

The following is edited in length and content to improve readability. For an unedited version, you can contact the ISD or go to:

[http://www.michigan.gov/documents/mde/March08-ProceduralSafeguardsNotice\\_229223\\_7.pdf](http://www.michigan.gov/documents/mde/March08-ProceduralSafeguardsNotice_229223_7.pdf)

The Individuals with Disabilities Education Act requires schools to provide parents of a child with a disability a notice containing a full explanation of the procedural safeguards available. A copy of this notice must be given to parents only one time a school year, except: upon initial referral or parent request for evaluation; upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year; when a decision is made to take a disciplinary action that constitutes a change of placement; and, upon parent request. The following abbreviations are used throughout this document:

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

## Notice

Your school must give you written notice whenever it proposes to initiate or to change the identification, evaluation, or educational placement of your child or the provision of FAPE; or refuses to initiate or to change the identification, evaluation, or educational placement of your child or the provision of FAPE. The written notice must:

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

The notice must be written in understandable language and provided in your native language or other mode of communication you use, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, your school must ensure that: the notice is translated for you orally by other means in your native language or other mode of communication; you understand the content of the notice; and there is written evidence that these requirements have been met.

*Consent* means:

1. You have been fully informed in your native language or other mode of communication (such as Braille) of all information about the action for which you are giving consent.

2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
3. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime. Your withdrawal does not undo an action that has occurred after you gave your consent and before you withdrew it.

### **Consent for Initial Evaluation, Services, and Reevaluations**

Your school cannot conduct an initial evaluation of your child to determine whether your child is eligible under IDEA to receive special education without first providing you with prior written notice of the proposed action and obtaining your consent and must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability. Your consent for initial evaluation does **not** mean that you have also given your consent for the school district to start providing special education to your child.

If your child is enrolled in public school, or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school may seek to conduct an initial evaluation of your child by utilizing the IDEA procedures. Your school will not violate its obligations of child find if it does not pursue an evaluation of your child in these circumstances. Your school must obtain your informed consent before providing special education services to your child for the first time, and must make reasonable efforts to obtain that informed consent.

If you refuse to give your consent for your child to receive special education services for the first time, or if you do not respond to a request to provide such consent and the school does not provide your child with the special education services for which it sought your consent, your school is not in violation of the requirement to make FAPE available to your child for its failure to provide those services to your child; and is not required to have an IEP meeting or develop an IEP for your child for the special education services for which your consent was requested.

Your school must obtain your informed consent before it reevaluates your child, unless your school can demonstrate that it took reasonable steps to obtain your consent for your child's reevaluation and you did not respond. If you refuse to consent to your child's reevaluation, the school may pursue your child's reevaluation by using the IDEA procedures to seek to override your refusal to consent. Your school does not violate its obligations under IDEA if it declines to pursue the reevaluation in this manner.

Your school must maintain documentation of reasonable efforts to obtain parental consent. The documentation must include a record of the school's attempts in these areas such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the 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.

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

If you have enrolled your child in a private school at your own expense or if you are home schooling your child and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school may not use its consent override procedures. They are not required to consider your child as eligible to receive equitable services.

### Rescinding Consent for Special Education Services

If, at any time after your child begins to receive special education services, you wish to rescind your permission to the school district to provide special education services to your child, you may do so in writing to the building principal or special education administrator. You are not required to provide a reason for the request. The school district will promptly provide you with written notice and, within a reasonable time after providing you with written notice, cease providing special education services to your child. The school district may not use due process procedures (see below) or mediation to continue to provide those services against your wishes. The school district may, but is not required to, convene an IEP Team meeting prior to implementing your decision to discontinue special education.

All of your rights, and the responsibilities of the school district, as defined under IDEA 2004, cease with the discontinuing of special education services. Your child is considered to be a general education student when services cease. Your rights, and the responsibilities of the school district, are the same as to parent of all non-disabled students in the district after services cease. This includes any discipline procedures.

At any time after the request that your child stop receiving special education services you may notify the school that you wish to have those services resumed. However, this request must be considered by the school district to be a request for an initial evaluation. As such, all policies and procedures, including evaluating the presence of a disability and the impact that disability has on progress through the general education curriculum, must be completed before resuming any special education services. The amount and type of special education services must be based on the evaluation data and may not necessarily be the same services the student was receiving prior to rescinding consent.

