PARENT RIGHTS & RESPONSIBILITIES IN SPECIAL EDUCATION

Notice of Procedural Safeguards

July 2016

PUBLIC SCHOOLS OF NORTH CAROLINA

State Board of Education | Department of Public Instruction | Exceptional Children Division

LOCAL EDUCATIONAL AGENCY (LEA) CONTACT

The local educational agency (LEA) is your local school district. This may be a county or city school district, public charter school or State-operated program. The acronym LEA is used throughout this document for your local charter school, school district or State-operated program.

It is important that you understand the Procedural Safeguards (legal rights) provided for you and your child with a disability. Staff is available to assist you in understanding your rights and will provide further explanation upon your request. If you have any questions or would like additional information, please contact the Exceptional Children (EC) Department in your local LEA.

- LEA EC Directors are listed at http://ec.ncpublicschools.gov/directory/lea-ec-program-directors
- Charter Schools are listed at http://www.ncpublicschools.org/charterschools/schools/
- State-operated Programs are listed at http://www.ncpublicschools.org/esdb/directory/

LEA's EC Director: _____

Telephone: _____

Email: _____

State Educational Agency (SEA) The State Educational Agency is the North Carolina Department of Public Instruction (NCDPI). The acronym, NCDPI, is used throughout this document to refer to the SEA. The Exceptional Children Division (ECD) is part of NCDPI.

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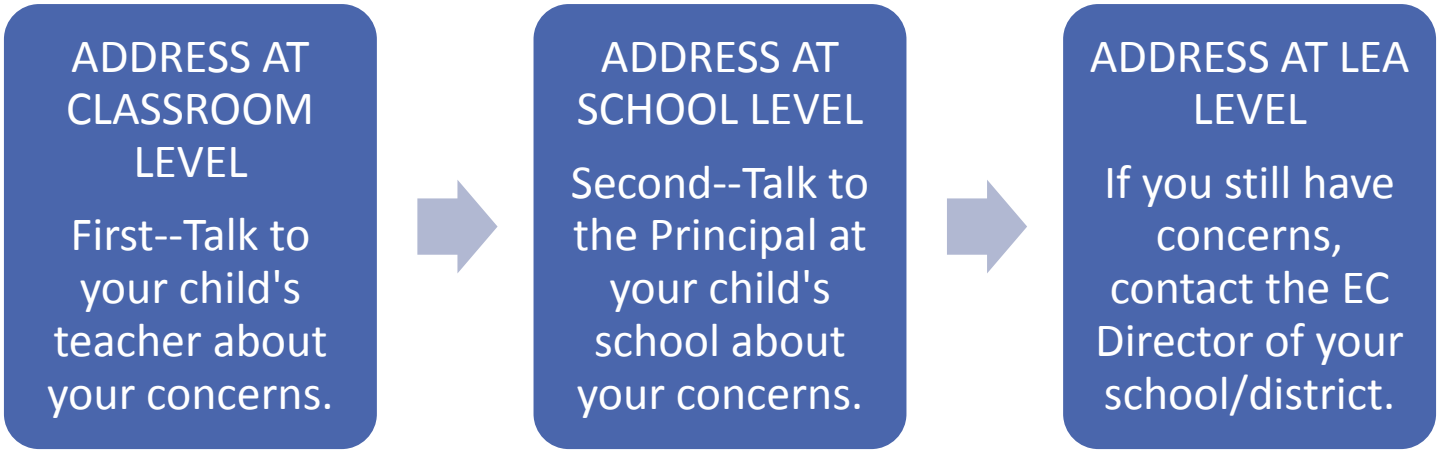
A REMINDER TO PARENTS:

If you have questions and/or concerns regarding your child's special education services, please use the flow chart below to help ensure they are addressed in the most effective and efficient way possible.



INTRODUCTION

The Individuals with Disabilities Education Improvement Act of 2004 (IDEA) is the federal law and Article 9, Section 115C of the North Carolina General Statutes is the State law concerning the education of students with disabilities. Part B of the IDEA refers to the part of the law for children with disabilities who are ages three (3) through twenty-one (21).

Children with disabilities include those with autism, deaf-blindness, deafness, developmental delay, serious emotional disability, hearing impairment, intellectual disability, multiple disabilities, other health impairment, orthopedic impairment, specific learning disabilities, speech and/or language impairment, traumatic brain injury and visual impairment.

PURPOSE OF THIS DOCUMENT

The IDEA requires schools to provide parents of a student with a disability notice containing a full explanation of the Procedural Safeguards (legal rights) available under the IDEA and the accompanying federal regulations. It is critical for parents to understand both their rights and responsibilities in the special education process.

Age 18 is the age of majority in the State of North Carolina and the right to make educational decisions and procedural safeguards transfer to the student at this time. Unless a guardian has been appointed to represent the student, the student represents him or herself. (See *Policies*, Transfer of Parental Rights at Age of Majority, NC 1504-1.21)

The numbers listed after each heading in this document refer to the sections for the legal citations in the federal regulations and the North Carolina Policies Governing Services for Children with Disabilities (*Policies*) where you can find the information. (Examples: 34 CFR §300.300 (Federal) and NC 1504-1.13 (*Policies*)) The federal regulations regarding IDEA can be found at http://idea.ed.gov/download/finalregulations.pdf and *Policies* is located at http://ec.ncpublicschools.gov/parent-resources/policies.

INFORMATION IN THE NOTICE OF PROCEDURAL SAFEGUARDS

This document provides an overview of 13 parental special education rights, sometimes called procedural safeguards. These same procedural safeguards are also available for students with disabilities who have reached the age of 18.

1. Parental Consent
2. Confidentiality of Information
3. Prior Written Notice
4. Disciplinary Procedures
5. Independent Educational Evaluation
6. Unilateral Placement of Children with Disabilities by Parents in Private Schools at Public Expense
7. Availability of Mediation
8. State Complaint Procedures
9. Filing a Due Process Petition
10. Hearings on Due Process Petitions
11. State-Level Appeals
12. Civil Actions
13. Attorney's Fees

WHEN YOU WILL RECEIVE THE PROCEDURAL SAFEGUARDS

The LEA must provide you with the Notice of Procedural Safeguards at least **one time each school year** and at the following times:

a. When your child is first referred for evaluation or when you request an evaluation;
b. When you request a copy of the Notice of Procedural Safeguards;
c. When your child is removed for disciplinary reasons and the removal results in a change of placement;
d. Upon receipt of the first state complaint and/or the first due process petition in a school year, if you file a State complaint or request a due process hearing; and
e. Upon any revision to the content of the procedural safeguards notice.

TO ASSIST YOU:

There are ***Acronyms*** and ***Understanding Parent Rights & Responsibilities*** sections at the beginning of this document to help explain some of the rights and procedural safeguards provided to parents. It is not a complete list or explanation of those rights. Additional acronyms and definitions used often in special education are also found at the end of this document in Appendix I. Throughout this document, "day" means calendar day unless it is written as business day or school day.

ACRONYMS

Acronyms that are used often in special education are listed for you. Not all of these acronyms are used in the NC Notice of Procedural Safeguards.

