

# Clarenceville School District

## Special Education Services



Clarenceville Special Services  
20210 Middlebelt Road  
Livonia, MI 48152

248-919-0290

[Clarenceville.k12.mi.us](http://Clarenceville.k12.mi.us)



## **Mission Statement**

The mission of the Clarenceville School District is to create a learning environment where All Means All.

## **Vision Statement**

The vision of the Clarenceville School District is to become a learning culture where all students will be empowered to face the challenges of the 21<sup>st</sup> century.

## **Clarenceville School District Beliefs**

1. All people have value, worth and dignity.
2. Everyone can learn.
3. All individuals are unique.
4. Learning is a life-long process.
5. Everyone can experience success.
6. Change is inevitable.
7. Cooperation leads to greater learning and productivity.
8. Continuous improvement comes from trying new ideas.



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# Special Education Handbook

## Table of Contents

Clarenceville Special Education Philosophy .....	1
Clarenceville School District Programs .....	2-3
Clarenceville High School .....	2
Clarenceville Middle School.....	2
Elementary School Programs.....	2
Explanation of Evaluation Services .....	4-5
The Special Education Process .....	6-8
Special Education Certification Definitions .....	9-17
Procedural Safeguards Notice for Parents .....	18-70
	(MDE pages 1-53)
Parent/Student Rights Section 504.....	71-72
Medicaid-School Based Services Program.....	73
Resources for Parents.....	74-76



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# Special Education Program Pre-k - 12

## Philosophy

The purpose of the Clarenceville special education program is to provide each student with an Individual Education Plan (IEP) the opportunity to develop as completely as possible his/her individual potential in cognitive, academic, behavioral, social, psychomotor and vocational skills. Instruction is specifically designed to meet the individual needs of each student and delivered in the least restrictive environment. The goal of the program is the development of life academic and skills which prepare the student for personal independence and community participation in so far as the unique characteristics of the individual student will permit.

Each student placed in a special education program has an Individual Educational Plan (IEP). This plan details the services and specific educational goals, outcomes and objectives addressed through the special education program. Using the general education curriculum as the basis for instruction, specific goals/outcomes and short term objectives are written to design an educational program for each special education student.

Elementary School goals/outcomes and objectives address the specific disability areas of oral expression, listening comprehension, written expression, basic reading skills, reading comprehension, math calculation, math reasoning and social/emotional.

Middle School goals/outcomes and objectives address the above concepts and are designed to correspond to the curricula taught in general education. Courses taught by special education staff parallel the general education curriculum.

The High School special education curriculum is a credit based curriculum which incorporates the standard instructional content areas of English, Social Studies, Mathematics and Science and parallels the general education curriculum. As required by law, the special education curriculum also includes instruction in personal adjustment, prevocational education, physical education and vocational education. To receive a high school diploma a student must accrue enough credits to meet the current Clarenceville graduation requirements.

The Individual Education Plan (IEP) for every student in special education must be reviewed annually. Goals/outcomes and objectives must be reviewed and modified at that time. The IEP's of the special education students in the district are the driving force behind the special education curriculum. The Special Education Department, 248-919-0290, has the responsibility for coordinating the special education programs in the district.



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## District Programs

### Clarenceville Senior High

Clarenceville High School provides specially designed instruction for students with IEPs. A continuum of programs and services is provided, depending upon the student's identified needs. Clarenceville High School students receiving special education support/services have their curriculum needs identified and addressed at an individual education planning committee (IEPC) meeting. These needs range from supplemental instruction (support) to alternative curriculum taught by a special education teacher. The majority of the special education students follow the regular curriculum, or a combination of the regular curriculum and special education curriculum. In some cases, students require almost all of their instruction from special education in order to attain educational goals. Where this occurs, the special education curriculum is followed and it includes personal adjustment training and pre-vocational education.

### Clarenceville Middle School

Clarenceville Middle School students receiving special education support/services have their curriculum needs identified and addressed at an individual education planning committee (IEPC) meeting. These needs range from supplemental instruction (support) to alternative curriculum taught by a special education teacher. The majority of the special education students follow the regular curriculum, or a combination of the regular curriculum and special education curriculum. In some cases, students require almost all of their instruction from special education in order to attain educational goals. Where this occurs, the special education curriculum is followed and it includes personal adjustment training and pre-vocational education.

### Clarenceville Elementary Schools

Clarenceville Elementary Schools offer many special education services. Each program's main goal is to provide specialize instruction to meet the student's need, service/educate, and remediate the child's needs. Time is scheduled during the student's school week to provide specialized instruction for elementary students with IEPs. The special education staff works closely with district personnel, county consultant services, and most importantly with the student's parents. Social work, speech and language, occupational therapy and physical therapy, may also be included as part of student's overall individual educational program/services. The resource room teacher offers support to the regular education curriculum as well as specialized instruction to the student in their deficit areas.

A Early Childhood Special Education Program and Early On Program are available for children ages birth - 6 years old. These children must have demonstrated a delay in developmental areas or a disability qualifying medical condition. These programs are housed at Botsford Elementary School. Physical therapy and occupational therapy are also provided for all students showing a medical need.



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## **Center Programs**

Clarenceville School District is associated with Oakland Schools. Students who have been identified as having Hearing Impairments, Visual Impairments, Severe Multiple Impairments, Severe Emotional Impairments, Severe Cognitive Impairments or Autism may be eligible to attend programs operated by neighboring districts within Oakland Schools. Although the decision remains a determination of the IEPT, the students recommended for these programs generally have needs that exceed the parameters of the typical school environment. Clarenceville School district does not operate any Center Programs but a contact person from the district works as a liaison to the parents and the attending program. Every effort is made to provide an appropriate program for students in the closest program to the community. Clarenceville Schools provides transportation at no cost to parents. Oakland Schools also offers a variety of assessment and consultative services to the district.

## **PAC Representative**

Parent Advisory Committee (PAC) members play an important role in how the special education programs and services are delivered in Oakland County. The responsibilities, as defined by the county plan, and by the membership, are to attend and participate in the PAC monthly meetings. Members will participate in developing the Oakland Schools plan for the delivery of special education programs and services, and review and advise on proposed changes to this plan. The PAC serves as an informational source for all special needs children and their families as well as acting as a liaison between Oakland Schools and the local school districts with concerns and information. PAC members can help you understand special education and your rights. The members can direct you to the appropriate persons, respite, advocacy issues, state or local organizations. For more information, contact the Special Education Department at 248-919-0290.

## **Child Find**

Child Find is an active outreach by the Michigan Department of Education and the local school district. Within Clarenceville School District, Child Find specifically refers to the identification and service for children, birth through age six. The primary purpose is to identify young children who have an educational disability and to find appropriate special education services to aid in the child's development. Programs are mandated by IDEA (federal law) and Michigan rules for persons who are affected by one or more learning impairments, including hearing, vision, speech, cognitive, physical, and emotional. The early years are important in a child's development, and therefore specific attention is given to this age group for who school attendance is not mandatory. Disabilities, whether mild or severe, interfere with the learning process of a child, so early intervention is critical.

Early Intervention programs include home-based and/or classroom programs with necessary ancillary support services. Ancillary services may include physical therapy, occupational therapy, speech and language services and school social work. Consultation services from social workers, school psychologist, and teacher consultant for visual, hearing and autistic impairment may also be available. Any concerned parent, physician, agency or individual may refer a child by contacting the Special Education Department at 248-919-0290.



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## **Explanation of Evaluation Services**

### **School Psychologist**

The school psychologist may evaluate a student in the areas of intelligence, personality, academic achievement and perception using tests and observations. Personality testing requires specific written consent any time administered. Upon completion of tests, parents and school personnel involved will be notified of the evaluation results.

### **School Social Worker**

The school social worker evaluates a student's social and behavioral adjustment. The following are often used in making this determination: 1) family interview; 2) student conferences; 3) teacher conferences; 4) observations; 5) collection of information and coordination of service with other agencies (if appropriate).

### **Teacher Consultant**

A teacher consultant primarily evaluates academic achievement and may make observations in the special or regular education settings.

### **Teacher of the Speech and Language Impaired**

A teacher of the speech and language impaired evaluates speech and language behavior. Tests to diagnose the problem may be given in the following areas:

Language Development:	Assessment of student's ability to process, understand and communicate verbal ideas.
Articulation:	Assessment of the student's ability to speak clearly and effectively.
Voice:	Assessment of the student's ability to utilize appropriate voice pitch, loudness or quality of speech.
Fluency:	Assessment of the student's ability to speak without interruptions, repetition of sounds, words, or sentences which interfere with effective communication.

### **Occupational/Physical Therapists**

The Occupational Therapists and/or Physical Therapists' evaluations are done in gross, fine and perceptual motor skills and activities of daily living.





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## **Audiologist**

The audiologist assesses the student to determine the amount of hearing loss and to determine the effects of this loss on speech discrimination.

## **Medical Services Personnel**

Neurologist

Orthopedic Surgeon

Ophthalmologist

Pediatrician

Internist

Optometrist

Psychiatrist

Osteopathic Internist

Otolaryngologist

The medical personnel identified above provide diagnostic information relevant to the presence or absence of a physical or cognitive disorder or condition. The suspected disability condition will determine the medical personnel that should be involved.



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# The Special Education Process

## The Referral

A special education referral is a written statement that an individual may have a suspected disability that interferes with learning.

A referral most often comes from a teacher. However, anyone who is concerned, including social workers, parents, or a representative of an agency may refer a person suspected of being disabled.

A referral is the first step in the special education process. After a referral is made the school will begin plans to evaluate the child. A parent has the right to receive a written notice before the school evaluates your child for the first time. This notice must be in writing and in the parents' native language or other principal mode of communication that is understandable to the parent. In addition, the notice must describe the proposed action and explain why an evaluation is proposed.

Written consent must be obtained before the school district can conduct the initial evaluation of your child.

