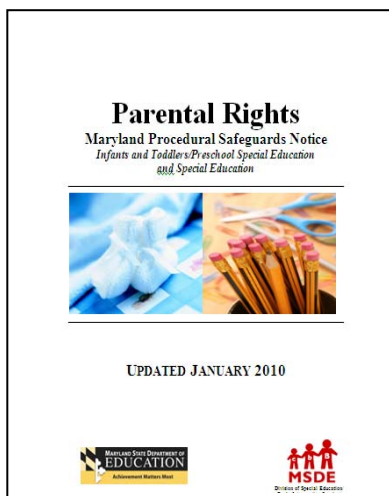


Parental Rights

Maryland Procedural Safeguards Notice *Infants and Toddlers/Preschool Special Education and Special Education*



Updated January 2010



Includes:

Parental Rights/Maryland Procedural Safeguards Notice
Infants and Toddlers/Preschool Special Education and Special Education
Maryland State Department of Education
Updated January 2010

Request for Mediation and Due Process Complaint Form
Maryland Office of Administrative Hearings
Revised October 2007

MSDE Parent's Guides to Frequently Asked Questions

Parental Rights
Maryland Procedural Safeguards Notice
Infants and Toddlers, Preschool, Special Education
January 2010

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Maryland State Department of Education
Division of Special Education/Early Intervention Services
200 West Baltimore Street, 9th floor
Baltimore, Maryland 21201
410-767-0858 (phone)
410-333-1571 (fax)
www.marylandpublicschools.org

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PROCEDURAL SAFEGUARDS NOTICE

The procedural safeguards notice includes a full explanation of your rights in an easily understandable manner and in your native language. This procedural safeguards notice applies to children and families receiving services through an Individualized Family Service Plan (IFSP) and also to children/students receiving services through an Individualized Education Program (IEP).

The protections included in this document are established by the federal Individuals with Disabilities Education Improvement Act of 2004 (IDEA 2004), 20 U.S.C. §1400 *et seq.*, and the following chapters of the Code of Maryland Regulations or COMAR: COMAR 13A.05.01, COMAR 13A.08.03, and COMAR 13A.13.01. Each public agency shall establish, maintain, and implement procedural safeguards that meet the requirements of IDEA 2004. A public agency is the agency providing IFSP or IEP services to the child (i.e. Anne Arundel County Public Schools (AACPS)).

Parents are to receive a copy of the procedural safeguards document one time a year, except AACPS is to give parents another copy of the document:

- Upon initial referral or parental request for evaluation;
- Upon receipt of the first State special education complaint under 34 CFR 300.151 through 300.153 in a school year;
- Upon receipt of the first due process complaint under 34 C.F.R. §300.507 in a school year;
- When a decision is made to take a disciplinary action; and
- Upon parent request.

AACPS may place a current copy of the procedural safeguards notice on its Internet web site if such web site exists.

The procedural safeguards document includes a full explanation of the parents' rights, in an easily understandable manner and in the parent's native language, unless it clearly is not feasible to do so. If the native language or other mode of communication of the parent is not a written language, AACPS shall take steps to ensure that the procedural safeguards are translated orally or by other means in the parent's native language or other mode of communication. AACPS must keep written evidence to document that the notice was translated and the parents understood the content of the procedural safeguards.

NATIVE LANGUAGE

Parents have the right to receive information in the language they understand.

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

- The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
- 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

Parents may choose to receive notices electronically if this option is available. If AACPS offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

- Prior written notice;
- Procedural safeguards notice; and
- Notices related to a request for due process.

PRIOR WRITTEN NOTICE

Parents have the right to receive written information about AACPS's actions concerning their child's early intervention services or special education.

Notice:

AACPS must give parents written notice each time it:

- Proposes to initiate or change the identification, evaluation, educational program, or educational placement of a child or the provision of a free appropriate public education (FAPE) to a child; or the provision of early intervention services to the child and the child's family for IFSP services only.
- Refuses to initiate or change the identification, evaluation, educational program, or educational placement of a child or the provision of FAPE to a child.

When written notice relates to an action that requires parental consent, AACPS may give written notice at the same time.

Content of Written Notice:

Written notice must:

- Describe the action(s) that AACPS proposed or refused to take;
- Explain why AACPS is proposing or refusing to take the action(s);
- Describe each evaluation procedure, assessment, record, or report AACPS used in deciding to propose or refuse the action(s);
- Include a statement that parents have protections under the procedural safeguards provisions in IDEA;
- Tell parents how they can obtain a description of the procedural safeguards if the action that AACPS is proposing or refusing is not an initial referral for evaluation;
- Include resources for parents to contact for help in understanding the IDEA;
- Describe any other choices that the child's Individualized Family Service Plan (IFSP) team or Individualized Education Program (IEP) team considered and the reasons why those choices were rejected; and
- Provide a description of other reasons why AACPS proposed or refused the action.

CONSENT

Parent Consent for IFSP Services Only:

Written informed consent shall be obtained before:

- Initial evaluation of the initial evaluation and assessment of the child
- Determining the resources, priorities, and concerns of the family related to enhancing the development of the child
- Initiating the provision of early intervention services and additional assessments
- If written consent is not given, AACPS shall make reasonable efforts to ensure that the parent:
 - Is fully aware of the nature of the evaluation and assessment or the services that will be available and
 - Understands that the child will not be able to receive the evaluation and assessment or the services unless written consent is given

Parent Right to Decline Service for IFSP Services Only:

A parent of an eligible child may determine whether they, their child, or other family members will accept or decline any early intervention service and may decline this service after first accepting it without jeopardizing other early intervention services. If a parent chooses to continue early intervention services for a child three or older, an educational component must be included. If the parent does not want the educational component, they are not eligible to receive early intervention services.

Parent Consent:

AACPS must get parental consent to assess a child for special education and related services, and before providing special education and related services. Parents have the right to withdraw consent at anytime. There are some exceptions to consent for evaluation.

Consent means that the parents:

- Have been fully informed of all information relevant to the activity for which consent is sought, in their native language or other mode of communication;
- Understand and agree in writing to the carrying out of the activity for which their consent is sought and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- Understand that the granting of consent is voluntary and may be revoked at anytime.

If parents withdraw consent, it does not cancel out an action that occurred between the time AACPS received consent and before its withdrawal.

If the parent revokes consent, in writing, for their child to receive special education services after the child is initially provided special education and related services, AACPS is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

Parental Consent for Initial Evaluation:

Before AACPS can conduct an initial evaluation of a child to determine whether the child is eligible for early intervention services or special education and related services, AACPS must:

- Provide parents prior written notice of the proposed action; and
- Obtain parental consent.

AACPS must make reasonable efforts to obtain informed consent for initial evaluation to decide whether the child is a child with a disability that requires the provision of special education and related services.

A parent's consent for initial evaluation does not mean the parent also gives consent for AACPS to start providing early intervention or special education and related services to their child.

Surrogate Parents for IFSP Services Only:

The Maryland State Department of Education shall assign a surrogate parent to represent an eligible child if:

- The parent cannot be identified
- AACPS after reasonable efforts cannot find the child's parent
- The child is a ward of the state of Maryland

Criteria for Surrogate Parents:

- No conflict with the interest of the child
- Has knowledge and skills that ensure adequate representation of the child
- Not an employee of the State or an employee of any service provider involved in the provision of early intervention or other services to the child or the child's family
- Not considered an employee agency solely because a person is paid by a public agency to be a surrogate parent

AACPS shall submit a written request to the Maryland State Department of Education to appoint a surrogate parent when the need has been identified. The Superintendent of the Department of Education or designee shall appoint a recommended individual to fulfill the role of surrogate parent.

Surrogate parent may represent a child in all matters relating to:

- Evaluation and assessment of the child
- Development and implementation of child's IFSP, including annual evaluations and periodic reviews
- Ongoing provision of early intervention services to child and family

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 parents, AACPS does not need consent from the parents for an initial evaluation to determine if the child is a child with a disability if:

- Despite reasonable efforts to do so, AACPS cannot find the child's parent;
- The rights of the parents have been terminated in accordance with State law; or
- A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

Parental Consent for Services:

AACPS must make reasonable efforts to obtain informed consent before providing early intervention or special education and related services to a child for the first time.

AACPS must not use mediation or due process procedures to obtain an agreement or a ruling that the early intervention or special education and related services recommended by a child's IFSP or IEP team may be provided to the child without parental consent if the parents:

- Refuse to give consent for their child to receive early intervention or special education and related services; or
- Do not respond to a request to provide consent for the provision of special education and related services for the first time.

If the parents refuse to give consent for their child to receive special education and related services for the first time, or if the parents do not respond to a request to provide consent, AACPS:

- Is not in violation of the requirement to make a free appropriate public education (FAPE) available to their child; and
- Is not required to have an Individualized Family Service Plan (IFSP) meeting or Individualized Education Program (IEP) meeting or develop an IFSP/IEP for their child.

Withdrawal of Parental Consent for Services:

If a parent of a child withdraws consent in writing for the continued provision of special education and related services, at any time after AACPS begins the initial provision of special education and related services, AACPS —

- Is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent;
- May not continue to provide special education and related services to the child, but must provide prior written notice to the parent of the parent's written request to stop all special education and related service, before ceasing the provision of special education and related services;
- May not use mediation or due process procedures to obtain agreement or a ruling that the services may be provided to the child;
- Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and
- Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.

Withdrawal of consent does not cancel out an action that occurred between the time AACPS received consent and before the withdrawal of consent.

Parental Consent for Reevaluations:

AACPS must obtain informed consent before it conducts new individualized assessments of a child, unless AACPS can demonstrate:

- It took reasonable steps to obtain parental consent for reevaluation; and
- The parent did not respond.

If parents refuse consent for new assessments, AACPS may, but is not required to, seek to override the parent's refusal by using mediation and due process procedures. As with initial evaluation, AACPS does not violate its obligations under the IDEA if it declines to pursue new assessments.

Documentation of Reasonable Efforts to Obtain Parental Consent:

AACPS must maintain documentation of reasonable efforts to obtain parental consent for initial evaluations, to provide early intervention or special education and related services for the first time, to reevaluate, and to locate parents of Wards of the State for initial evaluations.

The documentation must include a record of AACPS's attempts to obtain parental consent, such as:

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

Other Consent Requirements:

Parental consent is not required before AACPS:

- Reviews existing data as part of your child's evaluation or a reevaluation; or
- 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.

AACPS may not use a parent's refusal to consent to one service or activity to deny the parent or the child any other service, benefit, or activity.

If a parent enrolls their child in a private school at their own expense, AACPS may not use mediation or due process procedures to determine the child's eligibility and is not required to consider the child eligible to receive equitable services, if:

- The parent does not provide consent for their child's initial evaluation or reevaluation; or
- The parent fails to respond to a request to provide consent.