### Independent Educational Evaluations (IEE)

You have the right to obtain an IEE of your child if you disagree with the evaluation that was obtained by your school. If you request an IEE, the school must provide you with information about where you may obtain an IEE and about the school's criteria that apply to IEEs. *IEE* means an evaluation at public expense conducted by a qualified examiner who is not employed by the school responsible for the education of your child. *Public expense* means that the school either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you. You have the right to an IEE if you disagree with an evaluation of your child obtained by your school, if:

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

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

If you obtain an IEE of your child or you share with the school an evaluation of your child that you obtained at private expense your school must *consider* the results of the evaluation of your child, if it meets the school's criteria for IEEs, in any decision made with respect to the provision of FAPE to your child; and you or your school may present the evaluation as evidence at a due process hearing regarding your child. If an IEE is at public expense, the criteria under which the evaluation

is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the school uses when it initiates an evaluation. Except for the criteria described above, a school may not impose conditions or timelines related to obtaining an IEE.

### **Confidentiality of Information**

The school must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the school. The school must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an IEP, or any impartial due process hearing, and in no case more than 45 calendar days after you have made a request. Your right to inspect and review education records includes:

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

Each school may charge a fee for copies of records that are made for you, if the fee does not effectively prevent you from exercising your right to inspect and review those records. A school may not charge a fee to search for or to retrieve information.

### **Amendment of Record at Parent Request**

If you believe that information in the education records regarding your child collected, maintained, or used is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the school that maintains the information to change the information. The school must decide whether to change the information in accordance with your request within reasonable time of the receipt of your request. If the school refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing.

The school must provide, on request, an opportunity for a hearing to challenge information in education records regarding your child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child. If because of the hearing, the school decides that the information is inaccurate, it must change the information and inform you in writing.

If, because of the hearing, the school decides that the information is inaccurate it must inform you of your right to place in the records a statement commenting on the information or providing any reasons you disagree with the decision of the school. Such an explanation placed in the records of your child must be maintained by the school as part of the records of your child.

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

*Personally identifiable* means information that has your child's name, your name as the parent, or the name of another family member; your child's address; a personal identifier, such as your child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Unless disclosure of personally identifiable information contained in education records is authorized under the FERPA, your consent must be obtained before personally identifiable information is disclosed to parties other than officials of the school. Your consent must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials.

Each school must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official at each school must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding Michigan's policies and procedures regarding confidentiality. Each school must maintain, for public inspection,

a current listing of the names and positions of those employees within the school who may have access to personally identifiable information.

Your school district must inform you when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child. The information must be destroyed at your request. A permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

### **Mediation**

The MDE has established procedures to make mediation available to allow you and the school to resolve disagreements involving any matter under IDEA, including matters arising prior to the filing of a state complaint or a due process complaint whether or not you have filed a due process complaint. The mediation process is voluntary on your and the school's part. It may not be used to deny or delay your right to a due process hearing, or to deny any other rights you have. It must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The school may develop procedures that offer parents and schools that choose not to use the mediation process an opportunity to meet, at a time and location convenient to you, with a disinterested party. This party will be under contract with an appropriate alternative dispute resolution entity, a parent training and information center, or parent resource center in the State. They would explain the benefits and encourage the use of the mediation process to you.

The MDE is responsible for the cost of the mediation process. Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the school.

If you and the school resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that states that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. It must be signed by both you and a representative of the school. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any federal court or state court of a state receiving assistance IDEA.

The mediator may not be an employee of the MDE or the school that is involved in the education or care of your child; and must not have a personal/professional interest that conflicts with a mediator's objectivity. A person who otherwise qualifies as a mediator is not an employee of a school or State agency solely because he or she is paid by the agency or school to serve as a mediator.

### **DIFFERENCE BETWEEN DUE PROCESS HEARING COMPLAINT AND STATE COMPLAINT PROCEDURES ("Part 8")**

The regulations for IDEA set forth separate procedures for State complaints and for due process complaints and hearings. Any individual or organization may file a State complaint alleging a violation of any requirement by a school, the MDE, or any other public agency. Only you or a school may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child. While staff of the MDE generally must resolve a State complaint within a 60-calendar-day timeline unless the timeline is properly extended, an ALJ must hear a due process complaint and issue a written decision within 45-calendar days after the end of the resolution period. In resolving a State complaint in which the MDE has found a failure to provide services, the MDE must address the failure to provide services, including corrective action to address the needs of the child and future provision of services for all children with disabilities.