If you do not give permission for the school to evaluate your child, the school district may request a due process hearing to appeal your refusal.

## Evaluation by the Multidisciplinary Evaluation Team (MET)

The first step in determining eligibility for special education programs and/or related services is the evaluation of the student. This is done by a Multidisciplinary Evaluation Team (MET). This team is made up of educational specialists with knowledge in the area of your child's suspected disability.

The MET will evaluate the individual educational needs of the child. The team will review important information such as school records, test results, medical history and information provided by the parents. Outside evaluations of the child may also be considered.

Once the MET evaluation is finished, a written report with an eligibility recommendation is presented at an Individualized Education Program Team (IEPT) meeting. Using the evaluation information, the IEPT determines whether or not your child is eligible for special education.



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## **The Individualized Education Program Team**

The IEPT is a special team formed to review the needs of a child. The team is comprised of the following: the parents of the child; at least one regular education teacher of the child (if the child is, or may be participating in the regular education environment); at least one special education teacher/provider of the child; a representative of the public agency who is qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of the child, is knowledgeable about the general education curriculum, and is knowledgeable about the availability of resources of the public agency; and an individual who can interpret the instruction implications of evaluation results. At the discretion of the parent or the school, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate, may be included as well as, if appropriate the child and transition services participants.

An IEPT must be held to develop an Individualized Education Program (IEP) for every student receiving special education program/services. The IEPT determines the eligibility of a student, and the appropriateness of programs and/or services to be provided. The IEPT reviews the information and recommendations provided by the Multidisciplinary Evaluation Team (MET). In short, the IEPT meets to...

1. Decide if your child is eligible for special education.
2. Develop appropriate special education programs and services for your child.
3. Revise, or review your child's Individualized Education Program (IEP) annually.

## **Transition Planning Requirements**

An additional purpose of an IEP meeting for students turning 16, or younger if appropriate, has to do with a student's transition from high school to vocational training, college or the world of work. For these students the IEP will develop a transition plan and identify the needed transition services for the student. The student is required to participate in the development of this plan and to attend the IEP meeting. Other agencies may be identified and invited to send a representative to the IEP.

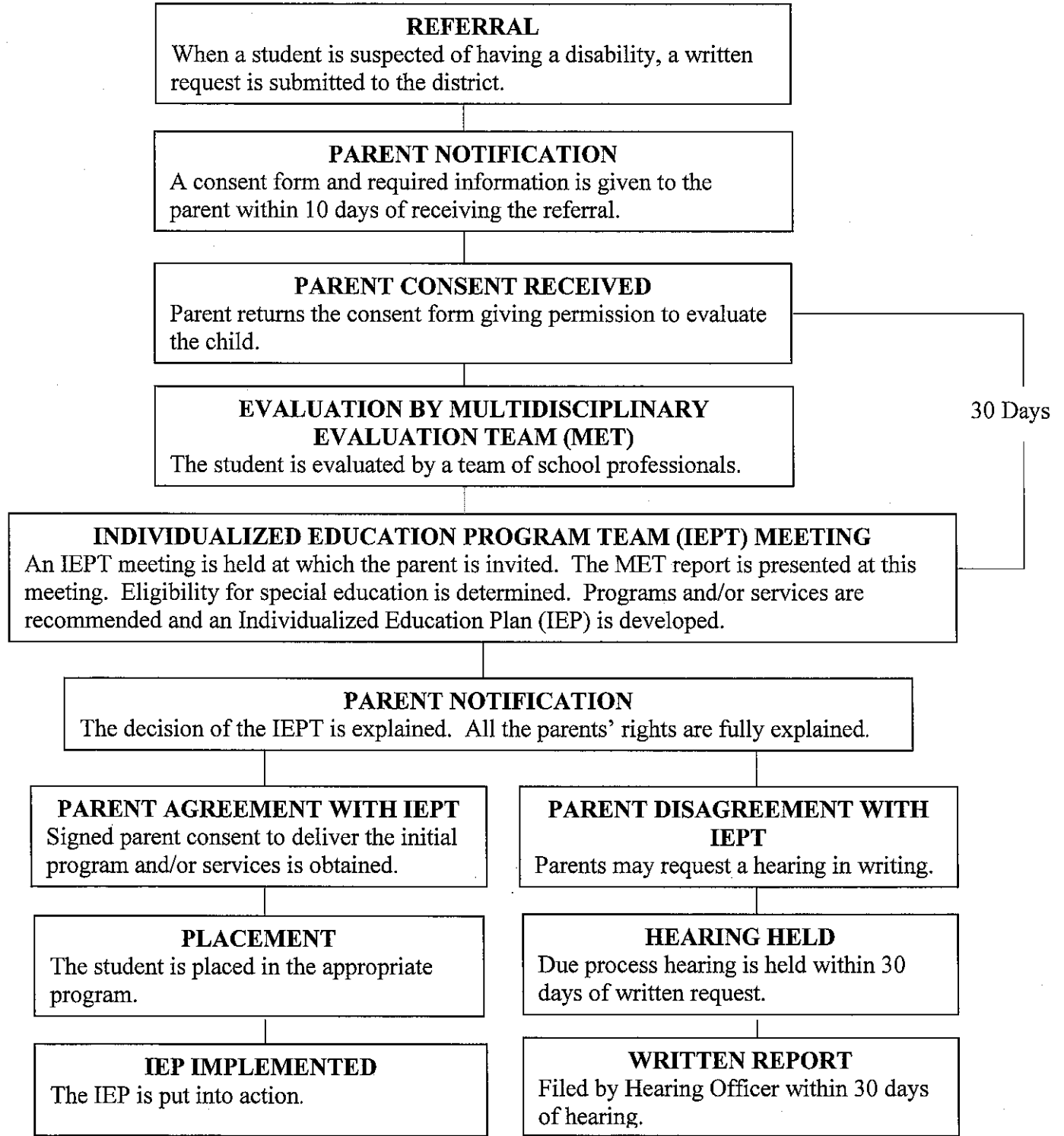
## **Due Process Hearing**

If a parent disagrees with the IEPT regarding the identification, evaluation, or placement of a child, they have the right to a special education due process hearing. This hearing is designed to settle disputes with the school district. A parent must request such a hearing in writing.



# The Special Education Process

Local school districts follow the same general procedure in evaluating special education students and planning their education program. The following is a brief outline of the process.





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## Special Education Certification

Michigan Special Education Rules list the following definitions to be used in determining a student's eligibility for special education services:

### **R. 340.1705 Determination of Cognitive Impairment (CI)**

Rule 5. -

- (1) The cognitive impairment shall be manifested during the developmental period and be determined through the demonstration of all of the following behavioral characteristics:
  - (a) Development at a rate at or below approximately 2 standard deviations below the mean as determined through intellectual assessment.
  - (b) Scores approximately within the lowest 6 percentiles on a standardized test in reading and arithmetic. The requirement will not apply if the student is not of an age, grade, or mental age appropriate for formal or standardized achievement tests.
  - (c) Lack of development primarily in the cognitive domain.
  - (d) Impairment of adaptive behavior.
  - (e) Adversely affects a student's educational performance.
- (2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include a psychologist.

### **R. 340.1706 Determination of Emotional Impaired (EI)**

Rule. 6. -

- (1) Emotional impairment shall be determined through manifestation of behavioral problems primarily in the affective domain, over an extended period of time, which adversely affect the student's education to the extent that the student cannot profit from learning experiences without special education support. The problems result in behaviors manifested by 1 or more of the following characteristics:
  - (a) Inability to build or maintain satisfactory interpersonal relationships within the school environment.
  - (b) Inappropriate types of behavior or feelings under normal circumstances.
  - (c) General pervasive mood of unhappiness or depression.
  - (d) Tendency to develop physical symptoms or fears associated with personal or school problems.
- (2) Emotional impairment also includes students who, in addition to the characteristics specified in subrule (1) of this rule, exhibit maladaptive behaviors related to schizophrenia or similar disorders. The term "emotional impairment" does not include persons who are socially maladjusted, unless it is determined that the persons have an emotional impairment.



- (3) Emotional impairment does not include students whose behaviors are primarily the result of intellectual, sensory, or health factors.
- (4) When evaluating a student suspected of having an emotional impairment, the multidisciplinary evaluation team report shall include documentation of all of the following:
  - (a) The student's performance in the educational setting and in other settings, such as adaptive behavior within the broader community.
  - (b) The systematic observation of the behaviors of primary concern which interfere with educational and social needs.
  - (c) The intervention strategies used to improve the behaviors and the length of time the strategies were utilized.
  - (d) Relevant medical information, if any.
- (5) A determination of impairment shall be based on data provided by a multidisciplinary evaluation team, which shall include a full and individual evaluation by both of the following:
  - (a) A psychologist or psychiatrist
  - (b) A school social worker

#### **340.1707 Determination of Deaf or Hard of Hearing (HI)**

Rule 7. –

- (1) The term "deaf or hard of hearing" refers to students with any type or degree of hearing loss that interferes with development or adversely affects educational performance. "Deafness" means a hearing loss that is so severe that the student is impaired in processing linguistic information through hearing, with or with amplification. The term "hard of hearing" refers to students who have permanent or fluctuating hearing loss that is less severe than the hearing loss of students who are deaf and that generally permits the use of the auditory channel as the primary means of developing speech and language skills.
- (2) A determination of impairment must be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include an audiologist and an otolaryngologist or otologist.