INDEPENDENT EDUCATIONAL EVALUATION

If a parent disagrees with an evaluation completed by AACPS, the parent has the right to have the child evaluated by someone who does not work for AACPS.

Definitions:

- Independent educational evaluation means tests and assessment procedures conducted by appropriately qualified personnel not employed by the Anne Arundel County Public School responsible for the education of the child; and
- Public expense means that AACPS either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parents.

Parents have the right to obtain an independent educational evaluation of their child under the IDEA subject to the procedures provided below. AACPS shall provide parents, upon request for an independent educational evaluation, information about:

- Where an independent educational evaluation may be obtained; and
- AACPS's criteria applicable for an independent educational evaluation.

Anne Arundel County Public School's Criteria:

When an independent educational evaluation is at public expense, the criteria under which the independent educational evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that AACPS uses when it initiates an evaluation, to the extent those criteria are consistent with a parent's right to an independent educational evaluation. Except for the criteria described above, AACPS may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

A Parent's Right to Evaluation at Public Expense:

Parents have the right to an independent educational evaluation at public expense if the parents disagree with an evaluation obtained by AACPS. If parents request an independent educational evaluation at public expense, AACPS must, without unnecessary delay, either:

- Initiate a due process hearing to show that its evaluation is appropriate; or
- Ensure an independent educational evaluation is provided at public expense, unless AACPS demonstrates in a due process hearing that the evaluation obtained by the parents did not meet AACPS's criteria.

If AACPS initiates a due process hearing and the final decision is that AACPS's evaluation is appropriate, parents still have the right to an independent educational evaluation, but not at public expense.

If parents request an independent educational evaluation, AACPS may ask parents for the reason why the parents object to the public evaluation. However, the parent's explanation is not required and AACPS may not unreasonably delay either providing the independent educational evaluation at public expense or initiating the due process hearing to AACPS's evaluation.

Parent Initiated Evaluation:

Parents always have the right to obtain an independent educational evaluation from qualified professionals of their choice, at their own expense. The IFSP/IEP team must consider the information from a parent-initiated evaluation at private expense, if it meets AACPS criteria, when making any decisions with respect to the provision of FAPE to the child. The results of parent-initiated private evaluation may also be presented as evidence at a due process hearing regarding the child.

Request for an Evaluation by an Administrative Law Judge (ALJ):

If an Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH) requests an independent educational evaluation as a part of a due process hearing, the cost of the evaluation must be at public expense.

CONFIDENTIALITY OF INFORMATION

Parents have the right to review their child's records and ask AACPS to correct their child's record if they think the record is not correct. Parents have the right to consent to release information about their child, yet consent is not required in some circumstances. Parents have the right to expect AACPS to keep their child's early intervention or educational records confidential and ask AACPS to destroy their child's educational information when it is no longer needed.

Definitions:

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 C.F.R. part 99 (the regulations implementing the Family Educational Rights and Privacy Act [FERPA] of 1974) including early intervention records.

Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part C or Part B of the IDEA.

Personally identifiable information includes:

- Name of the child, child's parents, or other family member;
- Address of the child;
- A personal identifier, such as the child's social security number; or
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Safeguards:

AACPS shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official of AACPS is responsible for protecting the confidentiality of personally identifiable information. In addition to the requirements of these procedural safeguards, federal and State laws and regulations also govern the protection of educational records. All AACPS personnel who collect or use personally identifiable information must receive training regarding the State's policies and procedures on the confidentiality of personally identifiable information. Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Consent:

AACPS must obtain parental consent before personally identifiable information is disclosed to anyone other than officials of participating agencies collecting or using the information under the IDEA, or for any purpose other than meeting the requirements of providing a child with a disability FAPE under the IDEA. Disclosures addressed in referral to and action by law enforcement and judicial authorities regarding reporting a crime committed by a child with a disability does not require parental consent to the extent that the transmission is permitted by FERPA.

AACPS may not release information from education records to participating agencies without parental consent unless authorized to do so under FERPA. MSDE has developed policies and procedures for public agencies, including sanctions, which the State uses to ensure that its policies and procedures are followed, and that the requirements for confidentiality, in accordance with IDEA and FERPA are met.

AACPS is required to have procedures in place for how adequate notice is provided to fully inform parents about the requirements of confidentiality of personally identifiable information including a:

- Description of the extent that the notice is given in the native languages of the various population groups in the State;
- Description of the children on whom personally identifiable information is maintained, and the types of information sought;
- Summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- Description of policies and procedures used in the event that a parent refuses to provide consent; and
- Description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 C.F.R. §99.

Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the jurisdiction of the activity.

Access Rights:

AACPS shall permit parents to inspect and review any education records relating to their child that is collected, maintained, or used by AACPS with respect to the identification, evaluation, and educational placement of their child, development and implementation of the IFSP and the provision of FAPE. AACPS shall comply with a request without unnecessary delay and before any meeting regarding an IFSP or IEP, or any due process hearing, and in no case more than 45 days after the request has been made.

A parent's right to inspect and review educational records under this section includes the parent's right to:

- A response from AACPS to reasonable requests for explanations and interpretations of the records;
- Request that AACPS provide copies of the record if failure to provide copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- Have the parent's representative inspect and review the records.

AACPS may presume parents have the authority to inspect and review records relating to their child unless AACPS has been advised that a parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.

Record of Access:

AACPS shall keep a record of individuals, other than parents and authorized employees of AACPS, obtaining access to education records collected, maintained, or used under Part C or Part B of the IDEA, including the name of the individual, the date access was given, and the purpose for which the individual is authorized to use the records. 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. AACPS shall provide parents, on request, a list of the types and locations of education records collected, maintained, or used by AACPS. AACPS may charge a fee for copies of education records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. AACPS may not charge a fee to search for or retrieve information from education records.

Amendment of Records at Parent's Request:

If a parent believes that information in the education records collected, maintained, or used under the IDEA is inaccurate or misleading or violates the privacy or other rights of their child, the parent may request AACPS, that maintains the information, to amend the information. AACPS shall decide whether to amend the information in accordance with the parent request within a reasonable period of time of receiving the request. If AACPS refuses to amend the information in accordance with the request, it shall inform the parent of their refusal and advise the parent of their right to a hearing to challenge the information in educational records. A hearing conducted to challenge information in educational records must be conducted in accordance with FERPA procedures as found in 34 C.F.R. §99.22.

AACPS, upon request, shall provide the parent with an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. If, as a result of the hearing, AACPS decides that the information is inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, AACPS shall amend the information accordingly and so inform the parent of the amendment in writing. If, as a result of the hearing, AACPS decides that the information is not inaccurate or misleading or otherwise in violation of the privacy or other rights of the child, they shall inform the parent of their right to place in the records it maintains on their child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of AACPS. Any explanation placed in the records of your child must:

- Be maintained by AACPS as part of the child's record as long as the record or contested portion is maintained by AACPS; and
- Disclose the explanation to any party requesting a copy of the child's record or the contested portion.

Procedures for the Destruction of Information:

AACPS is required to inform parents when personally identifiable information collected, maintained, or used under the IDEA is no longer needed to provide early intervention or educational services to their child. The information must be destroyed at the request of the parents. However, a permanent record of the child's name, address, and phone number, the child's grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

Children's Rights:

Under the regulations for FERPA, parental rights regarding a child's education records transfer to the child once he/she reaches the age of 18, unless the child's disability makes him/her incompetent under State law. If the parent's rights under Part B of IDEA transfer to the child who reaches the age of majority, the rights regarding educational records must also transfer to the child. However, AACPS must provide the parent and the child any notice required under IDEA. Please refer to "Transfer of Parental Rights at Age of Majority" for more specific information.

Disciplinary Information:

AACPS may include in a child's records a statement of any current or previous disciplinary action that has been taken against the child and transmit discipline information; to the same extent that disciplinary information is included in, and transmitted with the records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the child transfers from one school to another, the transmission of any of the child's records must include both the child's current IEP and any statement of current or previous disciplinary action taken against the child.

DISCIPLINE OF CHILDREN WITH DISABILITIES

The information below applies to children with disabilities, ages 3 through 21, receiving services through an Extended IFSP or IEP.

Parents have the right to specific procedures and protections if AACPS takes certain disciplinary actions towards their child. AACPS must provide a child educational services, after the child's removal for more than 10 days in a school year for a violation(s) of a student code of conduct.

Definitions:

For purposes of this part, the following definitions apply:

- 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 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 the IDEA or under any other provision of federal law.
- 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.
- Serious bodily injury means a bodily injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss of impairment of the function of a bodily member, organ, or mental faculty (18 U.S.C. 13645(h)(3)).

Authority of School Personnel:

School personnel may remove a child with a disability who violates the code of conduct for not more than 10 school days at a time for each violation, in accordance with the discipline policy used

for all children, unless it is determined that the removal constitutes a change of placement from the current educational placement to:

- An interim alternative educational setting;
- Another setting; or
- Suspension.

When removals (10 days or less at one time) accumulate to more than 10 days in a school year, the child's IFSP or IEP team determines the extent of services needed to enable your child to participate in the general curriculum and toward his/her IEP goals.

School personnel may consider unique circumstances on a case-by-case basis in determining whether a change in placement is appropriate for a child with a disability who violates the code of conduct. Change of placement includes removal for more than 10 consecutive days or a series of removals that constitute a pattern. When disciplinary action results in a change of placement, AACPS provides notice the day AACPS makes the decision and it must include the procedural safeguards document.

Manifestation Determination:

Within 10 school days of any decision to change the placement because of a violation of the code of conduct, the parent and the child's IFSP team or IEP team must review all relevant information in the child's file, including his/her IFSP or IEP, any teacher observations and any relevant information provided by the parent, to determine if the conduct in questions was:

- Caused by or had a direct and substantial relationship to the child's disability; or
- The direct result of AACPS's failure to implement the child's IFSP or IEP.

If the IEP team determines that either of the above statements is applicable, the conduct shall be determined to be a manifestation of the child's disability.

If the conduct was a manifestation of the child's disability, the IFSP team or IEP team must:

- Conduct a functional behavioral assessment and implement a behavioral intervention plan for the child, if AACPS had not previously done so;
- Review the child's behavior intervention plan if he/she already has such plan and modify it, as necessary to address the behavior; and
- Return the child to the placement from which he/she was removed, unless the parents and AACPS agree to a change of placement as part of modifying the child's behavioral intervention plan, except when the child has been removed to an interim alternative educational setting for drugs, weapons or serious bodily injury.

If the behavior is not a manifestation of the child's disability, school personnel may discipline the child in the same manner as other children, except appropriate educational services must continue.

