy; (b) the amount of fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of comparable skill and experience; (c) the time spent and legal services provided were excessive, considering the

nature of the action; or (d) the attorney representing the parent did not provide to the school or agency the appropriate information required in the due process complaint.

Attorneys' fees will not be reduced if the court finds that the BIE or school unreasonably extended the final resolution of the action or there was a violation of procedural safeguards requirements.

### **PRIVATE SCHOOL PLACEMENT**

#### *Brief Summary*

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#### *Private School Placement*

*Parents who place their child in a private school without the school's consent could be awarded reimbursement for private school educational costs if a court or hearing officer determines that the school was not providing a free appropriate public education and the private placement is appropriate to meet the child's needs.*

IDEA does not require the school 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 that school made FAPE available to the child and you choose to place the child in a private school or facility.

Disagreements between you and the school regarding the availability of an appropriate program for the child, and the question of financial responsibility for the private placement, are subject to the due process procedures.

If you, as the parents of a child with a disability who previously received special education and related services from the school, enroll your child in a private school without the consent of or a referral from the school, a court or due process hearing officer may require the school

to reimburse you for the cost of that enrollment if the court or hearing officer finds that the school had not made a free appropriate public education available in a timely manner prior to the private school placement and the private placement is appropriate.

A hearing officer or a court may find a parental placement appropriate even if it does not meet BIE standards that apply to education provided by the BIE, tribal, or grant schools.

The cost of reimbursement described above may be reduced or denied if (a) at the most recent IEP meeting that you attended prior to removal of the child from the public school, you did not inform the IEP team that you were rejecting the placement proposed by the school to provide free appropriate public education to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; (b) at least 10 business days (including holidays) prior to the removal of the child from the public school, you did not give written notice to the public agency of the information in (a) of this paragraph; (c) if, prior to the your removal of the child from the public school, the school informed you, through notice requirements described on page 6 of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; or (d) upon a judicial finding of unreasonableness on your part.

However, the cost of reimbursement may not be reduced or denied for failure to provide the notice described in (b) above if 1) the parent is illiterate and cannot write in English, 2) complying with the notice requirement would likely result in physical or serious emotional harm to the child, 3) the school prevented the parent from providing the notice, or 4) the parents had not received notice under the procedural safeguards section of these requirements.

<b>DISCIPLINE</b>
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*Brief Summary*

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*Discipline*

*The IEP Team must consider using positive behavioral interventions, strategies, and other supports for a child whose behavior interferes with learning. Certain protections exist for a student whose behavior is caused by his/her disability.*

Discipline issues relating to students with disabilities are very complicated. For additional information, please contact your school administrator or the IEP team.

1. For a student whose behavior affects his/her learning or the learning of others, the IEP team shall consider and develop, if appropriate, strategies, including positive behavioral interventions and supports to address that behavior.
2. School personnel may order the removal of a student for not more than 10 consecutive school days for any violation of school rules and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).
3. After a student with a disability has been removed for more than 10 cumulative school days in the same year, during any additional removals, the school must provide services to the extent necessary to help the student to appropriately participate in the general curriculum and advance toward achieving the goals set out in his/her IEP.
4. A change of placement (removal for more than 10 consecutive school days, or a series of removals adding up to more than 10 days, under federal guidelines) requires prior written notice to the parents and convening the IEP team, a functional behavior assessment, and a manifestation determination.
5. School staff may order a disciplinary change in placement to an appropriate interim alternative educational setting for the same

amount of time that a regular education student would be removed, but for not more than 45 days, if the student causes serious bodily injury, carries a weapon to school or knowingly possesses, uses, sells, or solicits the sale of controlled substances (drugs) at a school or school function. The interim alternative educational setting must be determined by the IEP team and requires the procedural safeguards notice to address procedures for students who are subject to placement in an interim alternative educational setting.