#### **R 340.1708 Determination of Visual Impairment (VI)**

Rule 8

- (1) A visual impairment shall be determined through the manifestation of both of the following:



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- (a) A visual impairment which, even with correction, interferes with development or which adversely affects educational performance. Visual impairment includes both partial sight and blindness.
  - (b) One of more of the following:
    - (i) A central visual acuity for near or far point vision of 20/70 or less in the better eye after routine refractive corrective.
    - (ii) A peripheral field of vision restricted to not more than 20 degrees.
    - (iii) A diagnosed progressively deteriorating eye condition.
  - (2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include an ophthalmologist or optometrist.
  - (3) If a student cannot be tested accurately for acuity, then functional visual assessments conducted by a teacher certified in visual impairment may be used in addition to the medical evaluation for determination of impairment.
  - (4) For students with visual impairment who have a visual acuity of 20/200 or less after routine refractive correction, or who have a peripheral field of vision restricted to not more than 20 degrees, an evaluation by an orientation and mobility specialist shall be conducted. The orientation and mobility specialist shall also include in the report a set of recommended procedures to be used by a mobility specialist or a teacher of students with visual impairment in conducting orientation and mobility training activities.

### **R 340.1709 Determination of Physical Impairment (PI)**

#### Rule 9

- (1) "Physical impairment" means severe orthopedic impairment that adversely affects a student's educational performance.
- (2) A determination of disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include assessment data from 1 of the following persons:
  - (a) An orthopedic surgeon.
  - (b) An internist.
  - (c) A neurologist.
  - (d) A pediatrician
  - (e) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.



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### **R 340.1709a Determination of Other Health Impairment (OHI)**

#### Rule 9a

- (1) "Other health impairment" means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, which results in limited alertness with respect to the educational environment and to which both of the following provisions apply:
  - (a) Is due to chronic or acute health problems such as any of the following:
    - (i) Asthma.
    - (ii) Attention deficit disorder.
    - (iii) Attention deficit hyperactivity disorder.
    - (iv) Diabetes.
    - (v) Epilepsy.
    - (vi) A heart condition.
    - (vii) Hemophilia.
    - (viii) Lead poisoning.
    - (ix) Leukemia.
    - (x) Nephritis.
    - (xi) Rheumatic fever.
    - (xii) Sickle cell anemia
  - (b) The impairment adversely affects a student's educational performance.
- (2) A determination of disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include 1 of the following persons:
  - (a) An orthopedic surgeon.
  - (b) An internist.
  - (c) A neurologist.
  - (d) A pediatrician.
  - (e) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

### **R 340.1710 Determination of Speech and Language Impairment (SLI)**

#### Rule 10

- (1) A "speech and language impairment" means a communication disorder that adversely affects educational performance, such as language impairment, articulation impairment, fluency impairment, or voice impairment.
- (2) A communication disorder shall be determined through the manifestation of 1 or more of the following speech and language impairments that adversely affects educational performance.





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- (a) A language impairment which interferes with the student's ability to understand and use language effectively and which includes 1 or more of the following:
    - (i) Phonology.
    - (ii) Morphology.
    - (iii) Syntax.
    - (iv) Semantics.
    - (v) Pragmatics.
  - (b) Articulation impairment, including omissions, substitutions, or distortions of sound, persisting beyond the age at which maturation alone might be expected to correct the deviation.
  - (c) Fluency impairment, including an abnormal rate of speaking, speech interruptions, and repetition of sounds, words, phrases, or sentences, that interferes with effective communication.
  - (d) Voice impairment, including inappropriate pitch, loudness, or voice quality.
- (3) Any impairment under subrule (2)(a) of this rule shall be evidenced by both of the following:
- (a) A spontaneous language sample demonstrating inadequate language functioning.
  - (b) Test results on not less than 2 standardized assessment instruments or 2 subtests designed to determine language functioning which indicate inappropriate language functioning for the student's age.
- (4) A student who has a communication disorder, but whose primary disability is other than speech and language shall may be eligible for speech and language services under R 340.1745(a).
- (5) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary team which shall include a teacher of students with speech and language impairment under R 340.1796 or a speech and language pathologist qualified under R 340.1792.

### **R 340.1711 Determination of Early Childhood Developmental Delayed (ECDD)**

#### Rule 11. -

- (1) "Early childhood developmental delay" means a child through 7 years of age whose primary delay cannot be differentiated through existing criteria within R 340.1705 to R 340.1710 or R 340.1713 or R 340.1716 and who manifests a delay in 1 or more areas of development equal to or greater than  $\frac{1}{2}$  of the expected development. This definition shall not preclude identification of a child through existing criteria within R 340.1705 to R 340.1710 or R 340.1713 to R 340.1716.
- (2) A determination of early childhood development delay shall be based upon a full and individual evaluation of a multidisciplinary evaluation team.



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### **R. 340.1713 Determination of Specific Learning Disability (SLD)**

Rule 13. -

- (1) "Specific learning disability" means a disorder in 1 or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, or cognitive impairment, of emotional impairment, of autism spectrum disorder, or of environmental, cultural, or economic disadvantage.
- (2) In determining whether a student has a learning disability, the state shall:
  - (a) Not require the use of a severe discrepancy between intellectual ability and achievement.
  - (b) Permit the use of a process based on the child's response to scientific, research-based intervention.
  - (c) Permit the use of other alternative research-based procedures.
- (3) A determination of learning disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include at least both of the following:
  - (a) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach a student of his or her age or, for a child of less than school age, an individual qualified by the state educational agency to teach a child of his or her age.
  - (b) A least 1 person qualified to conduct individual diagnostic examinations of children and who can interpret the instructional implications of evaluation results, such as a school psychologist, an authorized provider of speech and language under R 340.1745(d), or a teacher consultant.

### **R 340.1714 Determination of Severely Multiply Impaired (SXI)**

Rule 14. -

- (1) Students with severe multiple impairments shall be determined through the manifestation of either of the following:
  - (a) Development at a rate of 2 to 3 standard deviations below the mean and 2 or more of the following conditions:
    - (i) A hearing impairment so severe that the auditory channel is not the primary means of developing speech and language skills.
    - (ii) A visual impairment so severe that the visual channel is not sufficient to guide independent mobility.
    - (iii) A physical impairment so severe that activities of daily living cannot be achieved without assistance.
    - (iv) A health impairment so severe that the student is medically at risk.



- (b) Development at a rate of 3 or more standard deviations below the mean or students for whom evaluation instruments do not provide a valid measure of cognitive ability and 1 or more of the following conditions:
- (i) A hearing impairment so severe that the auditory channel is not the primary means of developing speech and language skills.
  - (ii) A visual impairment so severe that the visual channel is not sufficient to guide independent mobility.
  - (iii) A physical impairment so severe that activities of daily living cannot be achieved without assistance.
  - (iv) A health impairment so severe that the student is medically at risk.
- (2) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include a psychologist and, depending upon the disabilities in the physical domain, the multidisciplinary evaluation team participants required in R340.1707, R340.1708, or R340.1709, R 340.1709a, or R 340.1716.

### **R 340.1715 Determination of Autism Spectrum Disorder (ASD)**

#### Rule 15. -

- (1) Autism spectrum disorder is considered a lifelong developmental disability that adversely affects a student's educational performance in 1 or more of the following performance areas:
- (a) Academic
  - (b) Behavioral.
  - (c) Social.
- Autism spectrum disorder is typically manifested before 36 months of age. A child who first manifests the characteristics after age 3 may also meet the criteria. Autism spectrum disorder is characterized by qualitative impairments in reciprocal social interactions, qualitative impairments in communication, and restricted range of interests/repetitive behavior.
- (2) Determination for eligibility shall include all of the following:
- (a) Qualitative impairments in reciprocal social interactions including at least 2 of the following areas:
    - (i) Marked impairment in the use of multiple nonverbal behaviors such as eye-to-eye gaze, facial expressions, body postures, and gestures to regulate social interaction.
    - (ii) Failure to develop peer relationships appropriate to developmental level.
    - (iii) Marked impairment in spontaneous seeking to share enjoyment, interests, or achievements with other people, for example, by a lack of showing, bringing, or pointing out objects of interest.
    - (iv) Marked impairment in the areas of social or emotional reciprocity.
  - (b) Qualitative impairments in communication including at least 1 of the following:



- (i) Delay in or total lack of, the development of spoken language not accompanied by an attempt to compensate through alternative modes of communication such as gesture or mime.
  - (ii) Marked impairment in pragmatics or in the ability to initiate, sustain, or engage in reciprocal conversation with others.
  - (iii) Stereotyped and repetitive use of language or idiosyncratic language.
  - (iv) Lack of varied, spontaneous make-believe play or social imitative play appropriate to developmental level.
- (c) Restricted, repetitive, stereotyped behaviors including at least 1 of the following:
- (i) Encompassing preoccupation with 1 or more stereotyped and restricted patterns of interest that is abnormal either in intensity or focus.
  - (ii) Apparently inflexible adherence to specific, nonfunctional routines or rituals.
  - (iii) Stereotyped and repetitive motor mannerisms, for example, hand or finger flapping or twisting, or complex whole-body movements.
  - (iv) Persistent preoccupation with parts of objects.
- (3) Determination may include unusual or inconsistent response to sensory stimuli, in combination with subdivisions (a), (b), and (c) of subrule (2) of this rule.
- (4) While autism spectrum disorder may exist concurrently with other diagnoses or areas of disability, to be eligible under this rule, there shall not be a primary diagnosis of schizophrenia or emotional impairment.
- (5) A determination of impairment shall be based upon a full and individual evaluation by a multidisciplinary evaluation team including, at a minimum, a psychologist or psychiatrist, an authorized provider of speech and language under R 340.1745(d), and a school social worker.

### **R 340.1716 Determination of Traumatic Brain Injury (TBI)**

#### Rule 16. -

- (1) "Traumatic brain injury" means an acquired injury to the brain which is caused by an external force and which results in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairment in 1 or more of the following areas:
- (a) Cognition.
  - (b) Language.
  - (c) Memory.
  - (d) Attention.
  - (e) Reasoning.
  - (f) Behavior
  - (g) Physical functions.
  - (h) Information processing.



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- (i) Speech.
  - (2) The term does not apply to brain injuries that are congenital or degenerative or to brain injuries induced by birth trauma.
  - (3) A determination of disability shall be based upon a full and individual evaluation by a multidisciplinary evaluation team, which shall include an assessment from a family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.