Change of Placement:

When a child is removed for more than 10 days, that results in a change in placement, whether or not the behavior is a manifestation of the disability, or when a child is removed to interim alternative educational setting (IAES) for drugs, weapons or serious bodily injury, the child continues to receive services to enable him/her to continue to participate in the general education curriculum although in another setting and to progress toward meeting the goals set out in his/her

IEP. The child must also receive, as appropriate, a functional behavioral assessment and behavior intervention services and modifications designed to address the behavioral violation so that it does not recur. The IEP team determines appropriate services and the location in which the services will be provided.

Interim Alternative Educational Setting:

School personnel may remove a child to an interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where the child:

- Carries or possesses a weapon to or at school, on school premises, or to or at a school function under the jurisdiction of a State or AACPS;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of a State or AACPS; or
- Has inflicted serious bodily injury upon another person while at a school, on school premises, or at school function under the jurisdiction of a State or AACPS.

Appeal of Disciplinary Action:

If parents disagree with a decision regarding a manifestation determination or with any decision regarding placement for disciplinary reasons, the parents may file a due process complaint with the Office of Administrative Hearings (OAH) and AACPS. If AACPS believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, AACPS may file a due process complaint with OAH and the parents.

An Administrative Law Judge (ALJ), following the procedures described in the "Resolving Disagreements" section of this document, conducts the due process hearing. The hearing shall occur within 20 school days of the date the due process complaint is filed and shall result in a determination in 10 school days after the hearing.

In making a determination in a disciplinary appeal, the ALJ may:

- Return the child to the placement from which he/she was removed; or
- Order a change in placement of the child 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 others.

When a due process complaint is requested by either the parents or AACPS, the child remains in the interim alternative educational setting pending the decision of the ALJ or until the expiration of the time period provided (no more than 45 school days), whichever comes first, unless the parents and AACPS agree otherwise.

Child Not Yet Determined Eligible:

Children who have not been determined eligible for special education and who have engaged in a behavior that violates any rule or code of conduct may assert any of the protections provided, if AACPS had knowledge that the child had a disability before the behavior occurred. AACPS has knowledge if, before the behavior resulting in the disciplinary action occurred:

- The parents expressed concern in writing, that their child needs special education and related services, to supervisory or administrative personnel of AACPS, or a teacher of the child ;

- The parents requested an evaluation; or
- The child's teacher or other school personnel have expressed specific concern about a pattern of behavior demonstrated by the child, directly to the director of special education or other supervisory personnel of AACPS.

AACPS is not considered to have knowledge if:

- The parents refused to allow AACPS to evaluate their child;
- The parents refused to allow AACPS to provide special education services; or
- The child has been evaluated and it was determined that he/she was not a child with a disability under IDEA.

If AACPS does not have knowledge that a child has a disability prior to taking disciplinary action, the child may be subject to the same disciplinary measures as a child without disabilities who engages in comparable behaviors.

If a parent made a request for an evaluation, during the timeframe in which their child is subject to disciplinary measures, the evaluation must be expedited. Pending the results, the child remains in the educational placement determined by school authorities. If, based on AACPS's evaluation and information provided by parents, the child is determined to be a child with a disability, AACPS is to provide special education and related services and all procedural safeguards regarding discipline of children with disabilities apply.

Referral to and Action by Law Enforcement and Judicial Authorities:

IDEA does not prohibit public agencies from reporting a crime to appropriate authorities, and law enforcement. Judicial authorities may exercise their responsibilities in applying federal and State law to crimes committed by a child with a disability. Any agency reporting a crime shall supply copies of the child's special education and disciplinary records to the appropriate authorities to the extent allowed by COMAR 13A.08.02, Student Records, with parent consent, or in accordance with exceptions to parent consent specified in the policy.

PARENTAL UNILATERAL PLACEMENT OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

IDEA does not require AACPS to pay for the cost of education, including early intervention or special education and related services, of a child with a disability at a private school if AACPS made a free appropriate public education (FAPE) available and the parent chose to place their child in a private school.

IDEA does not require AACPS to pay for the cost of education, including special education and related services, of a child with a disability at a private school if AACPS made a free appropriate public education (FAPE) available and the parents chose to place their child in a private school. However, AACPS shall include the child in the population of children placed in private schools by their parents, in accordance with the federal regulations. Disagreements between the parents and AACPS regarding the availability of FAPE and financial responsibility are subject to due process complaint procedures under IDEA. Please refer to "Resolving Disagreements" for more specific information.

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

Limitation on Reimbursement:

Reimbursement may be reduced or denied by an ALJ or a court if:

- At the most recent IEP team meeting parents attended prior to removing their child from the public school, parents did not inform the IEP team that they were rejecting the placement proposed by AACPS to provide FAPE, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- At least ten (10) business days (including any business days that occur on a holiday) prior to the parents removal of their child from the public school, parents did not give AACPS written notice of their intent to remove their child, including their concerns regarding their child's public placement; or
- If prior to the parents removal of their child from the public school, AACPS informed the parents, through the prior written notice requirements of its intent to evaluate their child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make their child available for the evaluation; or
- Upon a judicial finding of unreasonableness with respect to the parents actions.

Notwithstanding the notice requirements described above, the cost of reimbursement:

- Shall not be reduced or denied for the parents failure to provide such notice, if:
 - AACPS prevented the parents from providing notice,
 - The parents had not received written notice, under the IDEA notice requirements described above,
 - Compliance with the notice requirements would likely result in physical harm to the child, and
- May, at the discretion of a court or an ALJ, not be reduced or denied for failure to provide such notice if:
 - The parents are not literate and cannot write in English, or
 - Compliance with the notice as described above would likely result in serious emotional harm to the child.

TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

In Maryland, parental rights do not transfer to children with disabilities on reaching the age of majority, except under limited circumstances.

Under Maryland law, in certain limited circumstances, all rights accorded to the parents under IDEA shall transfer to a child with a disability. This transfer occurs when the child reaches the age of 18 years, if the child has not been adjudged incompetent under State law and there is documentation that:

- The parents are unavailable or unknown, and the child requests that the parental rights be transferred to the child rather than have a parent surrogate appointed;
- The parents have not participated in the special education decision making process for the child after repeated attempts by AACPS to involve the parents over the previous year;
- The parents have affirmatively rejected participation in the special education decision making process;
- The parents cannot participate in the special education decision making process due to prolonged hospitalization, institutionalization, or serious illness or infirmity of one or both of the parents and the parents have consented to the transfer of rights to the child;
- The parents cannot participate in the special education decision making process due to extraordinary circumstances beyond their control, and the parents have consented to the transfer of rights to the child; or
- The child is living outside of the parents' home and is not in the care or custody of another public agency.

If the parents of a child with a disability, with whom the child resides, do not consent to the transfer of rights to the child at the age of 18, and the child has not been adjudged incompetent under State law, either party may file a due process complaint to determine whether the rights should be transferred.

If a child with a disability has been represented by a parent surrogate in accordance with federal and State laws and regulations, AACPS shall provide any written notice required under federal and State laws and regulations to both the child and parent surrogate. All other rights afforded the parent surrogate under IDEA shall transfer to the child if the child has not been adjudged incompetent under State law and the child requests that the rights transfer.

RESOLVING DISAGREEMENTS

The following procedures describe the processes available to parents and AACPS for resolving disagreements regarding a child's early intervention or special education program and related services. These options include mediation, State complaint, and due process complaint.

Mediation:

Mediation is a process that may be used to resolve disagreements between the parents of a child with a disability and AACPS, responsible for the education of the child.

An employee of the Office of Administrative Hearings (OAH) who is qualified and trained in effective mediation techniques conducts the mediation. The individual selected by OAH will not have a personal or professional conflict of interest.

- Mediation is at no cost to the parent or AACPS, responsible for the child's early intervention or education, including the cost of a meeting with parents to encourage mediation.
- A request for mediation is made to AACPS, responsible for the early intervention or education of the child, and the OAH. To assist parents with filing a request for mediation a form is available from AACPS and on the MSDE website at **www.marylandpublicschools.org**. For further assistance, contact AACPS's Special

Education Office or the MSDE Division of Special Education/Early Intervention Services, 410-767-7770.

- Parents or AACPS may be accompanied and advised by counsel during mediation.
- A mediation session will generally occur within 20 days of the receipt of a written request at a location convenient to parents and AACPS.
- Mediation sessions are closed proceedings. Discussions that occur during mediation must be confidential and cannot be used as evidence in any subsequent due process hearing or civil action. Parents or AACPS may be asked to sign a confidentiality pledge before the start of the mediation.
- An agreement reached by the parties in the mediation must be set forth in a written agreement that is enforceable in any State Court that has the authority to hear this type of case or in a federal district court.
- AACPS may not use mediation to deny or delay the parent's right to a hearing on the parent's due process complaint

Meeting to Encourage Mediation:

AACPS may offer to parents, who elect not to use the mediation process, to meet at a time and location convenient to the parents, to explain the benefits of the mediation process and encourage parents to use the process.

Difference Between a State Complaint and a Due Process Complaint:

In addition to mediation, parents have the right to use the State complaint process or the due process complaint process to resolve disagreements with AACPS. These options have different rules and procedures.

The IDEA regulations have separate procedures for State complaints and for due process complaints. As explained below, any individual or organization may file a State complaint alleging a violation of any IDEA requirement by AACPS. Only a parent or AACPS may file a due process complaint on any matter relating to the identification, evaluation, early intervention services or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to the child.

MSDE staff 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 unless the ALJ grants a specific extension of the timeline at the parent's request or AACPS's request.

For an overview and comparison of these options, see the Attachment to this document.

State Complaint:

Individuals and organizations have the right to file a State Complaint with the Maryland State Department of Education (MSDE). In order for the State to conduct an investigation, the written complaint must meet specific criteria as required in the IDEA regulations.

If an individual or an organization believes AACPS has violated a federal or State law or regulation concerning an early intervention or special education requirement, or that AACPS has not implemented a due process hearing decision, a State complaint may be filed. The complaint must be

filed with the MSDE and should be address to the Assistant State Superintendent, Division of Special Education/Early Intervention Services, MSDE, 200 West Baltimore Street, Baltimore, Maryland 21201. The person or organization that files a State complaint with MSDE must also send a copy of the complaint to AACPS at the same time. To assist with filing the complaint, detailed procedures and a form are available on the MSDE website at www.marylandpublicschools.org, or by calling the Division's Complaint Investigation and Due Process Branch at 410-767-7770.

The State complaint must include:

- A statement that AACPS has violated a requirement of federal or State law or regulation;
- The facts upon which the statement is based;
- The signature and contact information for the person/organization filing the State complaint; and
- If the State complaint is alleging a violation with respect to a specific child:
 - The name and address of residence of the child;
 - The name of the school the child is attending;
 - 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;
 - A description of the nature of the problem of the child, including facts relating to the problem; and
 - A proposed resolution of the problem to the extent known and available to the party at the time the State complaint is filed.