### **MINIMUM STATE ("Part 8") COMPLAINT PROCEDURES**

The MDE has a time limit of 60 calendar days after a complaint is filed to:

1. Do an independent on-site investigation if it is determined that an investigation is necessary;
2. Give the complainant an opportunity to submit additional information about the allegations;
3. Provide the school with the opportunity to respond to the complaint, including, at a minimum: at the option of the school, a proposal to resolve the complaint; and an opportunity for a parent who has filed a complaint and the school to agree voluntarily to engage in mediation;
4. Review relevant information and make a determination whether the school is violating IDEA; and
5. Issue a written decision to the complainant that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the MDE's final decision.

The MDE also may permit an extension of the 60-calendar day time limit only if exceptional circumstances exist with respect to a particular State complaint or the parent and the school involved voluntarily agrees to extend the time to resolve the matter through mediation.

### **FILING A STATE ("Part 8") COMPLAINT**

The complaint must include:

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

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

A copy of the written complaint must be mailed, faxed or hand delivered to:

The Michigan Department of Education  
Office of Special Education and Early Intervention Services  
P.O. Box 30008  
Lansing, MI  
Fax: (517) 373-7504

A copy also must be provided to the superintendent of your local school system. The Coordinator of Planning, Monitoring and Data Collection of the Intermediate School District may assist you in writing your complaint.

The first 10 days of the process can be used to resolve informally the complaint, either through the intervention of an ISD special education administrator or other party, or through the Michigan Special Education Mediation Program. Resolution may occur at any time prior to the final report.

Within 30 days, the complaint will be investigated and a final report issued. You will receive a copy of the report. If either you or the school has information that may change one or more of the findings of the final report, within 10 days you or the school may submit a written request for reconsideration to the Michigan Department of Education.

## **DUE PROCESS COMPLAINT**

You or the school may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child, or the provision of FAPE to your child. The complaint must allege a violation that happened not more than 2 years before you or the school knew or should have known about the alleged action that forms the basis of the complaint. The above timeline does not apply to you if you could not file a complaint within the timeline because the school specifically misrepresented that it had resolved the issues identified in the complaint or the school withheld information from you that it was required to provide under IDEA. The school must inform you of free or low-cost legal and other relevant services available in the area if you request the information or if you or the school file a due process complaint.

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

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem relating to the proposed or refused action; and
6. A proposed resolution of the problem.

You or the school may not have a due process hearing until you or the school (or your attorney or the school's attorney), properly files a complaint that includes the information listed above. A complaint is properly filed when it has been received by the MDE and the other party. In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the complaint notifies the ALJ and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the complaint does not meet the requirements listed above. Within 5 calendar days of receiving the notification the receiving party considers a complaint insufficient, the ALJ must decide if the due process complaint meets the requirements listed above, and notify you and the school in writing immediately.

### **Complaint Amendment**

You or the school may make changes to the complaint only if: the other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; or the ALJ grants permission for the changes, not later than 5 days before the due process hearing begins. If the complaining party makes changes to the due process complaint, the timelines for the resolution meeting and the period for resolution start again on the date the amended complaint is filed.

### **School Response to a Due Process Complaint**

If the school has not sent a prior written notice to you regarding the subject matter contained in your complaint, the school must, within 10 calendar days of receiving the complaint, send you a response that includes:

1. An explanation of why the school proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's IEPT considered and the reasons why those options were rejected;

3. A description of each evaluation procedure, assessment, record, or report the school used as the basis for the proposed or refused action; and
4. A description of other factors that are relevant to the school's proposed or refused action.

### **Other Party Response to a Due Process Complaint**

Except as stated above, the party receiving a due process complaint must within 10 calendar days of receiving the complaint send the other party a response that specifically addresses the issues in the complaint.

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

Except as provided below, unless you and the State or school agree otherwise, once a due process complaint is filed with the MDE and received by the other party, your child must remain in his or her current educational placement during the resolution process time period. If the due process complaint involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all such proceedings.

If the due process complaint involves an application for initial services under Part B of the IDEA for a child who is transitioning from being served under Part C to Part B of the IDEA and who is no longer eligible for Part C services because the child has turned 3, the school is not required to provide the Part C services that the child has been receiving. If the child is found eligible under Part B and you consent for the child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school must provide those special education and related services that are not in dispute.

### **Resolution meeting**

The school must convene a resolution meeting with you and the relevant members of the IEPT. The resolution meeting must be convened within 15 calendar days after the due process complaint is filed with the MDE and received by the school. The due process hearing cannot begin until the resolution meeting is conducted. The meeting must include a representative of the school who has decision-making authority and may not include an attorney of the school unless you are accompanied by an attorney. You and the school determine the relevant members of the IEPT.

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint so that the school has the opportunity to resolve the dispute. The resolution meeting is not required if you and the school agree in writing to waive the meeting or you and the school agree to use the mediation process.

If the school has not resolved the due process complaint within 30 calendar days of the receipt of the due process complaint, the due process hearing may occur. The 45 calendar day timeline for issuing a final decision begins at the expiration of the 30 calendar day resolution period, with certain exceptions for adjustments made to the 30 calendar day resolution period, as described below.

Except where you and the school have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you do participate in a meeting. If after making reasonable efforts and documenting such efforts, the school is not able to obtain your participation in the resolution meeting, the school may, at the end of the 30 calendar day resolution period, request that an ALJ dismiss your complaint. Documentation of such efforts must include a record of the school's 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 you and any responses received; and detailed records of visits made to your home or place of employment and the results of those visits. If the school fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint, or fails to participate in the resolution meeting, you may ask an ALJ to order that the 45 calendar day due process hearing timeline begin. If you and the school agree in writing to waive the resolution meeting, the 45 calendar day timeline for the due process hearing starts the next day. After the start of mediation or the resolution meeting and before the end of the 30 calendar day resolution



period, if you and the school agree in writing that no agreement is possible, the 45 calendar day timeline for the due process hearing starts the next day.

If you and the school agree to use the mediation process, at the end of the 30 calendar day resolution period both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the school later withdraws from the mediation process, the 45 calendar day timeline for the due process hearing starts the next day. If a resolution to the dispute is reached at the resolution meeting, you and the school must enter into a legally binding agreement that is signed by you and a representative of the school who has the authority to bind the school district and enforceable in any state court of competent jurisdiction or a district court of the United States. If you and the school enter into an agreement either party may void the agreement within 3 business days of the time that both you and the school signed the agreement.

### **Impartial Due Process Hearing**

Whenever a due process complaint is filed, you or the school must have an opportunity for an impartial due process hearing. At a minimum, an ALJ:

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

ALJs are State employees who are attorneys and who are employed by the SOAHR. The MDE keeps a list that includes a statement of the qualifications of those persons who serve as ALJs.

You or the school must file a due process complaint within 2 years of the date you or the school knew or should have known about the issue(s) addressed in the complaint. The timeline does not apply to you if you could not file a complaint because the school specifically misrepresented that it had resolved the problem or issue or the school withheld information from you that it was required to provide to you under IDEA. Any party to any due process hearing has the right to:

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

At least 5 business days prior to a due process hearing, you and the school must disclose to each other all evaluations completed and recommendations based on those evaluations that you or the school intend to use at the hearing. An ALJ may prevent any party that fails to comply with this requirement from introducing the relevant information at the hearing without the consent of the other party. You must be given the right to have your child present, have the hearing open to the public; have the record of the hearing, findings of fact, and decisions provided to you at no cost.

An ALJ's decision on whether your child received FAPE must be based on substantive grounds. In matters alleging a procedural violation, an ALJ may find that your child did not receive FAPE only if the procedural inadequacies impeded with your child's right to FAPE; significantly impeded with your opportunity to participate in the decision-making process regarding the provision of FAPE to your child; or caused a deprivation of educational benefit. Nothing in the procedural safeguards section of the IDEA prevents you from filing a separate due process complaint on an issue separate from a complaint already filed. A decision made in a due process hearing is final, except that any party involved in the hearing may appeal the decision by bringing a civil action.

The MDE must ensure that, not later than 45 calendar days after the expiration of the 30 calendar day period for resolution meetings or, not later than 45 calendar days after the expiration of the adjusted period a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties. Each hearing must be conducted at a time and place that is reasonably convenient to you and your child. An ALJ may grant specific extensions of time beyond the 45 calendar day time period described above at the request of either party.

### **Civil Actions**

Any party who does not agree with the findings and decision in the due process hearing has the right to bring a civil action. The action may be brought in a state court of competent jurisdiction or in a district court of the United States without regard to the amount in dispute. The party bringing the action shall have 90 calendar days from the date of the decision of the ALJ to file a civil action.

In any civil action, the court receives the records of the administrative proceedings, hears additional evidence at your or the school's request, and bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

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

### **Attorneys' Fees**

In any action or proceeding brought under IDEA, if you prevail, the court, at its discretion, may award reasonable attorneys' fees as part of the costs to you. In any action or proceeding brought under IDEA, the court, at its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing state educational agency or school, to be paid by your attorney, if the attorney: filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation or continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

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

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

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

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

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

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing you did not provide to the school the appropriate information in the due process request notice.

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

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

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement is appropriate for a child with a disability who violates a school code of student conduct. To the extent that they also take such action for children without disabilities, school personnel may, for not more than 10 school days in a row, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative placement (AIP) (which must be determined by the child's IEPT), another setting, or suspension. School personnel may also impose additional removals of the child of not more than 10 school days in a row in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, the school district must, during any subsequent days of removal in that school year, provide services to the extent required. If the behavior that violated the student code of conduct was not a manifestation of the child's disability and the disciplinary change of placement would exceed 10 school days in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child.

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an IAP. A child with a disability who is removed from the child's current placement for more than 10 school days must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum, although in another setting, to progress toward meeting the goals set out in the child's IEP, and receive, as appropriate, a FBA, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for 10 school days in that same school year, if the current removal is for 10 school days in a row or less and if the removal is not a change of placement, then school personnel, in consultation with at least one

of the child's teachers, determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. If the removal is a change of placement, the child's IEPT determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

### **Manifestation Determination**

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, (except for a removal that is for 10 school days in a row or less and not a change of placement), the school, the parent, and the IEPT must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the school's failure to implement the child's IEP. If the school, the parent, and the child's IEPT determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability. If the school, the parent, and the child's IEPT determine that the conduct in question was the direct result of the school's failure to implement the IEP, the school must take immediate action to remedy those deficiencies.

If the school, the parent, and IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either conduct a FBA, unless the school had conducted a FBA before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (BIP) for the child; or if a BIP already has been developed, review the BIP, and modify it, as necessary, to address the behavior.

Except as described below, the school must return the child to the placement from which the child was removed, unless the parent and the school agree to a change of placement as part of the modification of the BIP. Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an IAP (determined by the child's IEPT) for up to 45 school days, if the child:

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

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the school must notify the parents of that decision and provide the parents with a procedural safeguards notice. A removal of a child with a disability from the child's current educational placement is a change of placement if:

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

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

The parent of a child with a disability may file a due process complaint to request a due process hearing if he or she disagrees with any placement made under these discipline provisions or the

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

An ALJ must conduct the due process hearing and make a decision. The ALJ may return the child with a disability to the placement from which the child was removed if the ALJ determines that the removal exceeded the authority of school personnel, or that the child's behavior was a manifestation of the child's disability or; order a change of placement of the child with a disability to an IAP for not more than 45 school days if the ALJ determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. These hearing procedures may be repeated if the school believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a school files a due process complaint to request such a hearing, a hearing must be held except as follows: the MDE arranges for an expedited due process hearing, which must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing, or; unless the parents and the school agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within 7 calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.

A decision made in an expedited due process hearing is final, except that any party involved in the hearing may bring a civil action. When the parent or school has filed a due process complaint related to disciplinary matters, the child must (unless the parent and the MDE or school agree otherwise) remain in the IAP pending the decision of the hearing officer or until the expiration of the time period of removal, whichever occurs first.

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but the school had knowledge before the behavior that the child was a child with a disability, then the child may assert any of the protections described in this notice. A school must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred: The parent of the child expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child; The parent requested an evaluation related to eligibility for special education and related services under IDEA; or The child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school district's director of special education or to other supervisory personnel of the school district. A school would not be deemed to have such knowledge if the child's parent has not allowed an evaluation of the child or has refused special education services or the child has been evaluated and determined not to be a child with a disability under IDEA.

If prior to taking disciplinary measures against the child, a school does not have knowledge that a child is a child with a disability, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

If a request is made for an evaluation of a child during the time in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, the school must provide special education and related services in accordance with IDEA, including the disciplinary requirements.

**Transmittal of Records**

If a school reports a crime committed by a child with a disability, the school must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the school reports the crime; and may transmit copies of the child's special education and disciplinary records only to the extent permitted by the FERPA.

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

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

If your child previously received special education and related services, and you choose to enroll your child in a private school without the consent of, or referral by, the school, a court or an ALJ may require the public school to reimburse you for the cost of that enrollment if the court or ALJ finds that the public school had not made FAPE available to your child and that the private placement is appropriate. An ALJ or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the MDE and school. The cost of reimbursement may be reduced or denied if:

1. At the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEPT that you were rejecting the placement proposed by the school to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or at least 10 business days prior to your removal of your child from the public school, you did not give written notice to the school of that information;
2. Prior to your removal of your child from the public school, the school provided prior written notice to you of its intent to evaluate your child but you did not make the child available for the evaluation; or
3. A court finds that your actions were unreasonable.

However, the cost of reimbursement:

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

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

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