**R 340.1717 Determination of Deaf-blindness (DB)**

Rule 17. –

- (1) Deaf-blindness means concomitant hearing impairment and visual impairment, the combination of which causes severe communication and other developmental and educational needs that cannot be accommodated in special education programs without additional supports to address the unique needs specific to deaf-blindness. Deaf-blindness also means both of the following:
  - (a) Documented hearing and visual losses that, if considered individually, may not meet the requirements for visual impairment or hearing impairment, but the combination of the losses affects educational performance.
  - (b) Such students function as if they have both a hearing and visual loss, based upon responses to auditory and visual stimuli in the environment, or during vision and hearing evaluations.
- (2) A determination of the disability shall be based upon data provided by a multidisciplinary evaluation team which shall include assessment data from all of the following:
  - (a) Medical specialist such as any of the following:
    - (i) An ophthalmologist.
    - (ii) An optometrist.
    - (iii) An audiologist.
    - (iv) An otolaryngologist.
    - (v) An otologist.
    - (vi) A family physician or any other approved physician as defined in 1978 PA 368, MCL 333.1101 et seq.
  - (b) A teacher of students with visual impairment.
  - (c) A teacher of students with hearing impairment.

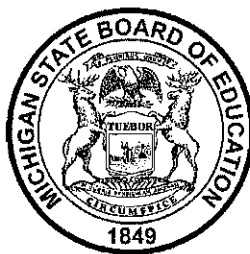
# Procedural Safeguards Notice

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Last updated: 10/16/18

*Note: This document was updated to comply with Michigan Department of Education standards for accessibility. No other content changes were made.*





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### **Michigan Department of Education (MDE)**

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MDE website ([www.michigan.gov/mde](http://www.michigan.gov/mde))

The Individuals with Disabilities Education Act (IDEA), the Federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with a notice containing a full explanation of the procedural safeguards available under the IDEA and U.S. Department of Education regulations. A copy of this notice must be given to parents only one time a school year, except that a copy must be given to the parents: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first State complaint under 34 CFR §§300.151 through 300.153 and upon receipt of the first due process complaint under §300.507 in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request. [34 CFR §300.504(a)]

This procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148 (unilateral placement at private school at public expense), §§300.151 through 300.153 (State complaint procedures), §300.300 (consent), §§300.502 through 300.503, §§300.505 through 300.518, and §§300.530 through 300.536 (procedural safeguards in Subpart E of the Part B regulations), and §§300.610 through 300.625 (confidentiality of information provisions in Subpart F).

The following acronyms are used throughout this document:

ALJ	Administrative Law Judge
BIP	Behavioral Intervention Plan
FAPE	Free Appropriate Public Education
FERPA	Family Educational Rights and Privacy Act
FBA	Functional Behavioral Assessment
IDEA	Individuals with Disabilities Education Act
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
MDE	Michigan Department of Education
OSE	Office of Special Education
SOAHR	State Office of Administrative Hearings and Rules



# Table of Contents

Procedural Safeguards Notice .....	11
General Information .....	11
Prior Written Notice .....	11
34 CFR §300.503 .....	11
Notice.....	11
Content of notice .....	11
Use of individualized education program as notice.....	12
Notice in understandable language.....	12
Native Language .....	12
34 CFR §300.29.....	12
Electronic Mail.....	12
34 CFR §300.505.....	12
Parental Consent - Definition .....	13
34 CFR §300.9 .....	13
Consent.....	13
Parental Consent.....	13
34 CFR §300.300.....	13
Consent for initial evaluation .....	13
Special rules for initial evaluation of wards of the State .....	14
Parental consent for services.....	14
Revocation of parental consent.....	15
Parental consent for reevaluations .....	15
Documentation of reasonable efforts to obtain parental consent .....	15
Other consent requirements.....	16
Independent Educational Evaluations .....	16
34 CFR §300.502.....	16

General .....	16
Definitions .....	17
Parent right to evaluation at public expense .....	17
Parent-initiated evaluations.....	17
Requests for evaluations by an administrative law judge.....	18
School district criteria.....	18
Confidentiality of Information .....	18
Definitions.....	18
34 CFR §300.611.....	18
Personally Identifiable Information .....	18
34 CFR §300.32.....	18
Notice to Parents.....	19
34 CFR §300.612.....	19
Access Rights.....	19
34 CFR §300.613.....	19
Record of Access .....	20
34 CFR §300.614.....	20
Records on More Than One Child.....	20
34 CFR §300.615.....	20
List of Types and Locations of Information.....	20
34 CFR §300.616.....	20
Fees .....	20
34 CFR §300.617.....	20
Amendment of Records at Parent’s Request.....	21
34 CFR §300.618.....	21
Opportunity for a Hearing.....	21
34 CFR §300.619.....	21
Hearing Procedures.....	21

34 CFR §300.621 .....	21
Result of Hearing .....	21
34 CFR §300.620 .....	21
Consent For Disclosure of Personally Identifiable Information .....	22
34 CFR §300.622 .....	22
Safeguards .....	22
34 CFR §300.623 .....	22
Destruction of Information .....	23
34 CFR §300.624 .....	23
Student Rights .....	23
34 CFR §300.625 .....	23
Mediation .....	23
Mediation .....	23
34 CFR §300.506 .....	23
General .....	23
Requirements .....	23
Impartiality of mediator .....	25
State Complaint Procedures .....	26
Difference Between Due Process Hearing Complaint and State Complaint Procedures .....	26
Adoption of State Complaint Procedures .....	26
34 CFR §300.151 .....	26
General .....	26
Remedies for denial of appropriate services .....	26
Minimum State Complaint Procedures .....	27
34 CFR §300.152 .....	27
Time limit; minimum procedures .....	27
Time extension; final decision; implementation .....	27

State complaints and due process hearings .....	27
Filing a State Complaint .....	28
34 CFR §300.153 .....	28
Due Process Complaint Procedures .....	30
Filing a Due Process Complaint.....	30
34 CFR §300.507 .....	30
General .....	30
Information for parents .....	30
Due Process Complaint.....	30
34 CFR §300.508 .....	30
General .....	30
Content of the complaint.....	30
Notice required before a hearing on a due process complaint.....	31
Sufficiency of complaint.....	31
Complaint amendment .....	31
School district response to a due process complaint .....	32
Other party response to a due process complaint.....	32
Model Forms .....	32
34 CFR §300.509 .....	32
The Child’s Placement While the Due Process Complaint and Hearing are Pending.....	32
34 CFR §300.518.....	32
Resolution Process.....	33
34 CFR §300.510 .....	33
Resolution meeting .....	33
Resolution period .....	34
Adjustments to the 30-calendar-day resolution period .....	34

Written settlement agreement.....	35
Agreement review period .....	35
Hearings on Due Process Complaints .....	36
Impartial Due Process Hearing .....	36
34 CFR §300.511 .....	36
General .....	36
Impartial administrative law judge .....	36
Subject matter of due process hearing.....	36
Timeline for requesting a hearing .....	36
Exceptions to the timeline.....	36
Hearing Rights .....	37
34 CFR §300.512.....	37
General .....	37
Additional disclosure of information .....	37
Parental rights at hearings .....	37
Hearing Decisions.....	38
34 CFR §300.513.....	38
Decision of administrative law judge.....	38
Construction clause.....	38
Separate request for a due process hearing.....	38
Findings and decision to advisory panel and general public.....	38
Appeals.....	39
Finality of Decision; Appeal; Impartial Review.....	39
34 CFR §300.514 .....	39
Finality of hearing decision .....	39
Timelines and Convenience of Hearings.....	39
34 CFR §300.515 .....	39

Civil Actions, Including the Time Period in Which to File Those Actions .....	39
34 CFR §300.516 .....	39
General .....	39
Time limitation .....	40
Additional procedures .....	40
Jurisdiction of district courts .....	40
Rule of construction .....	40
Attorneys' Fees .....	40
34 CFR §300.517 .....	40
General .....	40
Award of fees .....	41
Procedures When Disciplining Children with Disabilities .....	43
Authority of School Personnel.....	43
34 CFR §300.530 .....	43
Case-by-case determination .....	43
General .....	43
Additional authority.....	43
Services.....	43
Manifestation determination .....	44
Determination that behavior was a manifestation of the child's disability.	45
Special circumstances.....	45
Definitions .....	45
Notification .....	46
Change of Placement Because of Disciplinary Removals.....	46
34 CFR §300.536 .....	46
Determination of Setting .....	47
34 CFR § 300.531 .....	47

Appeal .....	47
34 CFR § 300.532 .....	47
General .....	47
Authority of an administrative law judge.....	47
Placement During Appeals .....	48
34 CFR §300.533 .....	48
Protections for Children Not Yet Eligible for Special Education and Related Services .....	48
34 CFR §300.534.....	48
General .....	48
Basis of knowledge for disciplinary matters .....	48
Exception.....	49
Conditions that apply if there is no basis of knowledge .....	49
Referral to and Action by Law Enforcement and Judicial Authorities .....	49
34 CFR §300.535.....	49
Transmittal of records .....	50
Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense .....	51
General.....	51
34 CFR §300.148.....	51
Reimbursement for private school placement .....	51
Limitation on reimbursement.....	51
Transfer of Parental Rights at Age of Majority.....	52
34 CFR §300.520 .....	52
Attachment A – Federal Definitions.....	53
Serious Bodily Injury.....	53
18 USC 1365(h).....	53
Weapon .....	53

# Procedural Safeguards Notice

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## General Information

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### Prior Written Notice

#### 34 CFR §300.503

#### Notice

Your school district (the term "school district," as used in this Notice, includes a public school academy) must give you written notice (provide you certain information in writing), whenever it:

1. Proposes to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; or
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

#### Content of notice

The written notice must:

1. Describe the action that your school district proposes or refuses to take;
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of the IDEA;
7. Describe any other choices that your child's individualized education program (IEP) Team considered and the reasons why those choices were rejected; and
8. Provide a description of other reasons why your school district proposed or refused the action.