ADHD	**Attention Deficit Hyperactivity Disorder**	**SLD (LD)**	**Specific Learning Disability**
ADD	**Attention Deficit Disorder**	**LEA**	**Local Education Agency**
AT	**Assistive Technology**	**LRE**	**Least Restrictive Environment**
AU	**Autism Spectrum Disorder**	**MTSS**	**Multi-Tiered System of Support**
BIP	**Behavior Intervention Plan**	**MU**	**Multiple Disabilities**
CFT	**Child and Family Team**	**OCS**	**Occupational Course of Study**
CRC	**Community Residential Center**	**OHI**	**Other Health Impairment**
DB	**Deaf - Blindness**	**OI**	**Orthopedically Impairment**
DD	**Developmental Disability**	**OM**	**Orientation and Mobility**
DF	**Deafness**	**OT**	**Occupational Therapy**
EC	**Exceptional Children**	**OTA**	**Occupational Therapy Assistant**
ECAC	**Exceptional Children's Assistance Center**	**PBIS**	**Positive Behavior Intervention Support**
ECS	**Extended Content Standards**	**PLAAFP**	**Present Level(s) of Academic and Functional Performance**
ESY	**Extended School Year**	**PRTF**	**Psychiatric Residential Treatment Facility**
FAPE	**Free and Appropriate Public Education**		
FBA	**Functional Behavioral Assessment**	**PT**	**Physical Therapy**
FERPA	**Family Educational Rights and Privacy Act**	**PTA**	**Physical Therapy Assistant**
GE	**General Education**	**RE**	**Regular Education**
HI	**Hearing Impairment**	**SEA**	**State Educational Agency**
IDEA	**Individuals with Disabilities Education Act**	**SED**	**Serious Emotional Disability**
		SI	**Speech and/or Language Impairment**
IDMI	**Intellectual Disability - Mild**	**SLP**	**Speech Language Pathologist**
IDMO	**Intellectual Disability - Moderate**	**SLPA**	**Speech Language Pathologist Assistant**
IDSE	**Intellectual Disability – Severe**	**TBI**	**Traumatic Brain Injury**
IEE	**Independent Educational Evaluation**	**VI**	**Visually Impairment**
IEP	**Individualized Education Program**	**VR**	**Vocational Rehabilitation**

Understanding Parent Rights & Responsibilities in Special Education

You Are a Member of the IEP Team!

If there is anything you do not understand, ask to have it explained to you.

This section is designed to summarize and help you understand your rights and responsibilities as a parent regarding special education. It SHOULD NOT BE USED AS A SUBSTITUTE FOR THE FULL VERSION OF THE PROCEDURAL SAFEGUARDS outlined in the Individuals with Disabilities Education Act (IDEA) and the North Carolina *Policies Governing Services for Children with Disabilities* (*Policies*) pertaining to special education. Please refer to the pages noted in each section below to find more information regarding these rights in the NC Notice of Procedural Safeguards beginning on page 12.

CONSENT (See pages 12-14)

- ✓ There are times when the LEA must ask for your written permission.
  - The LEA must have your permission to test/evaluate your child for special education and related services for the first time (initial evaluation).
  - After the evaluation, if the IEP Team decides your child is eligible, you must give written permission before your child can receive special education and related services for the first time. ***(You are a member of the IEP Team.)***
  - You can withdraw your permission, but cannot change what happened before you withdrew it.
- ✓ There are times when the LEA does NOT need your permission.
  - If the IEP Team decides your child needs any testing for a reevaluation and you do not respond to requests for your permission, the school can test your child without your permission.
  - Before an evaluation or reevaluation, the IEP Team may review the existing data and this does not require your permission.
  - The LEA (school/district) does not need your permission to give your child with a disability a test or other evaluation that it is giving other children in the school, unless permission is required from the other parents.

CONFIDENTIALITY OF INFORMATION & ACCESS TO RECORDS (See pages 14-16)

- ✓ You have a right to look at your child's education records.
  - The LEA (school/district) must not delay your review of your child's educational records and must let you review them before any IEP meeting or due process hearing.
  - You have the right to:
    - Review your child's education records,
    - Ask for an explanation of any records you do not understand,
    - Ask for copies if you cannot go to the school to review your child's records, and
    - Have someone who represents you review your child's records.
- ✓ You may request to have something in the record changed or removed if you feel it should not be in your child's record. You have the right to add relevant information to your child's record.

- ✓ Generally, the LEA must have written permission from the parent or eligible student to release any information from a student's education record.
  - However, federal law (FERPA) allows schools to share those records without consent with certain individuals under the law, including school officials with a legitimate educational interest. (34 CFR § 99.31).
  - The LEA must have written permission to share information with other agencies assisting with the transition plan in your child's IEP.

PRIOR WRITTEN NOTICE

(See page 17)

- ✓ The LEA (school/district) must give you information **BEFORE** they make or refuse to make any changes in your child's identification, evaluation or placement. This information must be given to you in writing.
  - ***Identification*** means the process of identifying your child as being eligible or not eligible to receive services through an IEP.
  - ***Educational placement*** means the amount of special education services provided to your child. Placement does not mean school assignment.
- ✓ ***Native Language*** means the language normally used by the person (or child's parents) in the home 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).
  - **Your LEA must give you written notice in your native language.**
  - If your native language cannot be written, the school system will translate it for you orally.
- ✓ If you take away (revoke) your consent for services, the LEA must give you notice in writing before stopping any services.
- ✓ The **PRIOR WRITTEN NOTICE** must clearly explain:
  - Everything the LEA decided to do or refused to do and why those decisions were made;
  - The other things the LEA considered, but decided against and why it decided against them; and
  - All the information used in making the decisions.
- ✓ **If there is anything you do not understand, ask to have it explained to you.**
- ✓ Not all LEAs will send important legal notices through email. If you would like to receive these notices through email, ask if your LEA allows them to be sent electronically.
- ✓ **If you disagree with an LEA decision, you have rights to take action.** (See pages 23-30.)

INDEPENDENT EDUCATIONAL EVALUATIONS (See pages 22-23)

- ✓ If you disagree with the school's evaluation of your child you have the right to request an independent educational evaluation (IEE) provided by someone not employed by the LEA (school/district) at no cost to you.
- ✓ Submit your request in writing to the LEA. The LEA will give you information about where an independent educational evaluation may be obtained, and the qualifications and criteria applicable for IEEs.
- ✓ If the LEA has not completed an evaluation, the LEA may not be required to pay for an IEE.
- ✓ If you ask for an IEE, the LEA has only two choices:
  - Take the steps necessary to ensure that you get an IEE at no cost to you, **or**
  - File for due process and try to prove to an administrative law judge that their own assessment is appropriate.
- ✓ You always have a right to pay for an independent educational evaluation (IEE).
- ✓ The results of any evaluation must be considered by the LEA, but they are not obligated to follow its recommendations.
- ✓ You may request only one IEE (paid for by the LEA) for each LEA evaluation you disagree with.

PRIVATE SCHOOL PLACEMENT (See page 23)

- ✓ The LEA (school/district) is not required to pay for the private school if you decide to enroll your child in a private school and the LEA made a free appropriate public education (FAPE) available to your child.
- ✓ Some services may be provided to your child through a private school service plan by the LEA where the private school is located if those services are part of the services the LEA provides to parentally placed private school students.
- ✓ The LEA may have to pay for private school placement if it is an appropriate placement and if a hearing officer or court decides the LEA did not make a FAPE available for your child.
- ✓ If you decide to enroll your child with a disability in a private school and ask the LEA to pay, you **must** have told school officials at the last IEP Team meeting you attended or **10 business days before withdrawing** your child that you were going to enroll your child in a private school and what your concerns were about the public school program.