A State complaint must allege a violation that has occurred not more than one year prior to the State receiving the complaint. MSDE is to issue their findings within 60 calendar days of receipt of the State complaint, and may extend the 60 day timeline if:

- Exceptional circumstances exist regarding a particular complaint; or
- The parent and AACPS voluntarily agree to extend the time to try to mediation or alternative means of dispute resolution.

At a minimum, MSDE shall:

- Conduct an independent on-site investigation, if it is determined necessary;
- Provide the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the State complaint;
- Review all relevant information and make an independent determination as to whether AACPS has violated requirements of federal and State laws; and
- Issue a written decision to the complainant and AACPS that addresses each allegation in the complaint and contains findings of fact and conclusions.

The decision will also include the reasons for the final decision and procedures for the effective implementation of the final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. If MSDE determines AACPS has failed to provide appropriate services, the final written decision shall address how AACPS is to remediate the denial of those services appropriate to the needs of the child, and appropriate future services for all children with disabilities.

Resolving a State Complaint:

Mediation and other less formal methods to resolve the disagreement may be available and are encouraged. If the parties resolve the complaint, MSDE does not need to conduct an investigation under the federal regulations.

Resolving a State Complaint that is the Subject of a Due Process Hearing:

If MSDE receives a State complaint that is also part of a due process hearing, or if a State complaint contains multiple issues of which one or more are part of a hearing, MSDE must set aside any part of the State complaint that is being addressed in the due process hearing until the conclusion of that due process hearing. However, any issue in the State complaint that is not part of the due process hearing must be resolved using the timeline and procedures described above. If an issue is raised in a State complaint that has previously been decided in a due process hearing, involving the same parties, the hearing decision is binding, and MSDE shall inform the complainant to that effect.

Due Process Complaint:

The parent or AACPS may file a due process complaint on any matter relating to the identification, evaluation, early intervention services or educational placement, or the provision of a free appropriate public education (FAPE) to a child.

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

This timeline does not apply if the parent could not file a due process complaint within the timeline because AACPS specifically misrepresented that it had resolved the issues identified in the due process complaint, or AACPS withheld information from the parent that it was required to provide under IDEA.

To file a due process complaint, the parent or AACPS (or the parent's attorney or AACPS's attorney) must submit a due process complaint to the other party and the OAH. The complaint must contain all of the content listed below and must be kept confidential.

To assist parents in filing a due process complaint, a Request for Mediation and Due Process Complaint form is available from AACPS from which the early intervention services are provided, where the child attends school, and on the MSDE website at www.marylandpublicschools.org. For further assistance, contact AACPS's early intervention office, special education office, or the MSDE Division of Special Education and Early Intervention Services at (410) 767-7770.

Content of the Due Process Complaint:

The due process complaint must include:

- The name of the child ;
- Address of the child's residence (or, for a homeless child , available contact information);
- Name of the school the child is attending;
- Name of the public agency responsible for the education of the child (i.e., Anne Arundel County Public Schools);
- A description of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

- A proposed resolution of the problem to the extent known and available to the party at the time of the complaint.

The parent or AACPS may not have a due process hearing until the parent or AACPS (or the parent's attorney or AACPS's attorney), files a due process complaint that includes this information.

Response to the Due Process Complaint:

When a party files a due process complaint, AACPS , responsible for the child's early intervention and education shall:

- Inform the parent of free or low cost legal and other relevant services available;
- Provide the parent with a copy of the procedural safeguards document; and
- Inform the parent of the availability of mediation.

If AACPS has not sent a prior written notice to the parents regarding the issues raised by the parent in the due process complaint, AACPS shall send the parent a response, within 10 days of receiving the due process complaint, containing:

- An explanation of why AACPS proposes or refuses to take the action(s);
- A description of any other options that AACPS considered and the reasons why those options were rejected;
- A statement that the parents of a child with a disability have protections under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- Sources for parents to contact to obtain assistance in understanding the provisions of the IDEA.

This response does not preclude AACPS from asserting that the parent's due process complaint was insufficient, where appropriate.

The other party to a due process complaint (parent or AACPS) must send the other party a response that specifically addresses the issues in the due process complaint, within 10 calendar days of receiving the due process complaint.

Sufficiency of Notice:

The due process complaint is considered sufficient unless the party receiving the complaint notifies OAH and the other party in writing within 15 days of receiving it that the receiving party believes the due process complaint does not meet the content requirements. Within five (5) days of receiving notice of the deficiency, OAH will determine whether the due process complaint meets the content requirements and immediately notify the parties in writing,

A party may amend its due process complaint only if the other party consents in writing and is given the opportunity to resolve the issues through a resolution meeting as noted below; or OAH grants permission not later than five (5) days before a due process hearing occurs. The timeline for the resolution meeting and the due process hearing begins again with the filing of the amended due process complaint.

Child's Status During Proceedings:

During the pendency of any administrative or judicial proceeding (except as provided under the discipline section), unless the parent and AACPS agree otherwise, the child must remain in his or her current early intervention or educational placement. If the proceeding involves an initial application for initial admission to public school, the child, with parental consent, must be placed in the public program until the completion of all proceedings. If the decision of the ALJ agrees with the parents that a change of early intervention services or education placement is appropriate, that placement becomes the child's current placement during the pendency of subsequent appeals.

Resolution Process:

Within 15 calendar days of receiving a parent's due process complaint, and before the due process hearing begins, AACPS must hold a meeting with the parent and the relevant member or members of the individualized family service plan (IFSP) team or individualized education program (IEP) team who have specific knowledge of the facts identified in the parent's due process complaint. The meeting:

- Must include a representative of AACPS who has decision-making authority on behalf of AACPS; and
- May not include an attorney representing AACPS unless the parent brings an attorney.

The parent and AACPS determine the relevant members of the IFSP or IEP team to attend the meeting.

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

The resolution meeting is not necessary if:

- The parent and AACPS agree in writing to waive the meeting;
- The parent and AACPS agree to try mediation; or
- AACPS initiated the due process complaint.

If AACPS has not resolved the due process complaint to the parent's satisfaction within 30 calendar days of receiving the complaint (the resolution period), the due process hearing may occur.

The 45 calendar day timeline for issuing a final decision begins at the end of the 30 calendar day resolution period, unless one of the following circumstances described below in the "Adjustments to the 30 Calendar Day Resolution Period" or the "Expedited Timelines" section applies.

Adjustments to the 30 Calendar Day Resolution Period:

Except when the parent and AACPS have agreed to extend the resolution process, waive the resolution process, or to use mediation, a parent's failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

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

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

If AACPS does not hold the resolution meeting within 15 calendar days of receiving notice of a parent's due process complaint or does not participate in the resolution meeting, the parent may request that the hearing commence and the decision be issued within 45 calendar days.

If the parent and AACPS agree in writing to waive the resolution meeting, then 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 the parent and AACPS agree in writing that no agreement is possible, then the 45 calendar day timeline for the due process hearing starts the next day.

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

Resolution Settlement Agreement:

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

- Signed by the parent and a representative of AACPS who has the authority to hold AACPS to the agreement; and
- Enforceable in any State court of competent jurisdiction (a state court that has authority to hear this type of case) or in a federal district court.

If the parent and AACPS enter into an agreement as a result of a resolution meeting, either party may void the agreement within three (3) business days.

Due Process Hearing:

The parent or AACPS involved in a dispute has the opportunity for an impartial due process hearing when filing a due process complaint.

An Administrative Law Judge (ALJ):

- Is an employee of the Office of Administrative Hearings;
- Will not have a personal or professional interest that conflicts with their objectivity in the hearing;
- Is knowledgeable and understands the provisions of the IDEA, and federal and State regulations pertaining to the IDEA, and legal interpretations of the IDEA; and
- Has the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Subject Matter of a Due Process Complaint:

The party (the parent or AACPS) that files the due process complaint may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Hearing Rights:

Either party to any due process hearing (including a hearing on IDEA disciplinary procedures) has the right to:

- Represent yourself or be represented by an attorney at due process hearings in accordance with State Government Article §9-1607.1, Annotated Code of Maryland;
- Be accompanied and advised by a lawyer and persons with special knowledge or training with respect to the problems of children with disabilities;
- Present evidence and confront, cross-examine, and require the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
- Obtain a written, or, at the parent's option, electronic, word-for-word record of the hearing; and
- Obtain written, or, at the parent's option, electronic findings of fact and decisions.

Additional Disclosure of Information:

At least five (5) business days before a due process hearing, the parent and Anne Arundel County Public Schools must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that the parent or Anne Arundel County Public Schools intend to use at the hearing.

An ALJ may prevent any party that does not comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parent's Rights:

The parent has the right to:

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

Hearing Decision:

The ALJ decision on whether a child received a free appropriate public education (FAPE) must be based on substantive grounds. In matters alleging a procedural violation, an ALJ may find that the child did not receive FAPE only if the procedural inadequacies:

- Interfered with the child's right to a FAPE;
- Significantly interfered with the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child; or
- Caused a deprivation of an educational benefit.

None of the provisions described above can be interpreted to prevent an ALJ from ordering AACPS 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 Due Process Complaint:

Nothing in the procedural safeguards section of IDEA prevents a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Timelines and Convenience of a Hearing:

Not later than 45 calendar days after the end of the 30 calendar day period for resolution meetings or, as described under “Adjustments to the 30 Calendar Day Resolution Period” or “Expedited Timelines,” not later than 45 calendar days after the end of the adjusted time period:

- A final decision is reached in the hearing; and
- 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 at the request of either party. Each hearing must occur at a time and place that is reasonably convenient to the parent and the child.

Expedited Timelines:

AACPS is responsible for arranging an expedited due process hearing when a due process complaint is filed on behalf of a child with a disability, regarding:

- A child with a disability who is not currently enrolled and attending school;
- The placement of a child with a disability in an interim alternative education setting; or
- A manifestation determination.

The due process hearing must occur within 20 school days of the date the complaint is filed. The ALJ must make a determination within 10 school days after the hearing. A resolution meeting must occur within seven (7) calendar days of receiving notice of the due process complaint and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receiving the due process complaint.

Finality of Hearing Decision:

An ALJ decision is final unless appealed by either the parents or AACPS. Any party aggrieved by the findings and decisions has the right to bring a civil action with respect to the complaint presented in the due process hearing.

Appeal:

Any party to the hearing who does not agree with the findings and decision has the right to appeal by bringing a civil action in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy within 120 days of the date of the ALJ decision.

In any civil action, the court will:

- Receive the records of the administrative proceedings;
- Hear additional evidence at the parent's request or at AACPS's request;
- Base its decision on the preponderance of the evidence; and
- Grant the relief that the court determines to be appropriate.