### **Use of individualized education program as notice**

A public agency may use the IEP as part of the prior written notice as long as the document(s) the parent receives meets all the requirements in §300.503.

### **Notice in understandable language**

The notice must be:

1. Written in language understandable to the general public; and
2. Provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, your school district must ensure that:

1. The notice is translated for you orally by other means in your native language or other mode of communication;
2. You understand the content of the notice; and
3. There is written evidence that 1 and 2 have been met.

### **Native Language**

#### **34 CFR §300.29**

Native language, when used with an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

### **Electronic Mail**

#### **34 CFR §300.505**

If your school district offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Prior written notice;
2. Procedural safeguards notice; and
3. Notices related to a due process complaint.

## **Parental Consent - Definition**

### **34 CFR §300.9**

#### **Consent**

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
3. You understand that the consent is voluntary on your part and you may withdraw your consent at any time.

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

## **Parental Consent**

### **34 CFR §300.300**

#### **Consent for initial evaluation**

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible under Part B of the IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described under the heading, **Parental Consent — Definition**.

Your school district must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does *not* mean that you have also given your consent for the school district to start providing special education and related services to your child.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the Act's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. Your school district will not violate its obligations to locate, identify, and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

### **Special rules for initial evaluation of wards of the State**

If a child is a ward of the State and is not living with his/her parent —

The school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the school district cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with State law; or
3. A judge or a public agency with responsibility for the general care of the child has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

*Ward of the State*, as used in the IDEA, means a child who, is:

1. A foster child, unless the child's foster parent has been assigned the right to make educational decisions on the child's behalf by a judge overseeing the child's case or a public agency with responsibility for the general care of the child;
2. Considered a ward of the State under State law;
3. Considered a ward of the court under State law; or
4. In the custody of a public child welfare agency.

### **Parental consent for services**

Your school district must obtain your informed consent before providing special education and related services to your child for the first time, and must make reasonable efforts to obtain that informed consent.

If you do not respond to a request to provide your consent for your child to receive special education and related services for the first time, or if you refuse to give such consent, your school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent and the school district does not provide your child with the special education and related services for which it sought your consent, your school district:

1. Is not in violation of the requirement to make a FAPE available to your child for its failure to provide those services to your child; and

2. Is not required to have an IEP meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

### **Revocation of parental consent**

If you inform the school district in writing that you revoke (take back) your consent for your school district to provide special education and related services to your child, your school district:

1. May not continue to provide special education and related services to your child;
2. Must provide you with timely prior written notice, consistent with §300.503 of the IDEA regulations, of their proposal to discontinue special education and related services based on receipt of your written revocation of consent;
3. May not use due process procedures (i.e., mediation, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the services may be provided to your child;
4. Is not in violation of the requirement to make FAPE available to your child for its failure to provide further special education and related services to your child;
5. Is not required to have an IEP meeting or develop an IEP for your child for the further provision of special education and related services; and
6. Is not required to amend your child's education records to remove any reference to your child's receipt of special education and related services because of the revocation of consent.

### **Parental consent for reevaluations**

Your school district must obtain your informed consent before it reevaluates your child, unless your school district can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; and
2. You did not respond.

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation in this manner.

### **Documentation of reasonable efforts to obtain parental consent**

Your school must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide special education and related services for

the first time, for reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the school district's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to the parents and any responses received; and
3. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

### **Other consent requirements**

Your consent is not required before your school district may:

1. Review existing data as part of your child's evaluation or a reevaluation; or
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

Your school district may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district may not use its consent override procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to parentally-placed private school children with disabilities).

### **Independent Educational Evaluations**

#### **34 CFR §300.502**

#### **General**

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by your school district.

If you request an IEE, the school district must provide you with information about where you may obtain an IEE and about the school district's criteria that apply to IEEs.

## **Definitions**

IEE means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.

Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of the IDEA, which allow each state to use whatever state, local, federal, and private sources of support are available in the state to meet the requirements of Part B of the Act.

## **Parent right to evaluation at public expense**

You have the right to an IEE of your child at public expense if you disagree with an evaluation of your child obtained by your school district, subject to the following conditions:

1. If you submit a written request for an IEE of your child at public expense, your school district must respond, in writing, to the request within seven calendar days of the receipt of the request, indicating the district's intent to either: (a) provide the IEE at public expense; or (b) file a due process complaint to request a hearing to show that it's evaluation of your child is appropriate.
2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an IEE, but not at public expense.
3. If you request an IEE of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the IEE of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.
4. If an IEE that you obtain does not meet the school district's criteria, the school district may file a due process complaint. If the final decision in the hearing is that the evaluation did not meet the school district's criteria, public reimbursement of the expense of your IEE may be denied.

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

## **Parent-initiated evaluations**

If you obtain an IEE of your child at public expense or you share with the school district an evaluation of your child that you obtained at private expense:

1. Your school district must consider the results of the evaluation of your child, if it meets the school district's criteria for IEEs, in any decision made with respect to the provision of a FAPE to your child; and
2. You or your school district may present the evaluation as evidence at a due process hearing regarding your child.

### **Requests for evaluations by an administrative law judge**

If an administrative law judge (ALJ) requests an IEE of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

### **School district criteria**

If an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an IEE).

Except for the criteria described above, a school district may not impose conditions or timelines related to obtaining an IEE at public expense.

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## **Confidentiality of Information**

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### **Definitions**

#### **34 CFR §300.611**

As used under the heading, **Confidentiality of Information**:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of "education records" in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)). FERPA defines "education records" as records that are directly related to a student and maintained by an educational agency or by a party acting for the agency.
- *Participating agency* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

### **Personally Identifiable Information**

#### **34 CFR §300.32**

*Personally identifiable* means information that has:

- a. Your child's name, your name as the parent, or the name of another family member;
- b. Your child's address;
- c. A personal identifier, such as your child's social security number or student number; or
- d. A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

## **Notice to Parents**

### **34 CFR §300.612**

The Michigan Department of Education (MDE) must give notice to parents that the MDE has procedures and policies that are adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
4. A description of all of the rights of parents and children regarding this information, including the rights under the FERPA and its implementing regulations in 34 CFR Part 99.

Before any major identification, location, or evaluation activity (also known as "child find"), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity to locate, identify, and evaluate children in need of special education and related services.

## **Access Rights**

### **34 CFR §300.613**

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the participating agency under Part B of the IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing (including a resolution meeting or a hearing



regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the participating agency provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; and
3. Your right to have your representative inspect and review the records.

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

### **Record of Access**

#### **34 CFR §300.614**

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

### **Records on More Than One Child**

#### **34 CFR §300.615**

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

### **List of Types and Locations of Information**

#### **34 CFR §300.616**

On request, each participating agency must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

### **Fees**

#### **34 CFR §300.617**

Each participating agency may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

A participating agency may not charge a fee to search for or to retrieve information under Part B of the IDEA.

### **Amendment of Records at Parent's Request**

#### **34 CFR §300.618**

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the participating agency that maintains the information to change the information.

The participating agency must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the participating agency refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing as described under the heading, Opportunity For a Hearing.

### **Opportunity for a Hearing**

#### **34 CFR §300.619**

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

### **Hearing Procedures**

#### **34 CFR §300.621**

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the FERPA.

### **Result of Hearing**

#### **34 CFR §300.620**

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

If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of the participating agency.

Such an explanation placed in the records of your child must:

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; and
2. If the participating agency discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

## **Consent For Disclosure of Personally Identifiable Information**

### **34 CFR §300.622**

Unless disclosure of personally identifiable information contained in education records (without parental consent) is authorized under the FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

## **Safeguards**

### **34 CFR §300.623**

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding Michigan's policies and procedures regarding confidentiality under Part B of the IDEA and the FERPA.

Each participating agency must 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.

## **Destruction of Information**

### **34 CFR §300.624**

Your school district must inform you when personally identifiable information collected, maintained, or used under Part B of the IDEA is no longer needed to provide educational services to your child.

The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## **Student Rights**

### **34 CFR §300.625**

Under the regulations for FERPA, the rights of parents regarding education records are transferred to the student at age 18.

The rights of parents under Part B of the IDEA regarding education records are also transferred to the student at age 18. However, a participating agency must provide any notice required under Part B of the IDEA to both the student and the parents.

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## **Mediation**

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### **Mediation**

#### **34 CFR §300.506**

##### **General**

The MDE has established procedures to make mediation available to allow you and the school district to resolve disagreements involving any matter under Part B or Part C of the IDEA, including matters arising prior to the filing of a state complaint or a due process complaint. Thus, mediation is available to resolve disputes under Part B or Part C of the IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading, **Filing a Due Process Complaint**.

##### **Requirements**

The procedures ensure that the mediation process:

1. Is voluntary on your part and the school district's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B or Part C of the IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school district may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with a disinterested party:

1. Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State; and
2. Who would explain the benefits and encourage the use of the mediation process to you.

The MDE must maintain a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The MDE must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the cost of the mediation process, including the costs of meetings. These services are provided by Special Education Mediation Services (<http://MiKids1st.org>).

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of

any federal court or state court of a state receiving assistance under Part B or Part C of the IDEA.

**Impartiality of mediator**

The mediator:

1. May not be an employee of the MDE or the school district that is involved in the education or care of your child; and
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

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## **State Complaint Procedures**

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### **Difference Between Due Process Hearing Complaint and State Complaint Procedures**

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

### **Adoption of State Complaint Procedures**

#### **34 CFR §300.151**

##### **General**

The MDE must have written procedures (see Administrative Rules for Special Education, Rule 340.1701a, 340.1851-1853) for:

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

##### **Remedies for denial of appropriate services**

In resolving a State complaint in which the MDE has found a failure to provide appropriate services, the MDE must address:

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

## **Minimum State Complaint Procedures**

### **34 CFR §300.152**

#### **Time limit; minimum procedures**

The MDE, through the Office of Special Education (OSE), will include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the MDE determines that an investigation is necessary;
2. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
3. Provide the school district or other public agency with the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the agency, a proposal to resolve the complaint; and (b) an opportunity for a parent who has filed a complaint and the agency to agree voluntarily to engage in mediation;
4. Review all relevant information and make an independent determination as to whether the school district or other public agency is violating a requirement of Part B of the IDEA; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; and (b) the reasons for the MDE's final decision.