DISCIPLINE (See pages 18-22)

A DISCIPLINARY REMOVAL is usually called an out-of-school-suspension (OSS), but it may also include any time the school calls and asks you to pick up your child before the end of the school day because of disciplinary reasons. It also includes in-school-suspension (ISS) if services are not provided to your child, and suspension from the bus, IF transportation is a related service for child's IEP.

School personnel may remove a child with a disability who violates a code of student conduct for a REMOVAL OF 10 SCHOOL DAYS OR LESS and the child may be treated the *SAME* as children without a disability.

ADDITIONAL PROTECTIONS APPLY TO A CHILD WITH AN IEP WHO HAS BEEN REMOVED FOR MORE THAN 10 SCHOOL DAYS WITHIN A SCHOOL YEAR

- **YOUR CHILD HAS A RIGHT TO CONTINUE RECEIVING SERVICES AFTER THE 10TH DAY OF REMOVAL.**
- **OTHER RIGHTS DEPEND ON WHETHER THERE WAS A CHANGE IN PLACEMENT.**
  - **A single removal for more than 10 consecutive school days is an automatic change in placement.**
  - Multiple removals totaling more than 10 school days are a change in placement **if** there is a pattern to the removals.
    - ***Factors to determine if a pattern exists:***
      - The behavior leading to the current removal is substantially similar to the behavior in the other removals;
      - Number of days for each removal;
      - Total days removed; and
      - Closeness of removals.

RIGHTS

- On the 11th day of removal in a school year, your child is entitled to continue receiving education services. These services must allow participation in general education and progress toward IEP goals.
- **MANIFESTATION DETERMINATION REVIEW (MDR):** IF there is a change in placement, a meeting must be held to determine if the child's behavior was caused by, or had a direct and substantial relationship to, the child's disability, ***and /or*** the behavior was the direct result of the school's failure to implement the IEP.
  - The manifestation determination ***must*** take place within 10 school days of any decision to change the placement of a child with a disability because of behavior.
  - The manifestation determination is conducted by the LEA, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA).
  - **If the Behavior IS A MANIFESTATION of the child's disability:**
    - The school must either –
      - Conduct a functional behavioral assessment (FBA) and implement a behavior intervention plan (BIP) **or**
      - If a BIP has already been developed, review the plan and modify as needed; and
      - The child returns to the placement from which the child was removed.
  - **If the Behavior IS NOT A MANIFESTATION of the child's disability:**
    - The student may receive the same discipline for behavior as children without a disability.

ALL STUDENTS WITH DISABILITIES

Special Circumstances: DRUGS, WEAPONS, SERIOUS BODILY INJURY
Your child can be removed to an interim alternative education setting (IAES) for up to 45 school days, if he or she (1) carries or has a weapon; (2) has, uses, solicits the sale of, or sells illegal drugs; or (3) causes serious bodily injury to another person. *(See definition of day in Appendix I.)*

COURT INVOLVEMENT –These procedures do **NOT** prevent the LEA from involving law enforcement.

If your child has not been identified as a child with a disability who is eligible for special education, but the LEA knew or had knowledge that your child might have a disability, then you can ask for the protections described in DISCIPLINARY PROCEDURES found on pages 18-22.

MEDIATION (See page 24)

- ✓ Mediation is a process focused on resolving disagreements and working toward a solution that satisfies all participants.
- ✓ You and/or the LEA (school/district) may request mediation any time you and the LEA cannot resolve a dispute **at no cost**.
- ✓ You do not have to file a State complaint or a due process petition in order to request mediation.
- ✓ Mediation is a voluntary process in which BOTH you and the LEA must agree to participate.
- ✓ A mediator does not take sides.
- ✓ If you and the LEA resolve the dispute, then the mediator writes an agreement for all parties to sign and it is legally binding.
- ✓ Discussions that happen during the mediation process must be kept confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any federal or state court.

STATE COMPLAINT (See pages 25-26)

- ✓ If you disagree with a decision made by your IEP Team or believe the district is not appropriately serving your child, you have a right to file a state complaint with the EC Division of the NC Department of Public Instruction (NCDPI).
- ✓ A State Complaint is a letter that:
  - Describes in detail what you think the school did wrong.
  - Explains why you think the school's action violates the law.
  - Proposes a solution or action you would like the school to take to fix the problem.
- ✓ **A state complaint must be filed within one calendar year of the alleged violation.**
- ✓ NCDPI has created a form which covers all information that should be included in your complaint. The form is found at http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/formal-written-complaints.
  - You are not required to use this form to file a complaint. However, if you do not use this form, you should review NC policies for what information should be included.
- ✓ **NCDPI will review your complaint to determine if there are possible violations.** If so, NCDPI will begin an investigation to determine whether the LEA (school/district) followed the law and considered all the relevant information about your student when making its decision. The investigation will follow the timeline on page 25.
- ✓ If NCDPI finds the LEA failed to provide appropriate services or violated the law, the department will issue a written decision that identifies the violation and outlines how the LEA must correct the violation and ensure the issues do not continue.
- ✓ You or the LEA may request mediation in order to resolve the issues more quickly and determine appropriate remedies for your child. See the section ***Mediation*** for more information about that process.
- ✓ **Limitations:**
  - NCDPI will not investigate an issue that is pending or has already been resolved by a due process petition, unless the issue is that the LEA is refusing to comply with the decision from a due process hearing**.**
  - NCDPI only has the authority to investigate issues directly related to special education laws and policies. It cannot investigate issues such as promotion, retention, personnel, and discrimination.

WHAT IS THE DIFFERENCE BETWEEN STATE COMPLAINTS AND DUE PROCESS?

A state complaint is a written request to DPI asking for an investigation of the actions of a school regarding a special education student. It can be filed by a parent or anyone else. A state complaint usually involves a concern that special education rules were not followed. For example, a complaint might state that services included on a student's IEP were not provided or that the school did not look at whether a child should get special education services after a parent asked for them. In addition, a complaint may raise an issue of whether an IEP is appropriate to meet the needs of a student. In such cases, DPI will look at whether the school followed the law (IDEA 2004) and considered all the relevant information about the student. Based on its findings, DPI will issue a written decision on whether the school violated any rules. If it determines violations resulted in the denial of a free, appropriate public education (FAPE) for the student, DPI can require the IEP Team to meet again and reconsider the issues.

A due process petition is a legal action filed to obtain a decision by a judge about a special education issue. Due process cases typically involve disputes between the parent and the school about whether the services provided to the child are proper and allow the child to make progress at school. They can also relate to issues about eligibility or evaluations. A due process petition must be filed by a parent of a special education student, or the student if he or she is 18 or over. School districts can also file due process petitions. If the issues are not settled, a court-like hearing will be held. Testimony will be taken from witnesses and a judge will make a decision.