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 filing for civil action under these laws the parents or AACPS must have exhausted the procedures for a due process hearing with OAH. This means that parents 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, parents 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

In any action or proceeding brought under IDEA, the court may award reasonable attorneys' fees to:

- The parents or guardians of a child with a disability who is the prevailing party;
- To a prevailing party who is MSDE or AACPS against the attorney of the parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of the parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- To a prevailing party who is MSDE or AACPS against the attorney of the parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

Fees awarded must be based on rates prevailing in the community in which the action arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

Fees may not be awarded under the following circumstances:

- For any IFSP or IEP team meeting unless it is convened as a result of a due process hearing or judicial action;
- For mediation conducted prior to filing a due process complaint;
- For resolution meetings; and
- For services following a written settlement offer to the parent if:
 - The offer is made within the timelines under Rule 68, Federal Rules of Civil Procedure, or in an administrative proceeding, more than ten days before the proceeding begins;
 - The offer is not accepted within ten days; and
 - The court finds the relief obtained by the parent in the hearing is not more favorable to the parent than the offer of settlement. Fees and costs may be awarded if the parent was substantially justified in rejecting the settlement offer.

Fees may be reduced under the following circumstances:

- The parent or the parent's attorney unreasonably prolonged resolving the dispute;
- The amount of fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation and experience;
- The time and services were excessive considering the nature of the proceeding; or
- The attorney did not provide the appropriate information in filing the due process hearing request notice.

Fees will not be reduced if:

- AACPS prolonged the resolution; or
- There was a violation of the procedural safeguard requirements.

Because the parent's right to recover attorneys' fees depends upon meeting certain conditions set out in the IDEA, parents should discuss this matter with their attorneys.

ATTACHMENT: IDEA DISPUTE RESOLUTION PROCESSES COMPARISON CHART

| | MEDIATION | DUE PROCESS COMPLAINT | RESOLUTION PROCESS | STATE COMPLAINT |
|--|---|---|--|---|
| Who can initiate the process? | Parent or AACPS, but must be voluntary for both | Parent or AACPS | AACPS schedules the resolution meeting upon receipt of a due process complaint unless the parties agree to waive or use mediation | Any individual or organization including those from out of state |
| What is the time limit for filing? | None Specified | 2 years of when the party knew or should have known of the problem with limited expectations ¹ | Triggered by a parent's due process complaint | 1 year from the date of the alleged violation |
| What issues can be resolved? | Any matter under Part 300, including matters arising prior to the filing of a due process complaint (there are exceptions) ² | Any matter relating to the identification, evaluation or educational placement or provision of a free appropriate public education (there are exceptions) | Same as the issues raised in the parent's due process complaint | Alleged violations of Part B of IDEA or Part 300 |
| What is the timeline for resolving the issues? | None specified | 45 days from the end of the resolution period unless a specific extension to the timeline is granted ^{3, 4} | AACPS must convene a resolution meeting within 15 days of receipt of the parent's due process complaint, unless the parties agree in writing to waive the meeting or agree to use mediation Resolution period is 30 days from receipt of the parent's due process complaint unless the parties agree otherwise or the parent or AACPS fails to participate in the resolution meeting or AACPS fails to convene the resolution meeting within 15 days of receipt of the parent's due process complaint ^{3, 5, 6, 7} | 60 days from receipt of the complaint unless an extension is permitted ⁸ |
| Who resolves the issues? | Parent and AACPS with a mediator The process is voluntary and both parties must agree to any resolution | Hearing Officer/Administrative Law Judge (ALJ) | Parent and AACPS Both parties must agree to any resolution | Maryland State Department of Education ⁹ |

¹ The time limit does not apply to a parent if the parent was prevented from filing a due process complaint due to: (1) specific misrepresentations by AACPS that it had resolved the problem forming the basis of the due process complaint; or (2) AACPS's withholding of information from the parent that was required under Part 300 of IDEA to be provided to the parent (34 C.F.R. §300.511(f)).

² Such exceptions include: AACPS may not file a due process complaint or use mediation to override a parent's refusal to consent to the initial provision of special education services (34 C.F.R. §300.300(b)(3)); AACPS may not file a due process complaint or use mediation to override a parent's refusal to consent to an initial evaluation or reevaluation of a parentally-placed private school child or home schooled child; (34 C.F.R. §300.300(c)(4)(i)); the right of parents of parentally placed private school children to file a due process complaint is limited to AACPS's failure to meet the child find requirements (34 C.F.R. §300.140); AACPS's failure to provide a highly qualified teacher is not an issue subject to due process, but a State complaint could be filed with the State Education Agency (SEA) (34 C.F.R. §300.156(e)).

³ If the due process complaint is filed for an expedited hearing pursuant to discipline procedures, or the child is not currently enrolled and attending school, the resolution period is 15 calendar days (with the meeting being held within 7 days). If the matter has not been resolved to the satisfaction of both parties, the hearing must occur within 20 school days of the date the hearing is requested and a decision must be issued within 10 school days after the hearing. (34 C.F.R. §300.532(c) and COMAR 13A.05.01.15).

⁴ A hearing officer/ALJ may grant specific extension of time at the request of either party. (34 C.F.R. §300.516(c)).

⁵ The regulations allow for adjustments to the 30 day resolution period. The 45 day timeline for the due process hearing starts the day after one of the following events: (1) both parties agree in writing to waive the resolution meeting; (2) after either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible; (3) if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or AACPS withdraws from the mediation process. (34 C.F.R. §300.510 (c)).

⁶ Parent failure to participate in the resolution meeting delays the timelines for the resolution process and due process hearing until the meeting is held. (34 C.F.R. §300.510(b)(3)).

⁷ If AACPS fails to hold the resolution meeting within 15 days of receiving the parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of an ALJ to begin the due process hearing timeline (34 C.F.R. §300.510(b)(5)).

⁸ The timeline for resolving the State complaint may be extended if exceptional circumstances exist with respect to a particular complaint, or the parent (or individual or organization, if mediation or other alternative means of dispute resolution, is available to the individual or organization under State procedures) and AACPS agree to extend the time to engage in mediation or to engage in other alternative means of dispute resolution, if available in the State (34 C.F.R. §300.152(b)(1)).

⁹ The MSDE complaint procedures provides AACPS with the opportunity to respond to the complaint, including, at the discretion of AACPS, a proposal to resolve the complaint; and an opportunity for the parent who files a complaint and AACPS to voluntarily engage in mediation. (34 C.F.R. §300.152(a)(3)). In some cases, the complainant and AACPS may be able to resolve the dispute without the need for MSDE to resolve the matter.

Additional Resources

***REQUEST FOR MEDIATION and DUE PROCESS COMPLAINT
Form***

~

***FREE OR LOW COST ASSISTANCE FOR SPECIAL EDUCATION
DISPUTES***

~

***MARYLAND STATE DEPARTMENT OF EDUCATION
PARENT'S GUIDES TO FREQUENTLY ASKED QUESTIONS ABOUT:***

~ Special Education Mediation

~ Special Education Due Process Complaints

~ Special Education State Complaints

~ Facilitated IEP Team Meetings in Maryland

REQUEST FOR MEDIATION and DUE PROCESS COMPLAINT

Check all that apply:

Special Education or *Section 504*

I am requesting mediation. I understand that the Office of Administrative Hearings will schedule the mediation within approximately 20 days from receipt of this request if the other party agrees to mediate.

I am filing a due process complaint. I do not want to try to resolve the dispute through mediation. I understand that the public agency is required to schedule and convene a resolution meeting within 15 days¹ of receipt of this complaint, unless the parties agree to waive the meeting.

I wish to waive the resolution meeting.

I am filing a due process complaint and requesting we try mediation to resolve the dispute.

I understand that if the other party does not want to attend mediation, the public agency will schedule a resolution meeting to be held within 15 days¹ of receipt of this complaint, unless the parties agree, in writing, to waive the session. If both parties agree to mediate, it will be scheduled within approximately 20 days of receipt of this request so as not to delay the due process hearing.

NOTE: A resolution meeting is not required if the parties agree to try to resolve the dispute through mediation or if the public agency filed the due process complaint.

STUDENT INFORMATION:

Name: _____

Birth Date: _____

Address: _____

Public Agency responsible for the student's education: _____

School the student is attending: _____

Check one, if applicable¹:

The student is not currently enrolled and attending an approved educational program OR

The dispute is over a manifestation determination, or a change in placement due to behaviors resulting in disciplinary actions.

¹ If a due process complaint is filed on behalf of a student with a disability who is not currently enrolled and attending an approved educational program, or regarding placement in an interim alternative education setting or a manifestation determination, the Office of Administrative Hearings is responsible for scheduling an expedited due process hearing upon proper notice. This hearing must occur within 20 school days of the date the complaint requesting the hearing is filed. A resolution meeting must occur within 7 days of receiving notice of the due process complaint and the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.

PERSON FILING THE REQUEST:

Name: _____

Address (if different from student's): _____

Phone: (W) _____ (H) _____ (Cell) _____

Fax: _____ E-mail: _____

Relationship to student: Parent Legal Guardian Public Agency Self Parent Surrogate

ATTORNEY/REPRESENTATIVE (if applicable):

Name: _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____

Accommodations are required as follows (please be specific):

- | | |
|--|---|
| <input type="checkbox"/> Foreign Language Interpreter: _____ <i>(specify)</i> | <input type="checkbox"/> Special Communication: _____ <i>(specify)</i> |
| <input type="checkbox"/> Sign Language Interpreter | <input type="checkbox"/> Special Accommodations for Disability: _____ <i>(specify)</i> |
| <input type="checkbox"/> Other: _____ <i>(specify)</i> | |

In accordance with the Individuals with Disabilities Education Act (IDEA), if you are filing a due process complaint you must provide a description of the problem(s) to be reviewed at the hearing, including relevant facts and a proposed resolution to the problem(s) (attach additional paper, if necessary). If the due process complaint does not meet the content requirements identified in the IDEA, the receiving party may challenge the sufficiency of the complaint.

If you are requesting mediation, providing this information will help the mediator.

Description of the problem(s) and relevant facts:

Description of proposed resolution:

If you need additional information regarding mediation and due process hearings, please refer to the procedural safeguards document given to you by the public agency, *A Parent's Guide to Frequently Asked Questions about Mediation*, or *A Parent's Guide to Frequently Asked Questions about Due Process*. Copies of these documents may be obtained on the MSDE website at www.marylandpublicschools.org; by contacting the Office of the Director of Special Education in the local school system that is responsible for the student's education; or the Maryland State Department of Education's Division of Special Education/Early Intervention Services. You may also wish to review relevant federal and State law and regulations for further information.

You must forward a copy of this *Request for Mediation and Due Process Complaint* form to the opposing party and the Office of Administrative Hearings.