#### **Time extension; final decision; implementation**

The MDE's procedures described above also must:

1. Permit an extension of the 60-calendar day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; or (b) the parent and the school district or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation.
2. Include procedures for effective implementation of the MDE's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; and (c) corrective actions to achieve compliance.

#### **State complaints and due process hearings**

If a written State complaint is received that is also the subject of a due process hearing as described below under the heading, **Filing a Due Process Complaint**, or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside the State complaint, or any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.



If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (you and the school district), then the due process hearing decision is binding on that issue and the MDE must inform the complainant that the decision is binding.

A complaint alleging a school district's or other public agency's failure to implement a due process hearing decision must be resolved by the MDE.

## **Filing a State Complaint**

### **34 CFR §300.153**

An organization or individual may file a signed written State complaint under the procedures described above.

The State complaint must include:

1. A statement that a school district or other public agency has violated:
  - a. Any current provision of the administrative rules for special education;
  - b. 1976 PA 451, MCL 380.1 et seq., as it pertains to special education programs and services;
  - c. The individuals with disabilities education act of 2004, 20 U.S.C., chapter 33, §1400 et seq., and the regulations implementing the act, 34 C.F.R. part 300, and 34 C.F.R. part 303;The facts on which the statement is based;
  - d. An intermediate school district plan;
  - e. An individualized education program team report, hearing office decision, or court decision regarding special education programs or services; or
  - f. The state application for federal funds under the IDEA.
2. The signature and contact information for the complainant; and
3. If alleging violations regarding a specific child:
  - a. The name of the child and address of the residence of the child;
  - b. The name of the school the child is attending;
  - c. In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
  - d. A description of the nature of the problem of the child, including facts relating to the problem; and
  - e. A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received by the MDE or the ISD.

The party filing the State complaint must forward a copy of the complaint to the school district or other public agency serving the child at the same time the party files the complaint with the OSE.

The MDE has developed a model form to aid in the filing of a State complaint. The model form is available on the [OSE website](http://www.michigan.gov/specialeducation) ([www.michigan.gov/specialeducation](http://www.michigan.gov/specialeducation)). You are not required to use the model form. However, the complaint must contain the required information for filing a State complaint (See 1-4 above).

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## **Due Process Complaint Procedures**

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### **Filing a Due Process Complaint**

#### **34 CFR §300.507**

##### **General**

You or the school district may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of a FAPE to your child.

The due process complaint must allege a violation that happened not more than two years before you or the school district knew or should have known about the alleged action that forms the basis of the due process complaint.

The above timeline does not apply to you if you could not file a due process complaint within the timeline because:

1. The school district specifically misrepresented that it had resolved the issues identified in the complaint; or
2. The school district withheld information from you that it was required to provide you under Part B or Part C of the IDEA.

##### **Information for parents**

The school district must inform you of free or low-cost legal and other relevant services available in the area if you request the information, or if you or the school district file a due process complaint.

### **Due Process Complaint**

#### **34 CFR §300.508**

##### **General**

In order to request a hearing, you or the school district (or your attorney or the school district's attorney) must file a due process complaint with the MDE, and provide a copy to the other party. The complaint must contain all of the content listed below and must be kept confidential.

##### **Content of the complaint**

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;

4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; and
6. A proposed resolution of the problem to the extent known and available to you or the school district at the time.

### **Notice required before a hearing on a due process complaint**

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney), properly files a due process complaint that includes the information listed above. A due process complaint is properly filed when it has been received by the MDE and the other party.

### **Sufficiency of complaint**

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) notifies the ALJ and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five calendar days of receiving the notification the receiving party (you or the school district) considers a due process complaint insufficient, the ALJ must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

### **Complaint amendment**

You or the school district may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; or
2. The ALJ grants permission for the changes, not later than five days before the due process hearing begins.

If the complaining party (you or the school district) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

### **School district response to a due process complaint**

If the school district has not sent a prior written notice to you, as described under the heading, **Prior Written Notice**, regarding the subject matter contained in your due process complaint, the school district must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the school district proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's IEP Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

### **Other party response to a due process complaint**

Except as stated under the sub-heading immediately above, **School district response to a due process complaint**, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

### **Model Forms**

#### **34 CFR §300.509**

The MDE has developed a model form to help you file a due process complaint. You are not required to use the MDE model form. However, the due process complaint must contain the required information for filing a due process complaint. The model form is available on the [OSE website](http://www.michigan.gov/specialeducation) ([www.michigan.gov/specialeducation](http://www.michigan.gov/specialeducation)).

(Note: Use of the model form does not guarantee that an ALJ would find the complaint sufficient if the other party objects to the sufficiency of the complaint.)

### **The Child's Placement While the Due Process Complaint and Hearing are Pending**

#### **34 CFR §300.518**

Except as provided below under the heading, **Procedures When Disciplining Children with Disabilities**, once a due process complaint is filed with the MDE and received by the other party, your child must remain in his or her current educational placement during the resolution process time period, and while waiting

for the decision of any impartial due process hearing or court proceeding, unless you and the State or school district agree otherwise.

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

If the due process complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C of the IDEA to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned three, the school district is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B of the IDEA and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon).

## **Resolution Process**

### **34 CFR §300.510**

#### **Resolution meeting**

The school district must convene a resolution meeting with you and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in your due process complaint. The resolution meeting must be convened within 15 calendar days after the due process complaint is filed with the MDE, and received by the school district. The due process hearing cannot begin until the resolution meeting is conducted. The meeting:

1. Must include a representative of the school district who has decision-making authority on behalf of the school district; and
2. May not include an attorney of the school district unless you are accompanied by an attorney.

You and the school district determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not required if:

1. You and the school district agree in writing to waive the meeting; or

2. You and the school district agree to use the mediation process, as described under the heading, **Mediation**.

### **Resolution period**

If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and the school district have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you do participate in a meeting.

If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that an ALJ dismiss your due process complaint. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint, or fails to participate in the resolution meeting, you may ask an ALJ to order that the 45-calendar-day due process hearing timeline begin.

### **Adjustments to the 30-calendar-day resolution period**

If you and the school district agree in writing to waive the resolution meeting, the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if you and the school district agree in writing that no agreement is possible, the 45-calendar-day timeline for the due process hearing starts the next day.

If you and the school district agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the school district later withdraws from the mediation process, the 45-calendar-day timeline for the due process hearing starts the next day.

**Written settlement agreement**

If a resolution to the dispute is reached at the resolution meeting, you and the school district must enter into a legally binding agreement that is:

1. Signed by you and a representative of the school district who has the authority to bind the school district; and
2. Enforceable in any state court of competent jurisdiction (a state court that has authority to hear this type of case) or in a district court of the United States.

**Agreement review period**

If you and the school district enter into an agreement as a result of a resolution meeting, either party (you or the school district) may void the agreement within 3 business days of the time that both you and the school district signed the agreement.



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## **Hearings on Due Process Complaints**

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### **Impartial Due Process Hearing**

#### **34 CFR §300.511**

##### **General**

Whenever a due process complaint is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, after following the procedures described in the **Due Process Complaint** and **Resolution Process** sections.

##### **Impartial administrative law judge**

At a minimum, an ALJ:

1. Must not be an employee of the MDE or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as an ALJ;
2. Must not have a personal or professional interest that conflicts with the ALJ's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the IDEA, and federal and state regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts; and
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

ALJs are State classified civil service employees who are attorneys and who are employed by the State Office of Administrative Hearings and Rules (SOAHR). The MDE (through the SOAHR) keeps a list that includes a statement of the qualifications of those persons who serve as ALJs.

##### **Subject matter of due process hearing**

The party (you or the school district) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

##### **Timeline for requesting a hearing**

You or the school district must file a due process complaint within two years of the date you or the school district knew or should have known about the issue(s) addressed in the complaint.

##### **Exceptions to the timeline**

The above timeline does not apply to you if you could not file a due process complaint because:

1. The school district specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or
2. The school district withheld information from you that it was required to provide to you under Part B or Part C of the IDEA.

## **Hearing Rights**

### **34 CFR §300.512**

#### **General**

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
5. Obtain written, or, at your option, electronic findings of fact and decisions.

#### **Additional disclosure of information**

At least five business days prior to a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

An ALJ may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

#### **Parental rights at hearings**

You must be given the right to:

1. Have your child present;
2. Open the hearing to the public; and
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

## **Hearing Decisions**

### **34 CFR §300.513**

#### **Decision of administrative law judge**

An ALJ's decision on whether your child received a FAPE must be based on substantive grounds.

In matters alleging a procedural violation, an ALJ may find that your child did not receive FAPE only if the procedural inadequacies:

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

#### **Construction clause**

None of the provisions described above can be interpreted to prevent an ALJ from ordering a school district to comply with the requirements in the procedural safeguards section of the federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536).

#### **Separate request for a due process hearing**

Nothing in the procedural safeguards section of the federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

#### **Findings and decision to advisory panel and general public**

The MDE, after deleting any personally identifiable information, must:

1. Provide the findings and decisions in the due process hearing to the State special education advisory committee; and
2. Make those findings and decisions available to the public.

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## **Appeals**

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### **Finality of Decision; Appeal; Impartial Review**

#### **34 CFR §300.514**

##### **Finality of hearing decision**

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the decision by bringing a civil action, as described below.

### **Timelines and Convenience of Hearings**

#### **34 CFR §300.515**

The MDE must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, not later than 45 calendar days after the expiration of the adjusted time period as described under the sub-heading, **Adjustments to the 30-calendar-day resolution period:**

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

An ALJ may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party.