DUE PROCESS & HEARINGS (See pages 27-31)

- ✓ If you disagree with a decision made by your IEP Team or believe the district is not appropriately serving your child, you have a right to file a due process petition with the Office of Administrative Hearings (OAH).
- ✓ A due process petition triggers a formal legal proceeding in front of an administrative law judge.
- ✓ This process can be difficult to participate in without an attorney or detailed knowledge of special education law and court procedure.
    - If you cannot afford an attorney, you may contact Legal Aid of NC or Disability Rights NC to seek free assistance.
    - You may also ask the LEA (school/district) for other free or low-cost services in your area.
- ✓ You may represent yourself in court, but no one else may represent you unless he or she has a license to practice law. If you choose to file a petition on your own, you should review the NC *Policies* and the OAH court rules in detail.
- ✓ **A due process petition must be filed within one calendar year of the alleged violation** unless the LEA stated it had resolved the issue or it withheld required information from you.
- ✓ DPI has created a form which covers all information that must be included in a petition. It can be found at http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/due-process-hearings/h-06e.pdf
    - You are not required to use this form. However, if you choose not to use this form, you should review NC policies for what information should be included. **A hearing will not occur if you did not provide all of the required information.**
- ✓ While the complaint is pending, your child will remain in their current educational placement unless you and the LEA agree on a different placement.
    - If the due process petition relates to initial admission to public school, your child will be admitted until the petition is resolved.
- ✓ The decision made by the administrative law judge is final unless you or the LEA brings an appeal, as described below under the heading ***State Level Appeals***.

STATE LEVEL APPEAL (See page 32)

- ✓ If you or the LEA disagree with the judge's decision in a due process hearing, you may appeal it to an impartial review officer with DPI within 30 days of receiving the decision.
- ✓ The review officer will examine the record from the hearing, and may ask you and the LEA for more evidence and an oral or written argument.
- ✓ The review officer will make a decision and send it in writing to you and the LEA within 30 days of receiving the appeal, unless you or the LEA request an extension.
- ✓ The decision made by the review officer is final unless you or the LEA brings a civil action, as described below under the heading Civil Actions.

CIVIL ACTIONS

(See page 33)

- ✓ If you disagree with the review officer's final decision you have 30 days after receiving the final decision to file a civil action in state court or 90 days in federal court challenging that decision.
- ✓ A lawsuit may only be filed in state or federal court after you go through **both:**
  1. The initial due process hearing at the Office of Administrative Hearings (*See **Due Process & Hearings** section*); and
  2. An appeal to a review officer at NCDPI (*see **State Level Appeal** section*).

ATTORNEY'S FEES (See pages 33-34)

Fee Awards for Parents

- ✓ **Administrative Law Judges in NC cannot award attorneys' fees.**
- ✓ If you win any portion of your case, and you were represented by an attorney, you may ask a civil court to order the LEA to reimburse you for all or some of your attorneys' fees.
- ✓ Awards for attorneys' fee are not automatic, and the court will decide whether to award you fees and how much of your fees to award.
- ✓ If the court decides to award you fees, it will also decide whether to award you all of your fees, or only a part of your fees. The court will consider whether your attorney's rate is reasonable and the "degree-of-success" you had in your case.
- ✓ ***Some services that attorneys may do for you will NOT be eligible for a fee award.*** Attending IEP meetings, attending resolution sessions, and most types of tasks that attorneys may do for you before you decide to file a due process petition are all things that will NOT be reimbursed.
- ✓ The court can also reduce your fees, or deny you your fees altogether, for reasons found on page 34.
- ✓ If the court finds that the State or the LEA unreasonably delayed the final resolution, or there was a violation under the Procedural Safeguards, then the court cannot reduce your fee award.

Fee Awards for LEAs

- ✓ On the other hand, the court may decide that your attorney must pay the LEA's costs and/or the NCDPI's costs, if your attorney filed a petition that was trivial, unreasonable, or without any basis.
- ✓ The court can also decide that you or your attorney must pay the LEA's costs and/or the NCDPI's costs, if you filed due process for inappropriate reasons, such as to harass, cause unnecessary delay or increase the cost of the action or proceeding.

Resources for Parents

The organizations listed below are available to assist North Carolina's parents of children with disabilities.

Exceptional Children's Assistance Center (ECAC)
1.800.962.6817 or 704.892.1321 http://www.ecac-parentcenter.org
ECAC is home to NC's Parent Training and Information Center (PTI) and provides a variety of free services to parents of children with disabilities including: individual assistance with educational issues, workshops, lending library, newsletters, statewide toll-free Parent Info Line and more.

Family Support Network of North Carolina
1.800.852.0042 http://www.fsnnc.org/
The Family Support Network has a free statewide information and referral service, parent-to-parent programs, and workshops for parents of children with disabilities. Call the Network for specific disability information and for listings for all the different disability support groups.

Organizations that Provide Low-Cost Legal Services

Disability Rights North Carolina
877-235-4210 or 919-856-2195 or 888-268-5535 (TTY)
Email: info@disabilityrightsnc.org http://www.disabilityrightsnc.org/
Disability Rights North Carolina is a private, nonprofit organization that protects the rights of children and adults with disabilities living in North Carolina through legally-based advocacy.

Legal Aid of North Carolina
1.866.219.5262 http://www.legalaidnc.org
Legal Aid of North Carolina (LANC) is a statewide, nonprofit law firm that provides free legal services in civil matters to low-income people in order to ensure equal access to justice and to remove barriers to economic opportunity. Education is a priority legal area for LANC attorneys, who represent students and parents in all 100 counties in North Carolina. LANC attorneys also assist families with legal problems affecting basic human needs, such as family, health, housing, employment, and income.

NC NOTICE OF PROCEDURAL SAFEGUARDS

The numbers listed after each heading in this document refer to the sections for the legal citations in the federal regulations and the North Carolina *Policies Governing Services for Children with Disabilities* (*Policies)* where you can find the FULL VERSION of the policies regarding each procedural safeguard. (Examples: 34 CFR §300.300 and NC 1504-1.13) The federal regulations regarding IDEA can be found at http://idea.ed.gov/download/finalregulations.pdf and *Policies* is located http://ec.ncpublicschools.gov/parent-resources/policies.

1. PARENTAL CONSENT 34 CFR §300.300 and NC 1503-1 *(See page 6)*

Consent

Consent means:

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

If you wish to revoke (cancel) your consent after your child has begun receiving special education and related services, you must do so in writing. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent but before you withdrew it. In addition, the school district is not required to amend (change) your child's education records to remove any references that your child received special education and related services after your withdrawal of consent.

Consent for Initial Evaluation

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

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

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

Your school district may not use your refusal to consent to one service or activity related to the initial evaluation as a basis for denying you or your child any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by using the IDEA's mediation or filing a petition for a due process hearing. Your school district will not violate its obligations to locate, identify and evaluate your child (Child Find) if it does not pursue an evaluation of your child in these circumstances.

Special Rules for Initial Evaluation of Wards of the State

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

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

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

Ward of the State, as used in IDEA, means a child who, as determined by the State where the child lives, is:

1. A foster child;
2. Considered a ward of the State under State law; or
3. In the custody of a public child welfare agency.

There is one exception that you should know. *Ward of the State* does not include a foster child who has a foster parent who meets the definition of a parent as used in IDEA.

Parental Consent for Services

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

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

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

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

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; **and**
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

If you revoke (cancel) your consent in writing at any point after your child is first provided special education and related services, then the school district may not continue to provide such services, but must provide you with prior written notice, as described under the heading ***Prior Written Notice***, before discontinuing those services.