6. Before or within 10 business days after first removing a student for more than 10 days in a school year or for weapons violations, drugs violations, or behavior likely to result in injury to the student or to others—if the school did not conduct a functional behavioral assessment and implement a behavioral intervention plan before the behavior, the IEP team shall meet to develop an assessment plan.
7. If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and how it's working and modify it, as necessary, to address the behavior.
8. As soon as practicable after developing the assessment plan described in #6, above, and completing assessments required by the plan, the school shall convene an IEP meeting to develop appropriate behavioral interventions to address the behavior and shall implement those interventions.
9. Any additional removals beyond 10 consecutive school days requires prior notice to the parents and shall require the IEP team's meeting to review the behavioral intervention plan and determine if modifications are necessary. If at least one of the team members believes that modifications are needed, the team shall meet to modify the plan and its usage, as necessary.
10. A due process hearing officer may order a change in the student's placement to an appropriate interim alternative educational setting for up to 45 days if the hearing officer, in an expedited due process hearing, finds that leaving the student in his current placement is

likely to result in serious injury to him/herself or others. The hearing officer considers the appropriateness of the student's current placement; considers whether the school made reasonable efforts to reduce the risk of harm in the placement, including supplementary aids and services; and determines that the interim alternative educational setting proposed by school personnel who have consulted with the student's special education teacher will enable the student to continue to progress in the general curriculum and continue to receive the services and modifications described in the IEP to meet IEP goals. The setting must also include the services and modifications to address the behavior and be designed to prevent the behavior from being repeated.

11. Within 10 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, the IEP team must conduct a review of the relationship between the student's disability and the behavior causing the disciplinary action. The team will consider all relevant information, including testing results, information from the parent, observations of the student, and the student's IEP and placement.
12. After considering the above information, the IEP team and other qualified personnel may determine that the behavior was a manifestation of the student's disability if they find that (a) the conduct in question was caused by or had a direct and substantial relationship to the child's disability or (b) the conduct in question was the direct result of the school's failure to implement the IEP. If the behavior is not found to be a manifestation of his/her disability, the student may be disciplined in the same manner as students without disabilities except that a free and appropriate public education will be provided. If the behavior is determined to be a manifestation of the child's disability, the IEP team must
  - (a) conduct a functional behavior assessment and implement a behavior intervention plan or

- (b) if a behavior intervention plan was already developed, review it and modify as necessary and, except under special circumstances involving drugs, weapons, and/or serious bodily injury, return the child to the placement from which the child was removed.
13. If the parent disagrees with the determination that the behavior was not a manifestation of the disability, or with any decision regarding placement in discipline procedures, the parent may request a hearing. The BIE will arrange for an expedited hearing. If the hearing is to challenge the interim alternative educational setting, the student will remain in the interim alternate educational setting pending the decision of the hearing officer, or the expiration of the 45 days, unless the parent and the BIE agree otherwise. The hearing officer shall determine whether the school demonstrated that the child's behavior was not a manifestation of the child's disability.
14. After the interim alternative placement expires, if the school personnel propose to change the child's placement, during the proceeding to challenge the proposed change, the student must remain in the placement prior to the interim placement. If, however, school personnel believe it is dangerous to be in the prior placement, the BIE may request an expedited due process hearing. The hearing officer will apply the standards described in #10, above, to determine whether the child should be placed in the interim alternate placement, or another appropriate placement.
15. IDEA does not prohibit a school from reporting a crime committed by a child with a disability to appropriate authorities. State/tribal law enforcement and judicial authorities may also fulfill their responsibilities if the child with a disability has committed a crime. When a school or agency reports such a crime, they must ensure that copies of the student's special education and disciplinary records of the student are transmitted for the authorities to consider to the extent allowed by the national Family Educational Rights and Privacy Act.

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**BUREAU OF INDIAN EDUCATION**  
**DIVISION OF PERFORMANCE AND ACCOUNTABILITY**

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For more information or answers to questions regarding the content of these rights, please ask

1. A school staff member (Maryanne Levery 701-672-7274 or 701-672-7230)
2. The Bureau of Indian Education—Division of Performance and Accountability, 1011 Indian School Road NW, PO Box 1088, Albuquerque, NM 87104-1088.