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

### **Civil Actions, Including the Time Period in Which to File Those Actions**

#### **34 CFR §300.516**

##### **General**

Any party (you or the school district) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. The action may be brought in a state court of competent jurisdiction (a state court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

**Time limitation**

The party (you or the school district) bringing the action shall have 90 calendar days from the date of the decision of the ALJ to file a civil action.

**Additional procedures**

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school district's request; and
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

**Jurisdiction of district courts**

The district courts of the United States have authority to rule on actions brought under Part B of the IDEA without regard to the amount in dispute.

**Rule of construction**

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

**Attorneys' Fees****34 CFR §300.517****General**

In any action or proceeding brought under Part B of the IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing state educational agency or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous,

unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing state educational agency or school district, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to unnecessarily increase the cost of the action or proceeding.

### **Award of fees**

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you if:
  - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than 10 calendar days before the proceeding begins;
  - b. The offer is not accepted within 10 calendar days; and
  - c. The court or ALJ finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the IEP Team unless the meeting is held as a result of an administrative proceeding or court action.
4. Fees also may not be awarded for a mediation as described under the heading, **Mediation**.
5. A resolution meeting, as described under the heading, **Resolution meeting**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;

2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide to the school district the appropriate information in the due process request notice as described under the heading, **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the state or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

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## **Procedures When Disciplining Children with Disabilities**

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### **Authority of School Personnel**

#### **34 CFR §300.530**

##### **Case-by-case determination**

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

##### **General**

To the extent that they also take such action for children without disabilities, school personnel may, for not more than **10 school days** in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than **10 school days** in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see **Change of Placement Because of Disciplinary Removals** for the definition, below).

Once a child with a disability has been removed from his or her current placement for a total of **10 school days** in the same school year, the school district must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading, **Services**.

##### **Additional authority**

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see **Manifestation determination**, below) and the disciplinary change of placement would exceed **10 school days** in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services**. The child's IEP Team determines the interim alternative educational setting for such services.

##### **Services**

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.



A school district is only required to provide services to a child with a disability who has been removed from his or her current placement for **10 school days or less** in that school year, if it provides services to a child without disabilities who has been similarly removed. Michigan does not require services to students who are non-disabled who have been removed for disciplinary reasons.

A child with a disability who is removed from the child's current placement for **more than 10 school** days must:

1. Continue to receive educational services, so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment (FBA), and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and if the current removal is for **10 school days** in a row or less **and** if the removal is not a change of placement (see definition below), then school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see definition below), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

#### **Manifestation determination**

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, (except for a removal that is for **10 school days** in a row or less and not a change of placement), the school district, the parent, and relevant members of the IEP Team (as determined by the parent and the school district) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

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

If the school district, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the school district, the parent, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of the school district's failure to implement the IEP, the school district must take immediate action to remedy those deficiencies.

### **Determination that behavior was a manifestation of the child's disability**

If the school district, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a FBA, unless the school district had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (BIP) for the child; or
2. If a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading, **Special circumstances**, the school district must return the child to the placement from which the child was removed, unless the parent and the district agree to a change of placement as part of the modification of the BIP.

### **Special circumstances**

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to 45 school days, if the child:

1. Carries a weapon to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the MDE or a school district;
2. Knowingly has or uses illegal drugs, or sells or solicits the sale of a controlled substance while at school, on school premises, or at a school function under the jurisdiction of the MDE or a school district; or
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the MDE or a school district.

### **Definitions**

*Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

*Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.

*Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code. (See Attachment A.)

*Weapon* has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. (See Attachment A.)

### **Notification**

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the school district must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

### **Change of Placement Because of Disciplinary Removals**

#### **34 CFR §300.536**

A removal of a child with a disability from the child's current educational placement is a **change of placement** if:

1. The removal is for more than 10 school days in a row; **or**
2. The child has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year;
  - b. The child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
  - c. Of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the school district and, if challenged, is subject to review through due process and judicial proceedings.

## **Determination of Setting**

### **34 CFR § 300.531**

The IEP Team must determine the interim alternative educational setting for removals that are **changes of placement**, and removals under the headings, **Additional authority** and **Special circumstances**, above.

## **Appeal**

### **34 CFR § 300.532**

#### **General**

The parent of a child with a disability may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

1. Any decision regarding placement made under these discipline provisions; or
2. The manifestation determination described above.

The school district may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

#### **Authority of an administrative law judge**

An ALJ that meets the requirements described under the sub-heading, **Impartial administrative law judge**, must conduct the due process hearing and make a decision. The ALJ may:

1. Return the child with a disability to the placement from which the child was removed if the ALJ determines that the removal was a violation of the requirements described under the heading, **Authority of School Personnel**, or that the child's behavior was a manifestation of the child's disability; or
2. Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the ALJ determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These hearing procedures may be repeated, if the school district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a school district files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings, **Due Process Complaint, Hearings on Due Process Complaints**, except as follows:

1. The MDE arranges for an expedited due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless the parents and the school district agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within **seven** calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.

A decision made in an expedited due process hearing is final, except that any party involved in the hearing (you or the school district) may bring a civil action, as described under the heading "Civil Actions, Including The Time Period In Which To File Those Actions."

### **Placement During Appeals**

#### **34 CFR §300.533**

When, as described above, the parent or school district has filed a due process complaint related to disciplinary matters, the child must (unless the parent and the MDE or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading, Authority of School Personnel, whichever occurs first.

### **Protections for Children Not Yet Eligible for Special Education and Related Services**

#### **34 CFR §300.534**

##### **General**

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that the child was a child with a disability, then the child may assert any of the protections described in this notice.

##### **Basis of knowledge for disciplinary matters**

A school district must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child;

2. The parent requested an evaluation related to eligibility for special education and related services under Part B of the IDEA; or
3. The child's teacher, or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or to other supervisory personnel of the school district.

### **Exception**

A school district would not be deemed to have such knowledge if:

1. The child's parent has not allowed an evaluation of the child or has refused special education services; or
2. The child has been evaluated and determined to not be a child with a disability under Part B of the IDEA.

### **Conditions that apply if there is no basis of knowledge**

If prior to taking disciplinary measures against the child, a school district does not have knowledge that a child is a child with a disability, as described above under the sub-headings, **Basis of knowledge for disciplinary matters** and **Exception**, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district, and information provided by the parents, the school district must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

### **Referral to and Action by Law Enforcement and Judicial Authorities**

#### **34 CFR §300.535**

Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or

2. Prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a child with a disability.

**Transmittal of records**

If a school district reports a crime committed by a child with a disability, the school district :

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
2. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the FERPA.

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## **Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense**

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### **General**

#### **34 CFR §300.148**

Part B of the IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a FAPE available to your child and you choose to place the child in a private school or facility. However, the school district where the private school is located must include your child in the population whose special education needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school under 34 CFR §§300.131 through 300.144.

#### **Reimbursement for private school placement**

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or an ALJ may require the agency to reimburse you for the cost of that enrollment if the court or ALJ finds that the agency had not made a FAPE available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. An ALJ or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the MDE and school districts.

#### **Limitation on reimbursement**

The cost of reimbursement described in the paragraph above may be reduced or denied:

1. If: (a) At the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the school district to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the school district of that information;
2. If, prior to your removal of your child from the public school, the school district provided prior written notice to you, of its intent to evaluate your 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**



3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of your responsibility to provide the notice described above; or (c) Compliance with the above requirements would likely result in physical harm to your child; and
2. May, in the discretion of the court or an ALJ, not be reduced or denied for the parents' failure to provide the required notice if: (a) The parent is not literate or cannot write in English; or (b) Compliance with the above requirements would likely result in serious emotional harm to the child.

### **Transfer of Parental Rights at Age of Majority**

#### **34 CFR §300.520**

When a student with a disability reaches the age of majority (age 18 in Michigan if a legal guardian has not been appointed by the court), the public agency must provide any notices required under Part B of the IDEA to both the student and the parent and all rights accorded to the parent under Part B of the IDEA transfer to the student. All rights accorded to the parent also transfer to students who have reached the age of majority and who are incarcerated in an adult or juvenile federal, state, or local correctional institution.

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## **Attachment A – Federal Definitions**

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### **Serious Bodily Injury**

#### **18 USC 1365(h)**

3. The term "serious bodily injury" means bodily injury which involves –
  - (A) a substantial risk of death;
  - (B) extreme physical pain;
  - (C) protracted and obvious disfigurement; or
  - (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; and
4. The term "bodily injury" means –
  - (A) a cut, abrasion, bruise, burn, or disfigurement;
  - (B) physical pain;
  - (C) illness;
  - (D) impairment of the function of a bodily member, organ, or mental faculty; or
  - (E) any other injury to the body, no matter how temporary.

### **Weapon**

#### **18 USC 930(g)**

(2) The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.



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## Notice of Procedural Safeguards - Section 504

The following is a summary description of the rights provided by Section 504 of the Rehabilitation Act of 1973 to students with disabilities, or suspected disabilities. The intent of the law is to keep you fully informed about decisions concerning your child, to have you be an active participant in the educational planning for your child, and to inform you of your rights in the event you disagree with any decisions concerning your child.

You have the right to:

1. Have the Clarenceville School District advise you of your rights under federal law;
2. Receive notice with respect to Section 504 identification, evaluation, and/or eligibility determinations of your child;
3. Have evaluation, educational programming, and placement decisions made based upon a variety of information sources, and by a team of persons who are knowledgeable about the student, the evaluation data, and placement options;
4. Examine all education records related to your child, including those concerning the decisions regarding your child's Section 504 identification, evaluation, educational program, and placement;
5. Obtain copies of educational records at a reasonable cost, unless the fee would effectively deny you access to the records;
6. Receive a response from the Clarenceville School District to reasonable requests for explanations and interpretations of your child's records;
7. Request an amendment of your child's educational records if there is reasonable cause to believe that they are inaccurate, misleading, or otherwise in violation of the privacy rights of your child. If the Clarenceville School District refuses this request for amendment, the School District shall notify you within a reasonable time and advise you of your right to an impartial hearing;
8. Have your child receive special education services and related services if he/she is found to be eligible under the Individuals with Disabilities Education Act ("IDEA") or appropriate educational services and related services if he/she is found to be eligible under Section 504 of the Rehabilitation Act;
9. Have your child take part in, and receive benefits from, the School District's education programs without discrimination because of his/her disabling condition(s);
10. Have your child receive a free appropriate public education. This includes the right to be educated with non-disabled students to the maximum extent appropriate. It also includes



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the right to have the Clarenceville School District make reasonable accommodations to allow your child an equal opportunity to participate in school and school related activities;

11. Have your child educated in facilities and receive services comparable to those provided non-disabled students;
12. Where your child, due to a disability, has been placed in an educational setting that is not within the Clarenceville School District, have transportation provided to and from that placement at no greater cost to you than if the program was operated by and within the Clarenceville School District;
13. Have your child be given an equal opportunity to participate in nonacademic and extracurricular activities offered by the Clarenceville School District;
14. Request an impartial due process hearing regarding the Section 504 identification, evaluation, eligibility, placement or provision of a Free Appropriate Public Education ("FAPE") for your child;
15. File a complaint in accordance with the Clarenceville School District's Section 504 grievance procedure.

## Medicaid Annual Notification Regarding Parental Consent

### Background:

Since 1993, the State of Michigan has participated in a Federal program called Medicaid School-Based Services. The program assists school districts by providing partial reimbursement for medically-related services listed on a student's Individualized Educational Program (IEP) or Individualized Family Service Plan (IFSP). Although this partial reimbursement is available only for students who are Medicaid eligible, services are provided to all students with disabilities regardless of their Medicaid eligibility status.

The Michigan School-Based Services program is under the direction of the Michigan Department of Community Health.

In 2013, the regulations regarding Medicaid parental consent for School-Based Services changed. Prior to accessing a child's public benefits or insurance for the first time, and annually thereafter, school districts must provide parents/guardians written notification. So what does all this mean?

Effective October 1, 2019, School Based Services expanded to include general education students with mental or behavioral health issues. The program that includes general education students is called Caring for Students (C4S). Together, the program is now referred to as School Services Program (SSP).

### Is there a cost to you?

NO – Services are provided to students while they are at school at NO cost to the parent/guardian.

### Will School Services Medicaid claiming impact your family's Medicaid benefits?

The School Services program does NOT impact a family's Medicaid services, funds, or limits. Michigan operates the School Services program differently than the family's Medicaid program. The School Services program does not affect your family's Medicaid benefits in any way.

### What type of services does the School Services program cover?

- Evaluations
- Psychological/Social Work
- Case Management
- Speech & Language
- Orientation & Mobility
- Personal Care
- Occupational Therapy
- Assistive Technology Services
- Special Ed Transportation
- Physical Therapy
- Nursing

### What type of information about your child will be shared?

In order to submit claims for School Services reimbursement, the following types of records may be required: first name, last name, middle name, address, date of birth, student ID, Medicaid ID, disability, service dates and the types of services delivered.

### Who will see this information?

Information about your child's School Services may be shared with the Michigan Medicaid agency and its affiliates for the purpose of verifying Medicaid eligibility and submitting claims.

### What if you change your mind?

You have the right to withdraw consent to disclose your child's personally identifiable information to the Michigan Medicaid agency and its affiliates at any time.

### Will your consent or refusal affect your child's services?

NO. Regardless of whether you have Medicaid coverage or not (and whether you provide consent or not) the school district will still provide services to your child pursuant to their plan of care (IEP, IFSP, Behavior Plan, Individualized Health Plan, Medical Management Plan, or other).

### What if you have questions?

Please call your school district's Special Education department with questions or concerns, or to obtain a copy of the parental consent form.



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## Resources for Parents

The following represents a few of the resources available to support parents of students with disabilities. Many resources, organizations, and support groups, locally and statewide, have been established with “parent support” as the focus. The Resource Guide for Children and Adults with Developmental Disabilities and Their Families in Oakland County is an excellent resource that provides comprehensive information for parents. PAC parents and district special education administrators can further assist parents in locating additional resources.

ARC of Oakland County  
[www.thearkoakland.org](http://www.thearkoakland.org)  
248-816-1900

DEAF CAN  
[www.deafcan.org](http://www.deafcan.org)  
248.332-3331 or TYY 248-332-3323

Association for Children’s Mental Health  
[www.acmh-mi.org](http://www.acmh-mi.org)  
888-226-4543

Department of Community Health  
Children’s Special Health Care  
[www.michigan.gov/mdhhs](http://www.michigan.gov/mdhhs)  
517-241-3740 or 517-241-7420

Autism Alliance of Michigan  
[www.aaomi.org](http://www.aaomi.org)  
877-463-2266

Disability Network of Oakland & Macomb  
[www.dnom.org](http://www.dnom.org)  
800-284-2457

Bridges for Kids  
[www.bridges4kids.org](http://www.bridges4kids.org)

Down Syndrome Guild of Southeastern Michigan  
[www.dsgsemi.org](http://www.dsgsemi.org)  
248-556-5341

Center for Educational Networking (CEN)  
[www.cenmi.org](http://www.cenmi.org)  
517-908-3900

Early On of Oakland County  
[www.oakland.k12.mi.us](http://www.oakland.k12.mi.us)  
248-209-2084

CHADD Children and Adults with AD/HD of Eastern Oakland County  
[www.chadd.org](http://www.chadd.org)  
248-988-6716

Early On: Public Awareness /Information/Referral  
[www.1800earlyon.org](http://www.1800earlyon.org)  
800-327-5966

Child & Adolescent Health Centers (CAHC)  
[www.michigan.gov/mdhhs](http://www.michigan.gov/mdhhs)  
517-335-3720

Easter Seals Michigan, Headquarters  
[www.easterseals.com/michigan](http://www.easterseals.com/michigan)  
248-475-6400 or 800-75-seals

Common Ground Sanctuary  
[www.commongroundhelps.org](http://www.commongroundhelps.org)  
888-232-7733

Epilepsy Foundation of Michigan  
[www.epilepsymichigan.org](http://www.epilepsymichigan.org)  
248-377-6226

Community Housing Network of Oakland County  
[www.communityhousingnetwork.org](http://www.communityhousingnetwork.org)  
248-332-3323



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Family Support Network of Michigan  
[www.michigan.gov/eshcs](http://www.michigan.gov/eshcs)  
800-359-3722

JARC  
[www.jarc.org](http://www.jarc.org)  
248.538-6610

Learning Disabilities Association of Michigan  
[www.ldaofmichigan.org](http://www.ldaofmichigan.org)  
616-284-16650

Leukemia Foundation of Michigan  
[www.bloodcancerfoundationmi.org](http://www.bloodcancerfoundationmi.org)  
800-825-2536

MI Child  
[www.healthcare4mi.com](http://www.healthcare4mi.com)  
888-988-6300

Michigan Alliance for Families  
[www.michiganallianceforfamilies.org](http://www.michiganallianceforfamilies.org)  
833-564-8265

Michigan Association for Children with Emotional Disorders  
[www.michkids.org](http://www.michkids.org)  
248-433-2200

Michigan Bureau of Services for Blind Persons  
[www.michigan.gov/leo](http://www.michigan.gov/leo)  
800-292-4200

Michigan Deaf Association  
[www.mideaf.org](http://www.mideaf.org)  
[info@mideaf.org](mailto:info@mideaf.org)

Michigan Department of Education  
[www.michigan.gov/mde](http://www.michigan.gov/mde)  
833-633-5788

Michigan Department of Education  
Technical Assistance for Special Education  
888-320-8384

Michigan Depart. Of Labor & Economic Growth, Rehabilitation Services  
[www.mich.gov/mrs](http://www.mich.gov/mrs)  
517-241-5324

Michigan Department of Civil Rights  
[www.michigan.gov/mdcr](http://www.michigan.gov/mdcr)  
517-335-3165

Michigan Mental Health Association  
[www.mha-mi.com](http://www.mha-mi.com)  
517-898-3907

Mich. Protection and Advocacy Service, Inc.  
[www.drnich.org](http://www.drnich.org)  
800-288-5923

Michigan Self Help Clearing House  
[www.ceicmh.org](http://www.ceicmh.org)  
517-346-8200

MORC  
Macomb Oakland Regional Center  
[www.morcinc.org](http://www.morcinc.org)  
866-807-6940

Muscular Dystrophy Association  
[www.mda.org](http://www.mda.org)  
800-572-1717

National Center for Learning Disabilities (NCLD)  
[www.nclld.org](http://www.nclld.org)  
888-575-7373

Oakland County Community Mental Health Authority  
[www.oaklandchn.org](http://www.oaklandchn.org)  
800-284-2457

Oakland Family Services  
[www.oaklandfamilyservices.org](http://www.oaklandfamilyservices.org)  
248.858-7766



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Oakland Mediation Center  
[www.mediation-omc.org](http://www.mediation-omc.org)  
248-338-4280

Oakland Schools Compliance Support  
[www.oakland.k12.mi.us](http://www.oakland.k12.mi.us)  
248.209-2007

Office of Civil Rights, US Dept. of Education  
<https://www2.ed.gov/about/offices/list/ocr/index.html>  
216-522-4970

Special Education Mediation Services  
[www.mikids1st.org](http://www.mikids1st.org)  
833-543-7178

United Cerebral Palsy Association of Metro  
Detroit Inc.  
[www.mi-upc.org](http://www.mi-upc.org)  
248-557-5070

United Way of Southeastern Michigan  
[www.unitedwaysem.org](http://www.unitedwaysem.org)  
313-226-9200