Parental Consent for Reevaluations

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

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

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

Documentation of Reasonable Efforts to Obtain Parental Consent

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents of wards of the State for initial evaluations. The documentation must include a record of the school district's attempts in these areas:

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

When Consent is Not Required

Your consent is not required before your school district may:

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

The school district must develop and implement procedures to ensure that your refusal to consent to any of these other services and activities does not result in a failure to provide your child with a free appropriate public education (FAPE). Also, your school district may not use your refusal to consent to one of these services or activities as a basis for denying any other service, benefit, or activity, unless another Part B requirement requires the school district to do so.

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

2. CONFIDENTIALITY OF INFORMATION 34 CFR §§ 300.610 - 300.625 AND NC 1505-2

(See page 6)

Definitions as used under this section

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

- **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- **Education records** means the type of records covered under the definition of ''education records'' in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- **Participating agency** means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.
- **Personally identifiable** means information that includes:
  - a) Your child's name, your name as the parent, or the name of another family member;
  - b) Your child's address;
  - **c)** A personal identifier, such as your child's social security number or student number; **or**
  - d) (d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Confidentiality – Notice to Parents

The **NC Department of Public Instruction (NCDPI)** must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

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

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

Access to Records

The participating agency must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by your school district under Part B of IDEA. The participating agency must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

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

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

Record of Access

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

Records on More than One Child

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

List of Types and Locations of Information

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

Fees

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

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

Amendment of Records at Parent's Request

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

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

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

Opportunity for a Hearing

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

Hearing Procedures

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

Information about FERPA is at: http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html?src=rn

Result of Hearing

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

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

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

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

Consent for Disclosure of Personally Identifiable Information

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

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

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

Safeguards

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

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

All persons collecting or using personally identifiable information must receive training or instruction regarding your State's policies and procedures regarding confidentiality under Part B of IDEA and the Family Educational Rights and Privacy Act (FERPA).

Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Destruction of Information

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

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

3. PRIOR WRITTEN NOTICE

34 CFR §300.503 and NC 1504-1.4 (*See page7*)

Notice

Your school district must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

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

Note: Information about providing prior notice due to a disciplinary change in placement is located under the heading ***Disciplinary Procedures*.**

Content of Notice

The written notice must:

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

Notice in Understandable Language

The notice must be:

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

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

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

Native Language

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

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

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

Electronic Mail

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

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

4. DISCIPLINARY PROCEDURES

34 CFR §§300.530 – 300.536 and NC 1504-2 *(See page 8)*

Authority of School Personnel and Case-by-Case Determination

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

Note: A **removal** is usually called an out-of-school suspension (OSS), but it may also include any time the school calls and asks you to pick up your child before the end of the school day because of disciplinary reasons. It also includes in-school-suspension (ISS) if services are not provided to your child, and suspension from the bus, **IF** transportation is a related service for child's IEP.

General

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

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

Additional Authority

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

Services

The services that must be provided to your child with a disability who has been removed from his or her current placement may be provided in an interim alternative educational setting (IAES).

The school district is only required to provide services to a child with a disability who has been removed from his or her current placement for **10 school days or less** in a school year, if it provides services to children without disabilities who have been similarly removed.

A child with a disability who is removed from the child's current placement for **more than 10 school days** and the behavior is not a manifestation of the child's disability (see subheading, ***Manifestation Determination***) or who is removed under special circumstances (see the subheading, ***Special Circumstances***) must:

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

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

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP.

Manifestation Determination

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

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

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

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

Determination that Behavior was a Manifestation of Your Child's Disability

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

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

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

Special Circumstances

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

1. Carries a **WEAPON** (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of NCDPI or a school district;
2. Knowingly has or uses **ILLEGAL DRUGS** (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the NCDPI or a school district; **or**
3. Has inflicted **SERIOUS BODILY INJURY** (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district.

Definitions

- **Controlled substance** — 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)). Controlled substances under schedule I have no acceptable medical use in the United States. They have a high potential for abuse and there is no accepted safety for use of the drug or other substance under medical supervision. Controlled substances under schedules II, III, IV and V have a currently accepted medical use for treatment in the United States. They range from having a high potential for abuse to a low potential for abuse. Physical or psychological dependence on these drugs ranges from severe dependence to limited dependence.
- **Illegal drug** — A controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- **Serious bodily injury** —Injury that involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of a function of a bodily member, organ or faculty.
- **Weapon** — A dangerous weapon is a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 and ½ inches.

Notification

On the date school personnel make the decision that a disciplinary removal of your child is a change of placement, the LEA must notify you of that decision, and provide you with the Procedural Safeguards notice.

Change in Placement for Disciplinary Reasons

A removal of your child with a disability from your 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. Your 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. Your 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 your child has been removed, and the proximity of the removals to one another.

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

Determination of Setting

The Individualized Education Program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings ***Additional Authority*** and ***Special Circumstances***.

Appeal in General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) to request a due process hearing if you disagree with:

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

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

Authority of Hearing Officer

A hearing officer that meets the requirements described under the subheading ***Impartial Hearing Officer*** must conduct the due process hearing and make a decision. The hearing officer may:

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

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

Whenever you or a school district files a due process petition to request an expedited hearing, all the requirements under the previous headings: ***Filing a Due Process Petition, Hearings on Due Process Petitions, and State-Level Appeals*** must be followed, except for the timelines and written response.

The timelines are expedited as follows:

The Office of Administrative Hearings must arrange 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; and

Unless you and the school district agree in writing to waive the resolution meeting, or agree to use mediation, a resolution meeting must occur **within seven (7) calendar days** of the date the school district's Superintendent **or** EC Director received notice of the expedited due process petition. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15 calendar days** of the date the school district's Superintendent **or** EC Director received notice of the due process petition.

A party may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings.

Placement during Appeals

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

Protections for Children Not Yet Eligible for Special Education and Related Services in General

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

Basis of Knowledge for Disciplinary Matters

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

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA;
3. Your child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school district's director of special education or to other supervisory personnel of the school district; **or**
4. Your child's behavior and performance, prior to the disciplinary action, clearly and convincingly establish a need for special education

Exception

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

1. You have not allowed an evaluation of your child or have refused special education services; **or**
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

Conditions that Apply if there is No Basis of Knowledge

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

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

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

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

Referral to and Action by Law Enforcement and Judicial Authorities

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; **or**
2. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

Transmittal of Records

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

1. Must ensure that copies of the child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**

a. May transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

5. INDEPENDENT EDUCATIONAL EVALUATIONS (IEE) 34 CFR §300.502 and NC 1504-1.13 *(See page 7)*

General

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

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

Definitions

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

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

Right to Evaluation at Public Expense

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

1. If you request an independent educational evaluation of your child at public expense, your school district must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.
2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

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

Parent-Initiated Evaluations

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

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

Requests for Evaluations by Hearing Officers

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

School District/ LEA Criteria

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

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

6. REQUIREMENTS FOR UNILATERAL PLACEMENT OF CHILDREN WITH DISABILITIES BY THEIR PARENTS IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

34 CFR §300.148 and NC 1501-6 through NC 1501-8 *(See page 7)*

General (Placement of Children by Parents if FAPE is at Issue)

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

Reimbursement for Private School Placement

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment **if** the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer 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 NCDPI and school districts.