Signature of Applicant and Date

Send your request form to:

Office of Administrative Hearings
Clerk's Office/ Unit E
11101 Gilroy Road
Hunt Valley, Maryland 21031
Fax: 410-229-4277

AND

Anne Arundel County Public Schools
Attn: Ellen Meyer
Coordinator of Compliance
2644 Riva Road
Annapolis, MD 21401
Phone: 410-222-5422
Fax: 410-222-5640

FREE OR LOW COST ASSISTANCE FOR SPECIAL EDUCATION DISPUTES

Following is a list of attorneys and advocacy organizations that may provide legal and other services to individuals in special education disputes.

Legal Aid Bureau, Inc.

229 Hanover Street
P.O. Box 943
Annapolis, MD 21404
410-263-8330
800-666-8330

500 East Lexington Street
Baltimore, MD 21202
410-951-7777
866-534-2524

5 North Main Street
Suite 200
Bel Air, MD 21014
410-879-3755
410-836-8202
800-444-9529

110 Greene Street
Cumberland, MD 21502
301-777-7474
866-389-5243

Tred Avon Square
210 Marlboro Road
Suite 3
Easton, MD 21601
410-763-9676
800-477-2543

22 South Market Street
Suite 11
Frederick, MD 21701
301-694-7414
800-679-8813

P.O. Box 249
Route 231
Hughesville, MD 20637
301-932-6661
410-535-3278

Legal Aid Bureau (con't)

6811 Kenilworth Avenue
Calvert Building, Suite 500
Riverdale, MD 20737
301-927-6800
888-215-5316

111 High Street
P.O. Box 4116
Salisbury, MD 21801
410-546-5511
800-444-4099

29 West Susquehanna Ave.
Suite 305
Towson, MD 21204
410-296-6705
www.mdlab.org

Maryland Coalition for Inclusive Education (MCIE)

7484 Candelwood Road
Suite R
Hanover, MD 21076
410-859-5400 Ext. 105
1-800-899-8837
www.mcie.org

Maryland Disability Law Center (MDLC)

1800 North Charles Street
Suite 400
Baltimore, MD 21201
410-727-6352
410-727-6387 TDD
800-233-7201
www.mdlcbalto.org

Maryland Volunteer Lawyers Service

Maureen van Stone, Esq.
Project HEAL at Kennedy Krieger
1750 E. Fairmount Ave.
Office 1062
Baltimore, MD 21231
443-923-4416
vanstone@kennedykrieger.org

Hope Tipton, Esq.
Director of Project HEAL
Johns Hopkins Children's Center
Harriet Lane Clinic
200 N. Wolf Street, Office 1118
Baltimore, MD 21287
410-502-0058
htipton2@jhmi.edu

Parents' Place of Maryland (provides parent support and training)

801 Cromwell Park Drive
Suite 103
Glen Burnie, MD 21061
410-768-9100
www.ppmmd.org

University of Maryland Clinical Law Office

500 West Baltimore Street
Baltimore, MD 21201
410-706-3295
<http://www.law.umaryland.edu>

Family Support Services **/Partners for Success**

You may wish to contact the special education office for your local school system to find out about Family Support Services, Partners for Success, or similar services that may be available to provide assistance.



Nancy S. Grasmick
State Superintendent of Schools

Martin O'Malley
Governor

Maryland State Department of Education
Division of Special Education/Early Intervention Services
200 W. Baltimore Street, Baltimore, MD 21201
www.marylandpublicschools.org

A PARENT'S GUIDE TO FREQUENTLY ASKED QUESTIONS ABOUT SPECIAL EDUCATION MEDIATION

1. What is mediation?

Mediation is a voluntary process that can be used to resolve disagreements between the parents of a student with a disability, or a student suspected of having a disability, and the public agency¹ responsible for the student's education.

2. Who conducts the mediation?

The person serving as the mediator is an employee of the Maryland Office of Administrative Hearings who is trained in mediation skills and techniques.

3. What role does the mediator have in trying to resolve the disagreement?

The role of the mediator is to help people reach an agreement. The mediator is neutral and will not take sides, but assists the parties in finding common ground and exploring possible solutions regarding the dispute.

4. If I request mediation does the public agency have to participate?

No. Mediation is voluntary; both parties to the dispute have to agree to use mediation. Although the public agency is not required to agree to mediate, under most circumstances it will.

5. If the public agency requests mediation do I have to participate?

No. As indicated in question #4 mediation is voluntary.

6. Can I request mediation without filing a due process complaint?

Yes. You may request mediation anytime to help resolve a dispute. In fact it is preferable to try to resolve a disagreement as early as possible and prior to filing a due process complaint.

¹ The term, public agency, in this document refers to the local school systems or other public agencies responsible for the provision of a free appropriate public education to a student.

7. Who can I bring with me to mediation?

You may bring anyone you believe will be helpful in resolving the dispute. This may include a trusted friend, relative, advocate, or an attorney. For a list of organizations that provide free or low-cost legal or other services please refer to the *Request for Mediation and Due Process Complaint* form, or the Maryland State Department of Education, Division of Special Education/Early Intervention Services web site at www.marylandpublicschools.org (choose Divisions, Special Education Early Intervention, then choose Complaint Investigation and Due Process Branch).

8. What is the cost for mediation?

Mediation is at no cost to you or the public agency. The cost of mediation is paid for by the State.

9. What happens when we reach an agreement at mediation?

The mediator will draft an agreement for you and the public agency to sign and you will receive a copy.

10. What happens if we go to mediation and we can not reach an agreement?

If you participate in mediation and do not reach an agreement with the public agency you may: (1) attempt mediation again at a later date; (2) proceed with a hearing (if you initially filed a sufficient due process complaint); (3) file a due process complaint; or (4) seek some other means of resolving the dispute.

If you proceed to a due process hearing and your mediator was an administrative law judge, that same judge will not be assigned to your due process hearing.

11. How soon after requesting mediation can I expect it to occur?

The Office of Administrative Hearings will attempt to schedule the mediation as soon as possible, but mediation may not deny or delay your right to a due process hearing.

12. What happens if the public agency refuses to honor the agreement reached at mediation?

The written, signed mediation agreement is legally binding and enforceable in any State court of competent jurisdiction or in a district court of the United States.

13. May I or the public agency use discussions held and offers made at the mediation in future proceedings?

No. Mediation sessions are closed proceedings. Discussions that occur during mediation must be confidential and cannot be used as evidence in any subsequent due process hearing or civil action. Parents or the public agency may be asked to sign a confidentiality pledge before the start of the mediation.

14. How do I request mediation?

It is preferred that the request be submitted on the Office of Administrative Hearing's *Request for Mediation and Due Process Complaint* form. However, any written request that includes all the required information shall initiate the mediation process. You may obtain a form by calling or writing to the public agency responsible for the student's education or the Office of Administrative Hearings. The form is also available on the websites for the Office of Administrative Hearings at www.oah.state.md.us and the Maryland State Department of Education at www.marylandpublicschools.org.

15. Where do I send my request for mediation?

Your request must be sent to the public agency responsible for the student's educational program **and** to the Office of Administrative Hearings. The form may be sent by mail, fax, or hand-delivery. The Office of Administrative Hearings does not accept requests for mediation by email; its address is 11101 Gilroy Road, Unit E/Clerk's Office, Hunt Valley, MD 21031, the fax number is 410-229-4277.

16. What if I want to withdraw my request for mediation or change my mind about participating in mediation requested by the public agency?

Mail, fax, or hand-deliver a signed letter stating that you wish to withdraw your request to the Office of Administrative Hearings, and the public agency, as soon as possible. The letter may include information as to why the request is being withdrawn.

Again, mediation is voluntary; therefore, if you decide that you no longer wish to try to resolve the dispute by mediation, or do not want to participate in a request by the public agency you need not do so.

17. You have not answered all of my questions. Where do I go for help?

First, please refer to the procedural safeguards document provided to you by the public agency. Other questions you have may be addressed to the appropriate personnel from the public agency responsible for the student's education, your Partners for Success or Family Support Services Center, the Maryland State Department of Education's Family Support Services Office (410-767-0267 or 1-800-535-0182, ext. 0267), or the Office of Administrative Hearings Clerk's Office (410-229-4294). You may also wish to consult one of the organizations that provide free or low-cost assistance in special education matters (a list of these organizations is attached to the *Request for Mediation and Due Process Complaint* form).

Funding provided through the Maryland State Department of Education, Division of Special Education/Early Intervention Services from IDEA Part B Grant #HO27A070035A, the U.S. Department of Education, Office of Special Education and Rehabilitative Services. The views expressed herein do not necessarily reflect the views of the U.S. Department of Education or any other Federal agency and should not be regarded as such. The Division of Special Education/Early Intervention Services receives funding from the Office of Special Education Programs, Office of Special Education and Rehabilitative Services, U.S. Department of Education. This information is copyright free. Readers are encouraged to copy and share it, but please credit the Division of Special Education/Early Intervention Services, Maryland State Department of Education.

The Maryland State Department of Education does not discriminate on the basis of race, color, sex, age, national origin, religion, or disability in matters affecting employment or in providing access to programs. For inquiries related to departmental policy, please contact the Equity Assurance and Compliance Branch, Voice (410) 767-0433 or Fax (410) 767-0431. In accordance with the Americans with Disabilities Act (ADA) this document is available in alternative formats, upon request. Contact the Division of Special Education/Early Intervention Services, Maryland State Department of Education at Voice (410) 767-0858, or Fax (410) 333-1571.



Nancy S. Grasmick
State Superintendent of Schools

Martin O'Malley
Governor

Maryland State Department of Education
Division of Special Education/Early Intervention Services
200 W. Baltimore Street, Baltimore, MD 21201
www.marylandpublicschools.org

A PARENT'S GUIDE TO FREQUENTLY ASKED QUESTIONS ABOUT SPECIAL EDUCATION DUE PROCESS COMPLAINTS

1. What is a due process complaint?

A due process complaint is a formal complaint regarding the identification, evaluation, educational placement, or the provision of a free appropriate public education for a student with a disability or suspected of having a disability, which may result in a due process hearing.

2. Who can file a due process complaint?

A parent or a public agency¹ may file a due process complaint.

3. How do I file a due process complaint?

It is preferred that you file your due process complaint using the *Request for Mediation and Due Process Complaint* form, however, any written request that includes all the required information shall initiate the due process complaint process. You may obtain a form by calling or writing to the public agency responsible for the student's education; the Office of Administrative Hearings (410-229-4294); or the Maryland State Department of Education's Division of Special Education/Early Intervention Services (410-767-7770). The form is also available on the websites for the Office of Administrative Hearings at www.oah.state.md.us and the Maryland State Department of Education at www.marylandpublicschools.org (go to the Division of Special Education/Early Intervention Services page, then the Complaint Investigation and Due Process Branch page).