Limitation on Reimbursement

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

1. If: (a) At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the school district to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the school district of that information;
2. If, prior to your removal of your child from the public school, the school district provided prior written notice to you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; **or**
3. Upon a court's finding that your actions were unreasonable.

However, the cost of reimbursement:

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

7. AVAILABILITY OF MEDIATION 34 CFR §300.506 and NC 1504-1.7 *(See page 9)*

Definition

Mediation is an informal meeting of the parent and the school led by a neutral third party, the mediator. Mediation is a voluntary process, which the parties themselves control. The mediator helps the parents and school resolve disagreements concerning the child's identification, evaluation, program, or placement. Mediation can help the parties reach agreement about specific issues, as well as build a better working relationship for the future. Mediation can help resolve differences between parents and schools efficiently and effectively**.** *More information about mediation can be found at http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/mediation.*

General

The EC Division of NCDPI makes mediation available to allow you and the LEA to resolve disagreements involving any matter under IDEA, including matters arising prior to the filing of a due process petition.

Mediation is available to resolve disputes under IDEA, whether or not you have filed a due process petition to request a due process hearing as described under the heading ***Filing a Due Process Petition***.

Requirements

The procedures must ensure that the mediation process:

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

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

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

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

The EC Division is responsible for the costs of the mediation process, including the costs of meetings.

Note: The cost of the mediation process does not include any attorneys' fees, if you and/or the school district bring attorneys to the mediation.

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

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

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

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

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

Impartiality of Mediator

The mediator:

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

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

8. STATE COMPLAINT PROCEDURES

34 CFR §300.152 and NC 1501-10 (See page 9)

Definition

State Complaint - A State complaint is a signed written statement that alleges a school or local educational agency is not following special education law and regulations found in IDEA, Article 9 of Section 115C in the NC General Statutes. This statement is a formal request for the EC Division to investigate the allegation(s) of noncompliance.

More information about State complaints can be found at http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/formal-written-complaints

Differences between the State Complaint and Due Process Procedures

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

The EC Division must develop model forms to help you file a due process petition and help you or other parties to file a State complaint as described under the heading ***Model Forms***.

Adoption of State Complaint Procedures in General

Each State Educational Agency must have written procedures for:

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

Remedies for Denial of Appropriate Services

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

1. The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); **and**
2. Appropriate future provision of services for all children with disabilities.

Minimum State Complaint Procedures Time Limit

The NCDPI must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

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

Time Extension; Final Decision; Implementation

The NCDPI's procedures described above also must:

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

State Complaints and Due Process Hearings

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

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

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

Filing a Complaint

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

The State complaint must include:

1. A statement that a school district or other public agency has violated a requirement of Part B of IDEA or its implementing regulations in 34 CFR Part 300;
2. The facts on which the statement is based;
3. The signature and contact information for the party filing the complaint; and
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) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
   d) A description of the nature of the problem of the child, including facts relating to the problem; **and**
   e) A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading ***Adoption of State Complaint Procedures***.

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

Note: Issues that are not part of federal regulations, Article 9, or the Policies will not be investigated. Examples are: promotion, retention, personnel issues, and discrimination.

Model Forms

The NCDPI has developed model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. However, you are not required to use these model forms. In fact, you can use the model form or another appropriate form, so long as it contains the required information for filing a due process petition or a State complaint.

The model forms are located at http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/formal-written-complaints

9. FILING A DUE PROCESS PETITION 34 CFR §§ 300.507 – 300.518 and NC 1504-1.8 through NC 1504-1.19 *(See page 10)*

Definition

Due process petition – A form that is filed with the Office of Administrative Hearings and the Superintendent or EC Director of the local LEA.

More information about due process is at http://ec.ncpublicschools.gov/parent-resources/dispute-resolution/due-process-hearings

General

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

Parents **must** file the petition with the Superintendent **or** the EC Director of their school district **and** the Office of Administrative Hearings (OAH).

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

The timelines begin when the Superintendent or the EC Director of the local school district receives the petition you filed. If the school district files a due process petition, the timelines begin when you receive it.

The due process petition may be hand-delivered or mailed to your local Superintendent **or** EC Director using your local school district's mailing address.

The due process petition **must** be sent to:	A copy of your due process petition **must** be sent to:
Chief Hearings Clerk **Office of Administrative Hearings** **6714 Mail Service Center** **Raleigh, NC 27699-6714** **Phone: 919.431.3000** **Fax: 919.431.3100**	**Consultant for Due Process** **EC Division, NCDPI** **6356 Mail Service Center** **Raleigh, NC 27699-6356** **Phone: 919.807.3969** **Fax: 919.807.3755**

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

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

Information for Parents

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

Due Process Petition

The due process petition must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; **and**
6. A proposed resolution of the problem to the extent known and available to the complaining party (you or the school district) at the time.

Notice Required Before a Hearing on a Due Process Petition

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney) files a due process petition that includes the information listed above.

Sufficiency of Petition

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

Within five (5) calendar days of receiving the notification that the receiving party (you or the school district) considers a due process petition insufficient, the hearing officer must decide if the due process petition meets the requirements listed above, and notify you and the school district in writing immediately.

Petition Amendment

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

1. The other party approves of the changes in writing and is given the chance to resolve the issue(s) in the due process petition through the resolution process described under the heading ***Resolution Process***; **or**
2. By no later than five (5) days before the due process hearing begins, the hearing officer grants permission for the changes.

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

LEA Response to a Due Process Petition

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

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

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

Other Party Response to a Due Process Petition

Except as stated under the sub-heading immediately above, ***Local Educational Agency (LEA)Response to a Due Process Petition***, the party receiving a due process petition must, within 10 calendar days of receiving the petition, send the other party a response that specifically addresses the issues in the petition.

Resolution Process

Within 15 calendar days of receiving notice of your due process petition, and before the due process hearing begins, the school district must convene a meeting with you and the relevant member or members of the Individualized Education Program (IEP) Team who have specific knowledge of the facts identified in your due process petition. The meeting:

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

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

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

The resolution meeting is not necessary if:

1. You and the school district agree in writing to waive the meeting; **or**
2. You and the school district agree to use the mediation process, as described under the heading ***Mediation***.

Resolution Period

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

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, ***Hearing Decisions***, begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

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

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

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

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

Adjustments to the 30 Calendar Day Resolution Period

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

If you and the school district agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school district withdraws from the mediation process during this continuation period, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written Settlement Agreement

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

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

Agreement Review Period

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

The Child's Placement While the Due Process Petition and Hearing are Pending

Except as provided below under the heading ***Procedures When Disciplining Children with Disabilities***, once a due process petition is sent to the other party, during the resolution process time period, and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the State or school district agree otherwise, your child must remain in his or her current educational placement.

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

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

If a State review official in an administrative appeal proceeding agrees with you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

If your preschool child is found eligible under IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, the school district must provide those special education and related services that are not in dispute (those which you and the school district both agree upon.)

10. HEARINGS ON DUE PROCESS PETITIONS

34 CFR §300.511 and NC 1504-1.12 through NC 1504-1.14 and NC 1504-1.16 (*See page 10*)

Impartial Due Process Hearing

Whenever a due process petition is filed, you or the school district involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Petition*** and ***Resolution Process*** sections.

Impartial Hearing Officer

Note: In NC, the hearing officer is an Administrative Law Judge (ALJ).

At a minimum, the Administrative Law Judge:

1. Must not be an employee of the State Educational Agency/NCDPI or the school district that is involved in the education or care of the child. However, a person is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of IDEA, Federal regulations, Article 9 of NC General Statutes 115C and *Policies* pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions consistent with appropriate, standard legal practice.

Subject Matter of Due Process Hearing

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

Timeline for Requesting a Hearing

You or the school district must request an impartial hearing on a due process petition within **one year** of the date you or the school district knew or should have known about the issue addressed in the petition.

Exceptions to the Timeline

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

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

Hearing Rights General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) or an appeal, as described under the sub-heading ***Appeal of Decisions and Impartial Review*** has the right to:

1. Be accompanied and advised by an attorney and/or persons with special knowledge or training about the problems of children with disabilities (NC law does not recognize a non-attorney representing a party at a due process hearing);
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been shared with the other party at least five (5) business days before the hearing;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; **and**
5. Obtain written, or, at your option, electronic findings of fact and decisions.

Additional Disclosure of Information

At least five (5) business days prior to a due process hearing, you and the school district must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the school district intend to use at the hearing.

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

Parental Rights at Hearings

You must be given the right to:

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

Decision of Hearing Officer

The **Administrative Law Judge's** decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that your child did not receive FAPE only if the procedural violations:

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**
3. Caused your child to be deprived of an educational benefit.

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

Timelines and Convenience of Hearings and Reviews

The Office of Administrative Hearings must ensure that no later than 45 days after the expiration of the 30-day resolution period or, as described under the sub-heading ***Adjustments to the 30-day Resolution Period***, no later than 45 days after the expiration of the adjusted time period for resolution, a final decision is reached in the hearing and a copy of the decision is mailed to the school district and you, or your attorney if you are represented by council.

A hearing officer may grant specific extensions of these timelines, if you or the school district make a request for a specific extension of the timeline.

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

Separate Request for a Due Process Hearing

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

Findings and Decision to State Advisory Panel and General Public

The EC Division after deleting any personally identifiable information, must:

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

Construction Clause

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a school district to comply with the requirements in the Procedural Safeguards section of the federal regulations under IDEA. None of the provisions under**:** ***Filing a Due Process Petition, Model Forms, Resolution Process, Impartial Due Process Hearing, Hearing Rights, and Hearing Decisions*** can affect your right to file an appeal of the due process hearing decision with the EC Division.

11. STATE-LEVEL APPEALS 34 CFR §300.514 and NC 1504-1.15 through NC 1504-1.16 *(See page 10)*

Finality of Hearing Decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, unless appealed. Either party involved in the hearing (you or the school district) may appeal the decision to the EC Division within 30 days of receipt of the decision from the Office of Administrative Hearings.

Appeal of Decisions and Impartial Review

If a party (you or the school district) disagrees with the findings and decision in the due process hearing, the party may appeal to the EC Division.

If there is an appeal, the EC Division must appoint an impartial review officer to conduct an impartial review of the findings and decision appealed.

The review officer conducting the review must:

1. Examine the entire hearing record;
2. Ensure that the procedures at the hearing were consistent with the requirements of due process;
3. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described previously under the sub-heading ***Hearing Rights*** apply;
4. Give the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
5. Make an independent decision on completion of the review; **and**
6. Give you and the school district a copy of the written or, at your option, electronic findings of fact and decisions.

Findings and Decision provided to the State Advisory Panel and General Public

The State Educational Agency, after deleting any personally identifiable information, must:

1. Provide the findings and decisions of the appeal to the State Advisory Panel; **and**
2. Make those findings and decisions available to the public.

Note: The State Advisory Panel in NC is the Council on Educational Services for Exceptional Children.

Finality of Review Decision

The decision made by the reviewing official is final unless you or the school district brings a civil action, as described under the heading ***Civil Actions***, including the time period in which to file those actions.

Timelines and Convenience of Hearings and Reviews

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

1. A final decision is reached in the hearing; **and**
2. A copy of the decision is mailed to you and the school district.

The EC Division must ensure that not later than 30 calendar days after the receipt of a request for a review:

1. A final decision is reached in the review; **and**
2. A copy of the decision is mailed to you and the school district.

A review officer may grant specific extensions of time beyond the periods described above (45 calendar days for a hearing decision and 30 calendar days for a review decision) if you or the school district make a request for a specific extension of the timeline.

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

12. CIVIL ACTIONS 34 CFR §300.516 and NC 1504-1.17 *(See page 11)*

General

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

Time Limitation

The party (you or the school district) bringing the action shall have 30 days from the date of the decision of the State review officer to file a civil action in state court and 90 days in federal court.

Additional Procedures

In any civil action, the court:

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

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

Jurisdiction of District Courts

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

Rule of Construction

Nothing in Part B of 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 IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of 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 (i.e., the due process petition; resolution process, including the resolution meeting; and impartial due process hearing procedures) before going directly into court.

13. ATTORNEYS' FEES 34 CFR §300.517 and NC 1504-1.18 *(See page 11)*

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

In any action or proceeding brought under Part B of IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing State Educational Agency (NCDPI) or school district, **to be paid by your attorney**, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**

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

Note: North Carolina's Administrative Law Judges cannot award attorneys' fees.

Award of Fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made 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 or State-level review, 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 administrative hearing officer 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 Individualized Education Program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action.
4. Fees also may not be awarded for mediation as described under the heading ***Availability of Mediation***.

    A resolution meeting, as described under the heading ***Resolution Process***, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

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

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

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

Appendix I: Acronyms, Definitions, and Information

Several words used throughout the Procedural Safeguards have been defined according to the Federal Regulations and the Policies. The Federal Regulations contain a more extensive list of definitions, beginning with 34 CFR § 300.4. They can be found at http://idea.ed.gov/explore/home. Acronyms that are used often in special education are listed for you. Not all of these acronyms and definitions are used in the Procedural Safeguards.