4. Where do I send my due process complaint?

Your due process complaint must be sent to the public agency responsible for the student's educational program **and** to the Office of Administrative Hearings. The form may be sent by mail, fax, or hand-delivery. The Office of Administrative Hearings does not accept due process complaints by email; its address is 11101 Gilroy Road, Unit E/Clerk's Office, Hunt Valley, MD 21031; the fax number is 410-229-4277. The Maryland State Department of Education will not forward a due process complaint to the Office of Administrative Hearings or the public agency.

¹ The term, public agency, in this document refers to the local school systems or other public agencies responsible for the provision of a free appropriate public education to a student.

5. What is the time limit for filing a due process complaint?

A due process complaint must be filed within two (2) years of the date you knew, or should have known, about the alleged action that is the reason for the complaint. There are limited exceptions to this timeline; please refer to the procedural safeguards document you received from the public agency for additional information.

6. Before having the opportunity for a due process hearing, what steps must be taken to try to resolve the complaint?

Before having the opportunity for a due process hearing there is a 30 day resolution period. This time period allows you and the public agency time to try to resolve the dispute. Either you or the public agency may agree to attempt to resolve the dispute using mediation, or the public agency must schedule a resolution meeting, unless both parties agree to waive the meeting.

For more information regarding the mediation process, please refer to the procedural safeguards document, or the *Parent's Guide to Frequently Asked Questions about Special Education Mediation*.

7. What is a Resolution Meeting?

The resolution meeting provides an opportunity for you and the public agency to resolve the disagreement prior to the initiation of a due process hearing by discussing the facts that form the basis of the complaint and possible solutions.

8. Who can attend the Resolution Meeting?

You and the public agency determine who is appropriate to attend the resolution meeting. You, relevant members of the IEP team, and a public agency representative who has decision-making authority must attend the resolution meeting. Other participants may include your child, your advocate, or your attorney. However, if an attorney accompanies you, the public agency's attorney may also attend.

9. Do I need to ask for a Resolution Meeting?

No. Whenever a due process complaint is filed by a parent, the public agency must arrange for a Resolution Meeting unless the parties agree in writing to waive the Resolution Meeting or the parties agree to attempt to resolve the disagreement through mediation. If the public agency filed the due process complaint, a Resolution Meeting is not required. The Resolution Meeting is not required when the public agency files a complaint because it is assumed that the public agency has already tried to resolve the disagreement.

10. When must the Resolution Meeting be held?

The public agency is required to hold the resolution meeting within 15 days of receiving the due process complaint from you (unless the complaint meets the requirements for an expedited hearing; see question #13). If the public agency fails to hold the resolution meeting within 15 days of

receiving your complaint or fails to participate in the meeting, you may contact the Office of Administrative Hearings and request the due process hearing timeline immediately begin.

11. What if I fail to attend the Resolution Meeting?

If the public agency is unable to obtain your participation at the resolution meeting after reasonable efforts have been made, the public agency may request that an administrative law judge dismiss your complaint. If the complaint is dismissed, no due process hearing will be conducted regarding that specific complaint.

12. How long do we have to try to resolve the disagreement?

Generally, you and the public agency have 30 days to resolve the disagreement. However, if you and the public agency agree that progress is being made and you wish to extend the time, it is permissible to do so. In those cases where an expedited hearing must take place, you and the public agency have 7 days to try to resolve the disagreement.

13. What happens if we do not reach an agreement in the Resolution Meeting?

If you and the public agency do not come to resolution, you can agree to extend the resolution period and continue to meet to reach a satisfactory resolution. If both parties agree, you can try to resolve the dispute through mediation; or you may proceed to a due process hearing.

14. What happens at a due process hearing?

A due process hearing is conducted by an administrative law judge from the Office of Administrative Hearings who will take evidence from both parties and make a decision about a dispute. For specific information regarding the due process hearing procedures and rights, please refer to the procedural safeguards document.

15. Do I need an attorney?

No, however, because of the legal nature of the proceedings parents often are represented by counsel but may go to a hearing and represent themselves.

For a list of organizations that provide free or low-cost legal or other services please refer to the *Request for Mediation and Due Process Complaint* form, or the Maryland State Department of Education, Division of Special Education/Early Intervention Services web site at www.marylandpublicschools.org (choose Divisions, Special Education Early Intervention, then choose Complaint Investigation and Due Process Branch).

16. What is the due process hearing timeline?

If the public agency has not resolved the due process complaint to your satisfaction within 30 days of receiving the complaint (the resolution period), the due process hearing may occur. The administrative law judge then has 45 days to conduct the hearing and issue a final decision. The timeline for issuing the decision can be extended at your or the public agency's request.

17. What are the requirements for an expedited hearing, and how does the due process hearing timeline change?

If your child is not currently enrolled and attending an approved educational program, OR the dispute is over a manifestation determination, or a change in placement due to behaviors resulting in disciplinary actions, the hearing must be held in an expedited manner. In these cases, the resolution meeting must be held within 7 days of the public agency receiving notice of the due process complaint; the hearing shall be held within 20 school days of receipt of the complaint; and the decision shall be issued no later than 10 school days from the completion of the hearing.

18. What is a pre-hearing conference?

A telephone pre-hearing conference is conducted by the Office of Administrative Hearings to discuss details of the dispute for the purpose of determining the number of days needed for the hearing. During this conference you should be prepared to discuss when you and your witnesses will be available for the hearing.

19. What if I want to withdraw my Due Process Complaint?

You may mail, fax, or hand-deliver a signed letter stating that you wish to withdraw your complaint to the Office of Administrative Hearings, and the public agency, as soon as possible. The letter may include information as to why the complaint is being withdrawn.

20. You have not answered all of my questions. Where do I go for help?

First, please refer to the procedural safeguards document given to you by the public agency. Other questions you have may be addressed to the appropriate personnel from the public agency responsible for the student's education, your Partners for Success or Family Support Services Center, the Maryland State Department of Education's Family Support Services Office (410-767-0267 or 1-800-535-0182, ext. 0267), or the Office of Administrative Hearings' Clerk's Office (410-229-4294). You may also wish to consult one of the organizations that provide free or low-cost assistance in special education matters (a list of these organizations is attached to the *Request for Mediation and Due Process Complaint* form).

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Nancy S. Grasmick
State Superintendent of Schools

Martin O'Malley
Governor

Maryland State Department of Education
Division of Special Education/Early Intervention Services
200 W. Baltimore Street, Baltimore, MD 21201
www.marylandpublicschools.org

A Parent's Guide to Frequently Asked Questions About Special Education State Complaints

1. What is a State Complaint?

A State Complaint is a written, signed letter directed to the Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services, which alleges that a public agency¹ responsible for the education of a student with disabilities violated a requirement of the Individuals with Disabilities Education Act (IDEA) and accompanying State and federal regulations. The complaint may be filed on behalf of an individual student or a group of students that were affected by the alleged violation. The MSDE will investigate a complaint that alleges that a public agency did not implement a due process hearing decision if the written complaint meets the criteria as described in Question # 3, below.

For specific information regarding due process complaints and how that complaint process differs from the State Complaint process, please refer to the document titled, "*A Parent's Guide to Frequently Asked Questions About Special Education Due Process Complaints.*" That document can be found on the MSDE website (see Question #17).

2. Who may file a State Complaint?

Any organization or individual, including those from outside Maryland, may file a complaint with the MSDE. This individual is referred to as the "complainant" throughout this document.

3. What information needs to be included in a State Complaint?

Under federal requirements each written complaint to the MSDE **must** include the following:

1. A statement that a public agency has violated a requirement of State or federal special education law or regulation;
2. The facts on which the statement is based (the complainant is encouraged to provide copies of any documentation that supports the allegation(s));

¹ Public Agency is defined at IDEA 34 CFR §300.33, and in Maryland it includes the Maryland State Department of Education; local school systems, including any charter school in the jurisdiction; Department of Health and Mental Hygiene; Department of Juvenile Services; Maryland School for the Blind; and the Maryland School for the Deaf (COMAR 13A.05.01.02).

3. The signature and contact information of the complainant;
4. If alleging a violation with respect to a specific student, the complaint must include:
 - a. The name and address of the residence of the student;
 - b. The name of the school the student is attending;
 - c. In the case of a homeless student, available contact information for the student and name of the school the student is attending;
 - d. A description of the nature of the problem of the student, including facts relating to the problem;
 - e. A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

A model form has been developed to assist with filing a State Complaint. It is available on the MSDE website (www.marylandpublicschools.org) or can be obtained by contacting the Division of Special Education/Early Intervention Services at the MSDE at 410-767-7770; however, the MSDE will investigate a complaint not submitted on the model form as long as it contains all required information.

4. When filing a State Complaint, in addition to MSDE, who needs to receive a copy of the complaint?

A copy of any complaint sent to the MSDE must also be sent to the public agency against which the complaint is made. It is recommended that the copy of the complaint be sent to the attention of the Director of Special Education for the public agency. This permits the public agency to review the complaint and consider resolving it as quickly as possible.

5. What types of complaints will not be investigated by MSDE under its Special Education general supervisory responsibilities?

The MSDE does not investigate complaints regarding personnel matters, complaints that do not allege a violation of State or federal special education requirements, and other matters that do not fall within the State's authority to monitor and enforce, such as alleged violations of the Rehabilitation Act of 1973. The MSDE does not investigate allegations that the school did not implement any agreements between a public agency and parents of a student with a disability that were developed as a result of mediation, a resolution meeting, or other settlement agreement.

6. What are the timelines for filing a State Complaint?

The complaint must allege a violation that occurred no more than one (1) year prior to the date the MSDE receives the complaint.

7. What will the MSDE do when it receives a complaint that meets the requirements?

The MSDE will usually contact the complainant by telephone, if possible, and will respond to the written complaint in writing. The written response will notify the complainant and the public agency against which the complaint is filed, that the complaint was received and specify the allegations subject to the investigation. It will also identify the staff person assigned to investigate the complaint, the steps that the public agency may take to resolve the complaint, and describe the procedures that will be used in the investigation.

8. What if my complaint does not include all the required information or it is not filed within one (1) year of the alleged violation?

When the MSDE receives a complaint that does **not** meet the requirements, the complainant is contacted either by telephone or in writing, and he/she is informed of the specific content that has been omitted, or informed that a copy of the complaint must be sent to the public agency against which the complaint is filed. If the alleged violation occurred more than one (1) year from the date the complaint is received by the MSDE, the complainant is informed that the MSDE does not have the authority to investigate the matter and is provided information regarding other possible methods to resolve the dispute.

9. Can the public agency attempt to resolve the complaint before an investigation occurs?

Yes. It is suggested that the public agency contact the complainant as soon as it is aware of the complaint to discuss the alleged violation(s) and any remedy requested. The public agency may wish to resolve the complaint with the complainant by providing the remedy requested, or some other agreed upon remedy reached through mediation or a less formal process. Should the public agency offer to resolve the complaint by providing the requested remedy, or the parties agree that the matter has been resolved, MSDE will consider the matter closed and no further investigation of the specific complaint will occur. If the public agency conducts an internal investigation into the allegation and determines that a violation occurred, it may acknowledge the violation and propose a corrective action that addresses the loss of services to the named student(s) and to make corrections to address the future provision of services for all students with disabilities, as appropriate.

10. How long does it take the MSDE to complete an investigation and issue a written decision to the complaint?

The MSDE completes each investigation and issues a written decision [Letter of Findings (LOF)] to the parties as soon as possible. However, federal regulation requires that, unless unusual circumstances exist, the LOF must be sent within 60 calendar days from the date a complaint that meets all requirements is received by MSDE.

11. What type(s) of remedies can be expected as a result of the MSDE’s investigation?

When determining a remedy, or remedies, for a violation of the requirements, the MSDE may require the public agency to take actions such as:

- determining compensatory services to address the student’s needs or other remedies agreed upon by the parent and the public agency,
- monetary reimbursement,
- reconvening the IEP team to consider other information not previously considered, and
- staff training activities.

The MSDE may not substitute its judgment for the judgment of the student’s IEP team. Therefore, the MSDE may not order a specific placement requested by the complainant.

12. What other actions may be taken as a result of a finding of noncompliance through the State Complaint investigation process?

The MSDE may determine that a site visit be conducted by State staff to determine whether the violation is prevalent in the public agency, or if other violations to the requirements are occurring and, if so, may require additional corrective actions to address the violation(s).

13. Can a complainant or public agency appeal the determinations made by the MSDE?

Under the State Complaint process, there is no formal appeal process for a party to the complaint. However, a party to the complaint may submit additional documentation for the MSDE to consider within two weeks of the date of the LOF. MSDE will only review and consider documentation provided by a party to the complaint that was not previously available or reviewed during the investigation to determine if there are grounds to reconsider the conclusion(s) reached.

14. What happens if an issue in a State Complaint is also the subject of a due process hearing?

If a written complaint is received regarding a matter that is also the subject of a due process hearing or contains multiple issues of which one or more are part of the hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

However, any issue in the complaint that is not a part of the due process action must be resolved using the timelines and procedures described in this document. If an issue in the complaint has been decided in a due process hearing involving the same parties, the hearing decision is binding on that issue and will not be investigated by MSDE.

15. What steps can a parent take if it is believed that a public agency retaliates against them or their child for filing a complaint with the MSDE?

If parents believe a public agency is retaliating against them or their child, or believe that their child is being discriminated on the basis of the handicapping condition, they may file a complaint with the Office for Civil Rights. Those complaints should be submitted to:

Office for Civil Rights
United States Department of Education
Philadelphia Office
Wanamaker Building, Suite 515
100 Penn Square East
Philadelphia, PA 19107

The MSDE does not have the authority to monitor or enforce allegations of retaliation or discrimination where the failure to provide a free appropriate public education (FAPE) is not alleged. See answer to Question #5 above.

16. Where can an individual or organization get assistance in submitting a State Complaint?

Help may be obtained in filing a complaint by contacting one of the organizations that offers free or low cost legal or other services. A list of these organizations is included with the Request for Mediation and Due Process Complaint form that is available from each public agency and on the MSDE website referenced at the answer to Question #17, below. Additional assistance in filing a State Complaint may be received from one of the private attorneys and organizations who represent parents in disputes against public agencies.

17. Where can additional information be found concerning the State Complaint process?

Additional information can be found on the Division of Special Education/Early Intervention Services' webpage on the MSDE website at www.marylandpublicschools.org or by calling 410-767-7770. A link to the IDEA regulations is also available through this website.



Nancy S. Grasmick
State Superintendent of Schools

Martin O'Malley
Governor

Maryland State Department of Education
Division of Special Education/Early Intervention Services
200 W. Baltimore Street, Baltimore, MD 21201
www.marylandpublicschools.org



FACILITATED IEP TEAM MEETINGS IN MARYLAND

An Introduction and Frequently Asked Questions for Parents and Public Agency/School Personnel

Introduction to Facilitated IEP Team Meetings: Having IEP team meetings facilitated by an external, independent, trained “Facilitator” is rapidly becoming a popular means for parents and school personnel to reach agreement in the educational decision making process for students needing or suspected of needing special education services. When the relationship between parents and school personnel become strained or better yet, before the relationship has the opportunity to fray, parents and school personnel are finding that using external facilitators can assist the IEP team process. A facilitator may help parents and school personnel avoid misunderstandings or disagreements when it is believed that discussions at the meeting may become challenging. Using a trained facilitator has been found to be an effective means to keep IEP teams focused on the development of the educational program for the student while addressing some of the conflicts and disagreements that may arise from inadequate communication. The facilitator will utilize skills that create an environment in which the IEP team members; school personnel and parents can listen to each other and work together in developing high quality education programs for students suspected of, or identified as disabled.

1. Who can request an IEP meeting be facilitated?

A facilitator may be requested by the parent or the school. However, both parties must agree to use this voluntary process.

2. Who serves as an IEP meeting facilitator?

The facilitator is a trained volunteer from a community mediation center, generally located in the jurisdiction where the parent resides or another community close to where the parent resides and where the student attends school. The facilitator has completed a 50-hour training course in mediation skills, has experience mediating a variety of disputes, and has completed a 3-day training in IEP Facilitation. The facilitator is not a member of the IEP team and does not have a relationship with the school or the parents other than to assist in the meeting. The facilitator remains neutral and focuses on the process while the team makes the decisions.

3. How does facilitation differ from mediation under the Individuals with Disabilities Education Act (IDEA)?

While facilitated IEP team meetings are emerging as a means to avoid conflicts and/or to resolve conflicts prior to requesting mediation or filing a due process complaint, it is not required under the IDEA. States or local school systems are not required to offer the service. Some other differences between IEP facilitation and mediation under IDEA are the following:

- The facilitation occurs at a regular IEP team meeting
- The IEP meeting is generally run by the school system in the same manner as an IEP meeting that is not being facilitated
- There is no written agreement other than a written Individualized Education Program for the student and the prior notice requirement of the IDEA.

IEP facilitation should not be confused with mediation. Mediation may be used to deal with a broader range of issues in special education than in an IEP meeting. Mediation is typically used when there is a significant disagreement that the parties are otherwise unable to resolve. A trained impartial mediator brings the parties together to work with each other to resolve a variety of disagreements, often including those unrelated to the student's IEP.

4. What does the facilitator do at the meeting?

The facilitator can be expected to:

- Assist the team in establishing an agenda
- Guide the discussion and keep the focus on the student
- Make sure everyone has a chance to speak and be heard
- Help resolve disagreements
- Use communication skills to help parents and school personnel to work together to make decisions about the program
- Help team members develop and ask clarifying questions about issues that may have occurred in the past
- Help to keep the team on task and within the time allotted for the meeting
- Remain impartial, not take sides, place blame, impose a decision on the group, nor offer an opinion on the appropriateness of a decision.

5. What are the benefits of a facilitated IEP team meeting?

Parents and school personnel who have used facilitation at IEP team meetings report the following benefits:

- Focus remains on the student
- Supports all parties in participating fully
- Positive working relationships between parents and school staff are maintained
- Opportunities for creative, win-win, solutions are possible
- Facilitation services are free to the parties and non-confrontational

- Effective communication and listening skills are modeled
- Points of agreement and disagreement are clarified
- Parents and professionals are encouraged to identify new options to address unresolved problems
- Is part of the regular IEP meeting and, therefore, does not require a separate meeting
- All decisions are made by the team, rather than a mediator or a hearing officer

6. How is the confidentiality of the student and family maintained?

The parent must provide their consent to allow the school to share confidential information about the student with the facilitator. This is required under the Family Education Rights Privacy Act.

7. Who pays for the facilitator?

There is no cost to the parent or the school to have a facilitator assist in the IEP process. The funds to train facilitators and support the program, including, in some cases mileage reimbursement for the facilitators, are provided through grants to Community Mediation Maryland by the State Judiciary’s Mediation and Conflict Resolution Office which is under the direction of the Honorable Chief Judge Robert M. Bell, Maryland Court of Appeals, and the Maryland State Department of Education, Division of Special Education/Early Intervention Services, Carol Ann Baglin, Ed.D., Assistant State Superintendent.

8. What public agencies are offering facilitated meetings to parents and school staff?

Following are the public agencies offering the services of a facilitator to parents and school personnel for the 2007-2008 school year:

- Anne Arundel County Public Schools
- Baltimore County Public Schools
- Cecil County Public Schools
- Board of Education for Dorchester County
- Frederick County Public Schools
- Howard County Public Schools
- Montgomery County Public Schools
- Prince George’s County Public Schools
- St. Mary's County Public Schools
- Washington County Public Schools

The facilitators and the services provided are through the cooperation of staff and volunteers of the following Community Conflict Resolution Centers: *Anne Arundel Conflict Resolution Center; Charles County Community Mediation Center; Mid- Shore Community Mediation Center; Washington County Community Mediation Center; Conflict Resolution Center of Montgomery County; Community Mediation, Upper Shore, Inc; Center for Conflict Resolution, Inc., Salisbury; Prince George’s County Mediation and Conflict Resolution Collaborative, Community Mediation Center of St. Mary's County*, and the staff of *Community Mediation Maryland*, under the direction of Lorig Charkoudian, Ph.D., Executive Director.

9. Who do I contact if I want a facilitator to attend the IEP team meeting for my child?

School systems offering facilitation services have individualized the process for requesting a facilitator. To find out how to request the service, it is suggested that you contact the Office of the Director of Special Education for the school system responsible for student's educational program or Community Mediation Maryland (410-349-0080).

10. Who do I contact, if my school system does not offer facilitated IEP team meetings?

If you are interested in having your school system offer facilitated IEP team meetings you should contact the local school system's Director for Special Education. The Maryland State Department of Education and Community Mediation Maryland are committed to expanding the service to all school system's that are interested in providing the service to parents of students with disabilities and school personnel. Availability is subject to the number of trained facilitators and the capability of Community Mediation Maryland and each Conflict Resolution Center.

It is important to know that facilitated IEP meetings are the same as any other IEP meeting. The same expectations exist for compliance with legal regulations and any other requirements that govern the IEP process in Maryland. The only significant difference is the presence of a facilitator.

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ANNE ARUNDEL
COUNTY PUBLIC SCHOOLS

Kevin M. Maxwell, Ph.D.
Superintendent of Schools

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