1. **§** — § means Section.
2. **Administrative Law Judges (ALJs)** — In North Carolina, ALJs are the people who make decisions in due process cases that go to hearings.
3. **Article 9** — The North Carolina State law governing special education is Article 9 of Chapter 115C of the North Carolina General Statutes.
4. **Areas of Disability** — Following are the areas of disability under IDEA and the acronyms used by the State and LEAs:
   AU.....Autism Spectrum Disorder
   DB.....Deafness-Blindness
   DD.....Developmental Delay
   DF.....Deafness
   ED.....Serious Emotional Disability (Sometimes the acronym SED is used.)
   HI.....Hearing Impairment (Also called hard of hearing.)
   ID..... Intellectual Disability
   MU..... Multiple Disabilities
   OHI.....Other Health Impairment
   OI.....Orthopedic Impairment
   SI.....Speech and/or Language Impairment (Sometimes the acronym SLI is used.)
   SLD..... Specific Learning Disabilities (Sometimes the acronym LD is used. Dyslexia, dyscalculia, and dysgraphia are types of specific learning disabilities.)
   TBI.....Traumatic Brain Injury
   VI.....Visual Impairment, including Blindness
5. **Children's Developmental Services Agency (CDSA)** — The lead agency in North Carolina for infants and toddlers, ages birth through two (0–2).
6. **Charter Schools** — In North Carolina, charter schools are public schools and must follow the same federal regulations and Policies as other public schools for children with disabilities.
7. **Child with a Disability (CWD) or Student with a Disability (SWD)** — A child evaluated in accordance with Policies 1503-2 through 1503-3 as having one of the disabilities listed above and who, by reason of the disability, needs special education and related services.
8. **Code of Federal Regulations (CFR)** — This is where you will find the federal regulations for the IDEA.
9. **Complainant** — An individual or organization who has submitted a State complaint to the North Carolina Exceptional Children Division.
10. **Day** — Calendar day unless otherwise specified.
    - Business day — Monday through Friday, except Federal and State holidays.
    - School day — Any day school is in session for students, including a partial day. It has the same meaning for students with disabilities as it does for nondisabled students.
11. **Due Process Hearing** — A due process hearing is a formal hearing, which is guaranteed under federal and state special education law, before an impartial Administrative Law Judge.
12. **Exceptional Children Division (EC Division**) — The EC Division is responsible for ensuring the implementation of federal and state laws about special education.
13. **Evaluation** — The procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child may need.
14. **Family Educational Rights and Privacy Act (FERPA)** — The law that protects the confidentiality of educational records.
15. **Facilitated IEP (FIEP) Team Meeting** — IEP Facilitation is a process using an impartial facilitator to assist the IEP Team members in communicating more effectively and keeping the focus on student outcomes. An IEP facilitator is provided at no cost to the parent(s) or the LEA (school/school district).
16. **Free appropriate public education (FAPE)** — Education and related services are based on the unique needs of the child with a disability. Special education and related services must be provided without cost to the parents and according to standards of the Public Schools of North Carolina, Department of Public Instruction, for children in preschool, elementary, secondary, or public charter schools in the State and according to an individualized education program (IEP).
17. **Independent educational evaluation (IEE) -** An evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of your child.
18. **Individuals with Disabilities Education Improvement Act (IDEA)** — IDEA is the federal special education law.
19. **Individualized Family Services Plan (IFSP)** — An IFSP is the plan for infants-toddlers with disabilities and their families.
20. **Individualized Education Program (IEP)** — An IEP is a written statement for a child with a disability that is developed, reviewed, and revised in accordance with the federal regulations and Policies through which the child receives a FAPE.
21. **Infant-Toddler Program (ITP)** — ITP is the program that serves children with disabilities from birth through two years (0–2).
22. **Interim Alternative Educational Setting (IAES)** — A child with a disability may be placed in another educational setting for disciplinary reasons.
23. **Least Restrictive Environment (LRE)**—- The IEP Team must consider educating a child with a disability in an environment that is appropriate for that child. Some children are educated in a more restrictive environment than others due to the significance of their needs.
24. **Local Educational Agency (LEA)** — Any school program conducted by a public school or agency and approved by the North Carolina Department of Public Instruction. In North Carolina, this includes county, city, and charter schools and State-operated programs.
25. **Mediation** — A voluntary process in which an impartial individual (mediator) assists the parties in having a full discussion and reaching an agreement. A mediator may be requested through the EC Division at no cost to the parent(s) or the LEA (school/school district).
26. **Multi-Tiered System of Support (MTSS)** — A multi-tiered framework which promotes school improvement through engaging, research-based academic and behavioral practices. NC MTSS employs a systems approach using data-driven problem-solving to maximize growth for all.
27. **NC Department of Public Instruction (NCDPI)** — NCDPI is North Carolina's State Educational Agency (SEA).

28. **Parent** — IDEA uses the term parent to mean:
    a. A biological or adoptive parent of a child;
    b. A foster parent, unless State law, regulations or contracts with a State or local entity prohibits a foster parent from acting as a parent. A foster parent may serve as parent if the biological parent's rights to make educational decisions have been terminated by the Court.
        - A therapeutic foster parent cannot serve as parent.
    c. A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the State if the child is a ward of the State;
    d. A person acting in the place of a biological or adoptive parent (including a grandparent, stepparent or other relative) with whom the child lives or a person who is legally responsible for the child's welfare; or
    e. A surrogate parent who has been appointed in accordance with the federal regulations at 34 CFR §300.515.

If a Court Order identifies a specific person or persons in the list above to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this document.

    a. Except as provided above, when more than one party is qualified to act as a parent, the biological or adoptive parent must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational decisions for the child; and
    b. The term parent does not include a State agency or local agency, such as the Department of Social Services, or one of its employees if the child is in the custody of such agency.

29. **Private Schools** — Non-profit private schools, including religious schools or facilities that meet the definition of elementary school or secondary school in North Carolina. Registered home schools are recognized as private schools in North Carolina.
30. **Part B** - The part of the Individuals with Disabilities Education Improvement Act that is the special education law for children ages three through twenty-one (3–21).
31. **Part C** — The part of the Individuals with Disabilities Education Improvement Act that is the special education law for children ages birth through two (0–2).
32. **Placement** — In special education placement is used in two different ways:
    a. That a child has been determined to be eligible for special education and related services; and
    b. The level on the continuum of services, which means the amount of time the student will be removed from his or her nondisabled peers.

    Placement does not mean the location of services. The U.S. Department of Education, Office of Special Education Programs (OSEP) states the following: Historically, we have referred to ''placement'' as points along the continuum of placement options available for a child with a disability, and ''location'' as the physical surrounding, such as the classroom. It is the Department's longstanding position that maintaining a child's placement in an educational program that is substantially and materially similar to the former placement is not a change in placement.
33. **Public Agency** — A State agency that is responsible for providing education to children with disabilities. It includes the NCDPI; LEAs; Department of Health and Human Services; Department of Correction; and Department of Juvenile Justice; to the extent the public agency may be responsible for the provision of special education and related services and/or their actions impact upon a child receiving a free appropriate public education.
34. **Prior Written Notice (PWN)** — The PWN is described in Section 2 of this document. LEAs are not required to use the state form (DEC 5) and may use their own. An LEA may write a letter to you as the prior written notice.
35. **Reevaluation** — This is a review process and does not necessarily mean testing.
36. **Related Services** — These are supportive services that are required to assist a child with a disability to benefit from special education.
37. **Resolution Session** — When a due process petition is filed, the LEA must schedule a resolution session to try and resolve the dispute before a due process hearing.
38. **State Advisory Panel (SAP)** — In North Carolina, the State Advisory Panel is called the Council on Educational Services for Exceptional Children. The Council advises the State Board of Education on issues about the unmet needs of children with disabilities.
39. **Special Education (SPED)** — SPED is specially designed instruction, provided at no cost to the parent, to meet the unique needs of a child with a disability.
40. **Special Education Laws** — These laws include the federal statute, the Individuals with Disabilities Education Improvement Act (IDEA); accompanying federal regulations; Article 9 of NC General Statutes 115-C; and North Carolina Policies Governing Services for Children with Disabilities.
41. **State Complaint** — A signed, written complaint stating that a public agency has violated a procedural requirement of the Individuals with Disabilities Education Improvement Act (IDEA) or the North Carolina laws about special education.
42. **State Educational Agency (SEA)** — The North Carolina Department of Public Instruction (NCDPI).

Notes: