

# MASTERING THE MAZE

## The Special Education Process



### Process 5: IEP Meeting to Amend the Annual IEP

Alabama State Department of Education  
Office of Learning Support  
Special Education Services  
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Alabama State Department of Education, Michael Sentance, J.D., LL.M., State Superintendent of Education

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## TABLE OF CONTENTS

<b>Acronyms .....</b>	<b>2</b>
<b>Individualized Education Program (IEP) Team Membership .....</b>	<b>5</b>
<b>Process Chart 5: IEP Meeting to Amend Annual IEP.....</b>	<b>6</b>
Things to Remember When Going Through Process 5.....	7
<b>Written Agreement Between the Parent and the Public Agency to Amend the IEP.....</b>	<b>8</b>
Things to Remember When Using Written Agreement.....	9
<b>Annotate Process .....</b>	<b>10</b>
<b>Record of Access to Student Records .....</b>	<b>11</b>
Guide for When Using This Record to Access Student Records.....	12
<b>Special Education Rights Under the IDEA .....</b>	<b>13</b>
Guide for When Completing Special Education Rights.....	26
<b>Notice and Invitation to a Meeting/Consent for Agency Participation.....</b>	<b>27</b>
Guide for When to Notice and Invitation to a Meeting/Consent for Agency Participation.....	28
<b>Notice of Proposal or Refusal to Take Action.....</b>	<b>31</b>
Guide for When to Notice of Proposal or Refusal to Take Action.....	32
<b>Persons Responsible for IEP Implementation.....</b>	<b>34</b>
Guide for When to Use Persons Responsible for IEP Implementation.....	35
<b>Frequently Asked Questions: Process 5.....</b>	<b>36</b>

## ACRONYMS

AAA	Alabama Alternate Assessment
AAC	<i>Alabama Administrative Code</i>
ABA	Applied Behavior Analysis
ADA	<i>Americans with Disabilities Act</i>
ADD	Attention Deficit Disorder
ADHD	Attention Deficit Hyperactivity Disorder
ADRS	Alabama Department of Rehabilitation Services
AEIS	Alabama's Early Intervention System
ALSDE	Alabama State Department of Education
AMSI	Alabama Middle School Initiative
AMSTI	Alabama Math, Science & Technology Initiative
APR	Annual Performance Report
ARFI	Alabama Reading First Initiative
ARI	Alabama Reading Initiative
AT	Assistive Technology
AUT	Autism
BCBA	Board Certified Behavior Analyst
BIP	Behavioral Intervention Plan
CCRS	College and Career Ready Standards
CRS	Children Rehabilitation Services
CEIS	Coordinated Early Intervening Services
DB	Deaf-Blindness
DD	Developmental Delay
DIBELS	Dynamic Indicators of Basic Early Literacy Skills
DPH	Due Process Hearing
ED	Emotional Disability
eGAP	Electronic Grant Application Process
EI	Early Intervention
EL	English Learners
ELPP	Early Learning Progress
ESA	Educational Service Agency

## ACRONYMS

ESY	Extended School Year
FAPE	Free Appropriate Public Education
FBA	Functional Behavioral Assessment
HI	Hearing Impairment
IAES	Interim Alternative Educational Setting
ID	Intellectual Disability
IDEA	<i>Individuals with Disabilities Education Act</i>
IEE	Independent Educational Evaluation
IEP	Individualized Education Program
IFSP	Individual Family Service Plan
LEA	Local Education Agency
LEP	Limited English Proficiency
LRE	Least Restrictive Environment
MD	Multiple Disabilities
MDR	Manifestation Determination Review
OHI	Other Health Impairment
OI	Orthopedic Impairment
O&M	Orientation and Mobility
OSEP	Office of Special Education Program
OT	Occupational Therapy/Therapist
PBS	Positive Behavioral Supports
PST	Problem Solving Team
PT	Physical Therapy/Therapist
RIC	Regional Inservice Center
SBMH	School Based Mental Health
SEA	State Education Agency
SES	Special Education Services
SETS	Special Education Tracking System
SLD	Specific Learning Disability
SLI	Speech or Language Impairment
SLP	Speech Language Pathologist

## ACRONYMS

SPP	State Performance Plan
SPDG	State Personnel Development Grant
SSR	Student Services Review
TA	Technical Assistance
TBI	Traumatic Brain Injury
UCP	United Cerebral Palsy
VI	Visual Impairment
VRS	Vocational Rehabilitation Services

AAC pages 525-526 (3) (a-i)
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The **IEP Team** is composed of the following:

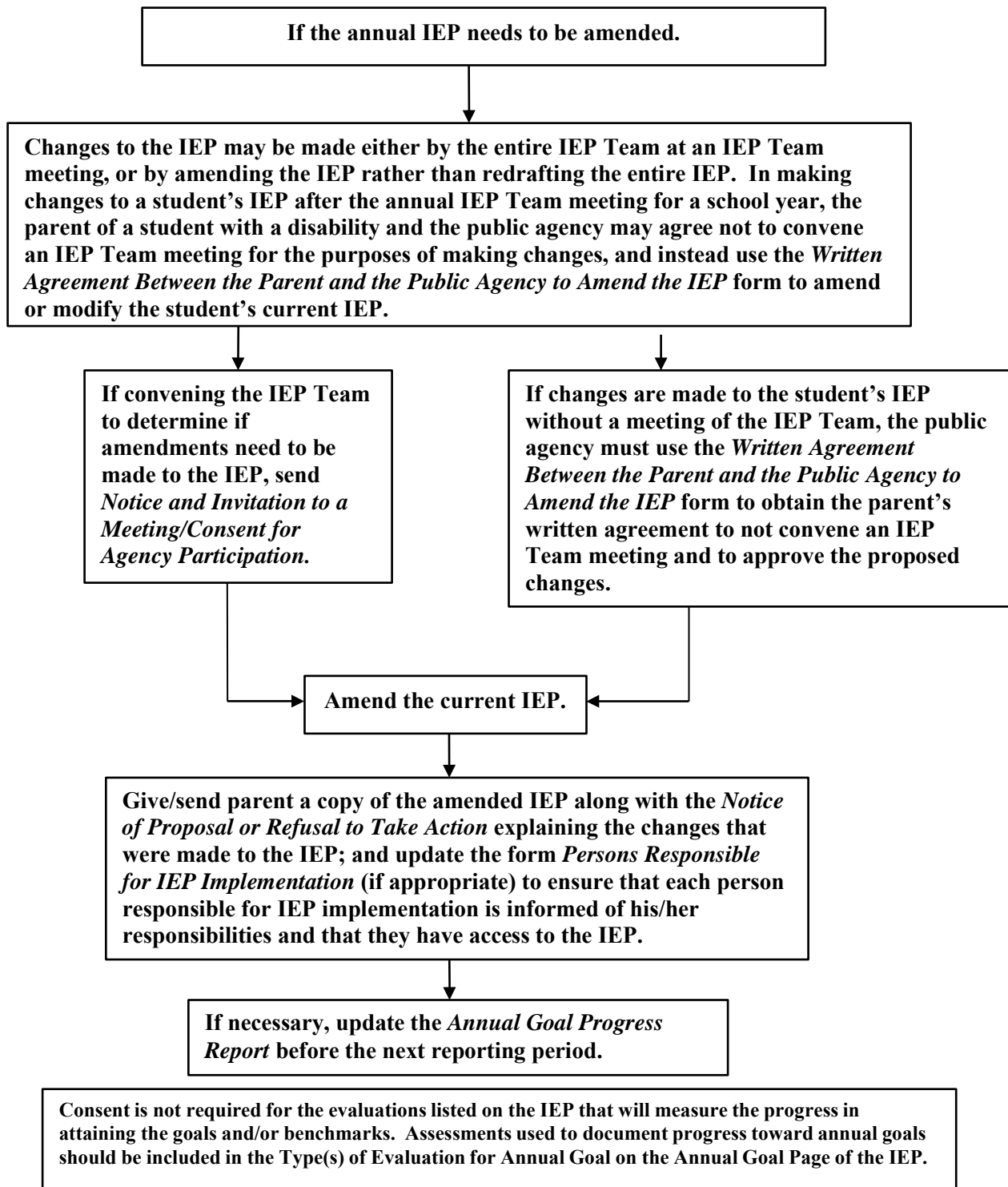
1. **The parent of the student with a disability.**
2. **Not less than one regular education teacher of the student** if the student is or may be participating in the regular education environment. The regular education teacher must, to the extent appropriate, participate in the development, review, and revision of the student's IEP, including assisting in the determination of appropriate positive behavioral interventions and supports and other strategies for the student and the determination of supplementary aids and services, program modifications, and supports for school personnel.
3. **Not less than one special education teacher of the student** or, where appropriate, not less than one special education provider of the student.
4. **\*A representative of the public agency** who is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities; is knowledgeable about the general education curriculum; is knowledgeable about the availability of resources of the public agency; and has the authority to commit agency resources and be able to ensure that IEP services will be provided. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the criteria for serving as a public agency representative are met.
5. **\*An individual who can interpret the instructional implications of evaluation results**, who may be a member of the IEP Team that is described in this section of required members of an IEP Team.
6. **At the discretion of the parent or the agency**, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate. The determination of the knowledge or special expertise of any individual is made by the party (parents or public agency) who invites the individual to be a member of the IEP Team.
7. **Whenever appropriate, the student with a disability.**
8. **Career/Technical Education Representative.** A representative of career/technical education must be included as a member of the IEP Team for those children with disabilities who have been referred for, or are currently receiving career/ technical education. The IEP of each secondary child with a disability must show any career/technical education program involvement, as well as needed accommodations and/or modifications made in the program.
9. **Secondary Transition Services Participants.** In addition to the participants specified above, if a purpose of the meeting is the consideration of the postsecondary goals for the student and the transition services needed to assist the student in reaching those goals, the public agency must invite the student and, with the consent of the parent or a student who has reached the age of majority, a representative of any other agency that is likely to be responsible for providing or paying for transition services. If the student does not attend the IEP Team meeting, the public agency must take other steps to ensure that the student's preferences and interests are considered.
10. **Early Intervention Representatives.** In the case of a child who was previously served under Part C/Early Intervention (EI), an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the EI service coordinator or other representatives of the EI system to assist with the smooth transition of services.

\*If an IEP Team Member is serving in two positions at a meeting (e.g., special education teacher is also serving as someone who can interpret the instructional implications of the evaluation results) he/she should sign his/her name by each position he/she is representing.



## Process Chart 5

### AMENDMENTS TO THE ANNUAL IEP



## PROCESS CHART 5

### AMENDMENTS TO THE ANNUAL IEP

#### Things to Remember When Going Through This Process

##### REMEMBER:

1. The required members of an IEP Team are outlined on page 4 of this document.
2. In making changes to a student's IEP after the annual IEP Team meeting for a school year, the parent of a student with a disability or student (age 19 and older) and the public agency may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or by amending the IEP rather than by redrafting the entire IEP. If changes are made to the student's IEP without a meeting of the IEP Team, the public agency must obtain the parent's or student's (age 19 and older) written agreement to such changes and must ensure that the student's IEP Team is informed of those changes. The proposed changes to the IEP must be enclosed with the *Written Agreement Between the Parent and the Public Agency to Amend IEP* and given to the parent. The parent or student (age 19 and older) shall be provided with a revised copy of the IEP with the amendments incorporated. The parent and student (age 19 and older) shall be provided with a copy of the signed written agreement form and the *Notice of Proposal or Refusal to Take Action* form explaining the amendments.
3. Amendments to the Annual IEP should be made to the existing IEP form.  
Here are the steps to follow in SETS when amending an IEP:
  - Click on "Edit".
  - Click on "Create Amendment".
  - Make the necessary changes to the IEP.
  - On the signature page record the date the copy of the amended IEP was provided to the parent.
  - On the signature page, remove the current signatures and dates and type in the new signatures and dates. This WILL NOT change the "Date of Most Recent Annual IEP Signature" in the Student Folder. (If using the form *Written Agreement Between the Parent and the Public Agency to Amend IEP* the signatures and dates should not be changed but the date the copy of the amended IEP was provided to the parent should still be recorded on the signature page).
  - Save the amendments to the IEP.
  - "Exit form."
  - "View Audit Trail" to review past signatures and dates.
4. Inform each teacher and service provider of his/her responsibilities for implementing the student's IEP and how to access the IEP and document that this has been done by having each person responsible sign the *Persons Responsible for IEP Implementation* form.
5. Develop *Annual Goal Progress Report*.  
If amendments to the **Measurable Annual Goals** have been made, in the Comments section of the *Annual Goal Progress Report*, enter the date of the reporting period the amendments were made and if the actual wording of a **Measurable Annual Goal** was changed. If a measurable annual goal is no longer needed or replaced with another goal, enter the reporting period and note that the goal was no longer needed with the amendment date.

## WRITTEN AGREEMENT BETWEEN THE PARENT AND THE PUBLIC AGENCY TO AMEND THE IEP

Student Name \_\_\_\_\_ Birth Date \_\_\_\_\_ Student ID # \_\_\_\_\_  
 School \_\_\_\_\_ Case Manager \_\_\_\_\_

In making changes to a student's IEP, the parent of a student with a disability and the public school system may agree not to convene an IEP Team meeting, and instead may develop a written document to amend or modify the student's IEP.

In order to make this proposed change to the IEP and not convene the IEP Team, your written agreement to make this change is needed. If you agree to the proposed change(s), your student's IEP Team members will be informed of the change(s). You will receive a copy of the revised IEP with the change(s) incorporated. Please check, sign, and date below, and return this form to your student's teacher.

**[ ] I approve the proposed enclosed change(s) to the annual IEP, and I do not wish to have a meeting.**

\_\_\_\_\_  
**Parent Signature**

\_\_\_\_\_  
**Date**

You have the right to request an IEP Team meeting to discuss this with school personnel. If you wish to have a meeting, please check, sign, and date below, and return this form to your student's teacher.

**[ ] I wish to request an IEP Team meeting to discuss this change.**

\_\_\_\_\_  
**Parent Signature**

\_\_\_\_\_  
**Date**

**Please return this form by** \_\_\_\_\_

\_\_\_\_\_  
 Signature of Education Agency Official

\_\_\_\_\_  
 Telephone Number

Date this form was provided/sent to the parent/student (age 19) \_\_\_\_\_

3>E673bbdahW" +!#\*!" +

## WRITTEN AGREEMENT BETWEEN THE PARENT AND THE PUBLIC AGENCY TO AMEND THE IEP

### **Purpose of this form:**

- To have documentation in writing from the parent or student (age 19 and older) that revisions may be made to the IEP (other than at the annual IEP Team meeting) without convening the IEP Team.

### **When to use this form:**

- To document making changes to the IEP (other than at the annual IEP Team meeting) without convening the IEP Team.

### **Things to remember when completing this form:**

- When making revisions to the IEP other than at the annual IEP Team meeting, the parent of a child with a disability or the student (age 19 and older) and the public agency may agree not to convene an IEP Team meeting for the purposes of making changes to the annual IEP. If changes are made to the child's IEP without a meeting of the IEP Team, the public agency must obtain the parent or student's (age 19 and older) written agreement to such changes before any changes are implemented.
- When making revisions to the IEP other than at the annual IEP meeting, the IEP revision(s) must be written on the student's IEP and dated. A completed copy of the IEP with the amendments incorporated must be filed with the student's education records, and the parent or student (age 19 and older) must be provided a revised copy of the IEP with the amendments incorporated, a copy of the signed written agreement form, and the *Notice of Proposal or Refusal to Take Action* form explaining the revisions.
- When making revisions to the IEP other than at the annual IEP Team meeting, the IEP Team, as well as anyone responsible for implementing the IEP, must be informed of changes to the IEP. The *Persons Responsible for IEP Implementation* form must be updated to reflect any changes in service providers and/or responsibilities.
- Remember to complete **Date copy of amended IEP provided/sent to parent/student (age 19)** on the signature page of the IEP.

### **What happens next:**

- A copy of the written agreement between the parent or student (age 19 and older) and the public agency must be given to the parent or the student (age 19 and older).
- A copy of the amended IEP must be given to the parent or the student (age 19 and older).
- A copy of the *Notice of Proposal or Refusal to Take Action* form must be given to the parent and the student (age 19 and older) explaining the changes/amendments.
- Document the date a copy of this form was provided to the parent/student (age 19) on the bottom of this form.

## Annotate Process

**Student Name:** \_\_\_\_\_ **SSID:** \_\_\_\_\_ **Date of Birth:** \_\_\_\_\_

**Name of Process:** \_\_\_\_\_ **Process Create Date:** \_\_\_\_\_

**All entries should have the entry date and the name of the person making the note.**

**Example: First Last name-xx/xx/xx- Notes**

## RECORD OF ACCESS TO STUDENT RECORDS

STUDENT'S NAME: \_\_\_\_\_

It is the policy of the Board of Education, in accordance with IDEA, to provide procedural safeguards that protect the individual confidentiality of all student records. The Board of Education authorizes the following categories of persons to review any personally identifiable data relating to students with disabilities:

### CATEGORIES OF PERSONS AUTHORIZED TO REVIEW DATA

1. Parents
2. Student
3. State Department of Education Representatives
4. Federal Education Agency Representatives
5. Local Education Agency Representatives\*
6. Other State Agency Representatives\*

\* Limited to those representatives who have a legitimate educational interest in the student's special education program.

Signature of Person Reviewing Record	Category 1-6	Reason for Review	Date of Review
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			

AAC page 539 (8)(d)(1)

SDE Approved 2/12/2007

## RECORD OF ACCESS TO STUDENT RECORDS

### **Purpose(s) of this form:**

- To document the name of the person reviewing the record, the reason for the review, and the date of the review.

### **When to use this form:**

- When a request is made for access to and disclosure of a special education student's records.

### **Things to remember when completing this form:**

- The special education records are confidential and must be kept in a secure location.
- Each special education student record must contain a *Record of Access to Student Records* form.
- The parent may inspect and review all educational records relating to identification, evaluation, educational placement, and provision of FAPE of his/her child that are collected, maintained, or used by the education agency.
- After providing written authorization to the education agency, the parent may have a representative review his/her child's records under the same access rights afforded to him/her.
- The local education agency is responsible for maintaining a log of each request for access to and disclosure of special education records.
- The parent, the student's teacher, and local education agency representatives are not required to sign each and every time the file is reviewed.
- If the records of a student contain information on more than one student, the parent or eligible student may inspect and review or be informed of only the specific information about that student.

### **What happens next:**

- The education agency must retain a copy of the student's records containing personally identifiable information for a period of five (5) years after the termination of the special education program for which they were used.
- At the end of the five-year retention period, special education records may be destroyed. To meet the notice requirement regarding the destruction of records, the education agency must inform the parent and student (that has reached the age of majority). This may be in the form of a public notice or in a letter to the parent and student (age 19 and older). Notice must include the years of the records that will be destroyed and the date of destruction.
- The education agency is not prohibited from retaining records indefinitely as long as confidentiality is ensured.

AAC pages 543-562

**SPECIAL EDUCATION RIGHTS**  
**UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)**

To \_\_\_\_\_ Date Provided \_\_\_\_\_

**You are receiving a copy of *Special Education Rights* (procedural safeguards) for the following reason(s):**

- |  |  |
|--|--|
| <input type="checkbox"/> Required annual copy                                  | <input type="checkbox"/> Parental request                                |
| <input type="checkbox"/> Initial referral/Parental request for evaluation      | <input type="checkbox"/> 1 <sup>st</sup> State complaint filed           |
| <input type="checkbox"/> Disciplinary action resulting in change of placement. | <input type="checkbox"/> 1 <sup>st</sup> Request for due process hearing |

**If you have questions or need further assistance in understanding these rights, please contact:**

\_\_\_\_\_ at \_\_\_\_\_  
 Name Telephone Number

Federal and state laws create specific rights for those eligible for SES. A copy of those rights must be given to parents only one time a year, except that a copy must also be given to the parents upon initial referral or parental request for evaluation, upon the first state complaint in a school year and upon the first request for a due process hearing in a school year, when a decision is made to the disciplinary action that constitutes a change of placement, and upon request by a parent. The following is an explanation of those rights. If you would like a further explanation of any of these rights, you may contact the individual named above the school principal the special education coordinator in your school system or the superintendent of schools. If you want another copy of your rights, have any questions, or wish to arrange a conference, please contact the individual named above.

**PRIOR WRITTEN NOTICE**

Your education agency must provide you with prior written notice within a reasonable time before it proposes or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education (FAPE). The notice must include a full explanation of all of the procedural safeguards available to you; a description of the action proposed or refused by the education agency; an explanation of why your education agency proposes or refuses to take the action; a description of other options considered by the Individualized Education Program (IEP) Team and the reasons why those options were rejected; a description of each evaluation procedure, assessment, record, or report the education agency used as a basis for the proposal or refusal; a description of any other factors which are relevant to the education agency's proposal or refusal; sources to contact to obtain assistance in understanding the rights for special education; a statement indicating that you have protection under the procedural safeguards; and if the notice sent to you is not the first referral for evaluation, the way by which you may obtain a copy of the procedural safeguards. The written notice must be understandable to the general public and provided in your native language or other mode of communication, unless it is clearly not feasible to do so. If your native language or other mode of communication is not a written language, your education agency must take steps to ensure that the notice is translated orally or by other means to you in your native language or other mode of communication; that you understand the content of the notice; that you are provided sources to contact to obtain assistance in understanding the information; and that there is written evidence that these requirements have been met. If your education agency offers parents the choice of receiving documents by e-mail, you may choose to receive prior written notice by e-mail. Written notice must be provided to you when your child graduates from high school with a regular diploma or exits because he or she has exceeded the age of eligibility for a free appropriate public education.



## **PARENTAL CONSENT**

Your education agency must obtain your informed written consent before conducting an initial evaluation, before the initial provision of special education and related services, or before obtaining additional data as part of a reevaluation. Your consent to an initial evaluation must not be construed as consent for initial provision of special education services and related services. The education agency may but is not required to use the state procedures for mediation and due process hearings to determine whether initial evaluations or reevaluations may be conducted when you have refused informed written consent. If the hearing officer upholds your education agency, the education agency may evaluate subject to your rights to appeal the decision and the child must remain in the current educational placement awaiting the decision of the appeal unless you and the education agency agree otherwise. If the parent of a child refuses to give consent to the initial provision of special education and related services, or fails to respond to a request for consent, the education agency shall not provide special education and related services to the child by utilizing due process hearing or mediation procedures. In this instance, the education agency will not be considered to be in violation of the requirement to make available a free appropriate public education to the child and is not required to convene an IEP Team meeting or develop an IEP for the child. The same applies if, subsequent to the initial provision of special education and related services, the parent revokes consent in writing and the public agency provides prior written notice before ceasing services. If the parent revokes consent in writing after the initial provision of services, the public agency is not required to amend the child's education record to remove any references to the child's receipt of special education and related services because of the revocation of consent.

Your education agency must obtain your informed consent before it reevaluates your child unless your education agency can demonstrate that it took reasonable steps to obtain your consent for your child's reevaluation and you did not respond. If you refuse to consent to your child's reevaluation, the education agency may, but is not required, pursue your child's reevaluation by using the mediation and/or due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, your education agency does not violate its obligations under Part B of the *Individual with Disabilities Education Act* (IDEA) if it declines to pursue the reevaluation in this manner. However, if after at least two attempts to obtain your consent for reevaluation you have not responded, the education agency may proceed with the reevaluation. Your consent is not required before your education agency may review existing data as part of your child's evaluation or a reevaluation, or give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children. An education agency may not use a parent's refusal to consent to one service or activity regarding initial evaluation for special education services to deny the parent or child any other service, benefit, or activity offered by the education agency for all children, except as required by this part. If you are the parent of a child who is home schooled or placed in a private school at your own expense, and you do not provide your informed written consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your informed written consent, the education agency shall not use its consent override procedures and it is not required to consider your child as eligible to receive equitable services. Your informed written consent or the informed written consent of an eligible child who has reached the age of majority (age 19) must be obtained prior to an IEP Team meeting before representatives of participating agencies who may be responsible for providing or paying for transition services may be invited to the IEP Team meeting.

## **TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY**

When a child with a disability reaches the age of majority under state law (age 19) that applies to all children (except for a child with a disability who has been determined to be incompetent under state law) the education agency must provide any notice required by this part to both the child and the parents; and all rights accorded to parents under Part B of the IDEA transfer to the child; all rights accorded to parents under Part B of the IDEA transfer to children who are incarcerated in an adult or juvenile state or local correctional institution; and whenever the rights have been transferred, the agency must notify the child and the parents of the transfer of rights.

## **INDEPENDENT EDUCATIONAL EVALUATION**

You have the right to an independent educational evaluation at public expense if you disagree with an evaluation obtained by your education agency. However, your education agency may request a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense. If you obtain an independent educational evaluation at private expense, the results of the evaluation must be considered by your education agency (if it meets agency criteria) in any decision made with respect to the provision of a free appropriate public education and may be presented as evidence at a due process hearing. If a due process hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation will not be at your expense. Each education agency shall provide you, on request, information about where an independent educational evaluation may be obtained and the criteria for the independent educational evaluation. Whenever an independent educational evaluation is at public expense, the standards under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the standards that the education agency uses when it conducts an evaluation. A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

## **DIFFERENCE BETWEEN STATE COMPLAINT AND DUE PROCESS HEARING PROCEDURES**

The regulations for Part B of IDEA set forth separate procedures for state complaints and for due process hearings. As explained below, any individual or organization may file a state complaint alleging a violation of any Part B requirement by an education agency, the ALSDE, or any other public agency. Only you or an education agency may file a due process hearing request 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 to the child. While staff of the ALSDE generally must resolve a state complaint within a 60 calendar day timeline, unless the timeline is properly extended, an impartial due process hearing officer must hear a due process hearing (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days after the end of the resolution period, unless the hearing officer grants a specific extension of the timeline at your request or the education agency's request.

## **STATE COMPLAINT PROCEDURES**

Any individual or organization has a right to file a signed written complaint alleging that a school system has violated the IDEA or 34 CFR Part 300 and the facts on which the statement is based; to present allegation(s) that occurred not more than one year prior to the date that the complaint is received; to submit additional information either orally or in writing about the allegations in the complaint; to a written decision within 60 calendar days that addresses each allegation in the complaint and contains findings of fact and conclusions and the reasons for the final decision; to an extension of the time limit only if exceptional circumstances exist with respect to a particular complaint; and to procedures for effective implementation of the final decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance. It is permissible for the timeline to be extended if the parent and the education agency agree to extend the timeline in order to participate in mediation to resolve the state complaint. The education agency will respond to the complaint allegations, at the discretion of the education agency, a proposal to resolve the complaint. An independent onsite investigation will occur as determined appropriate by the ALSDE, Special Education Services (SES) Section.

If requested, the ALSDE, Special Education Services, will provide you with a sample form for filing a state complaint.

You are not required to use the sample form, however your complaint must include: (1) A statement that a public agency has violated a requirement of Part B of the IDEA or of this part; (2) The facts on which the statement is based; (3) The signature and contact information for the complainant; and (4) If alleging violations with respect to a specific child: (a) The name 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 (within the meaning

of Section 725(2) of the *McKinney-Vento Homeless Assistance Act* (42 U.S.C. 11434a (2)), 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 at the time the complaint is filed.

A party filing a complaint must send it to the SES Section of the ALSDE. The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the ALSDE. If after reviewing the complaint, the SES determines that it includes all of the required information and is signed, the 60-day timeline begins on the workday that the SES received the complaint. A signature requirement is the same that a person would use for any other legal document such as a bank check or signing a contract. Exceptions may be made for persons without the ability to sign their name.

If a written complaint is received that is also the subject of a due process hearing or contains multiple issues of which one or more are part of that hearing, the state must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures required. If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties the due process hearing decision is binding on that issue; and the SEA must inform the complainant to that effect. A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.

## **STATE MEDIATION PROCEDURES**

You have the right to participate in mediation to resolve disagreements under IDEA with an education agency, whether or not you have requested a due process hearing or have filed a state complaint. The voluntary mediation will be scheduled by the ALSDE at no cost to you. A qualified impartial mediator trained in effective mediation techniques and selected by rotation will be provided and each mediation session will be scheduled in a timely manner and held in a location convenient to the parties in the dispute. The ALSDE must have a list of qualified mediators, and the mediators must be knowledgeable of the laws and regulations relating to special education and related services. The mediators may not be employees of the ALSDE or the education agency involved in the education or care of your child and must not have a personal or professional conflict of interest. You may participate without denial or delay of any other rights. If an agreement is reached, a legally binding written agreement that is signed by the parent and a representative of the education agency that has the authority to bind the education agency will state the resolution. All parties sign a confidentiality pledge prior to the beginning of the mediation process to assure confidentiality of mediation discussions and assurance that discussions may not be used as evidence in any later due process hearings or civil proceedings. The mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States. The education agency may develop procedures that offer an opportunity to meet with a disinterested party at a time and location convenient to you if you have chosen not to participate in mediation. The benefits of mediation will be explained by the disinterested party to encourage the use of mediation.

## **DUE PROCESS HEARING PROCEDURES**

You may request a due process hearing regarding the education agency's proposal or refusal to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education. If you request a hearing, you or your attorney must provide a copy of the written request (that must be kept confidential) to the other party and to the ALSDE. If requested, the ALSDE, Special Education Services Section, will provide you with a sample form for requesting a due process hearing.

You are not required to use the sample form; however, your request must include: (1) The name of the child; (2) The address of the residence of the child or available contact information in the case of a homeless child; (3) The name of the school the child is attending; (4) A description of the nature of the problem including facts relating to the problem that occurred within two years of the date the parent or the education agency knew or should have known about the alleged action that is the basis for the hearing request; and (5) A proposed resolution of the problem to the extent known and available to you at the time

you requested the hearing. The timeline shall not apply to a parent if the parent was prevented from requesting the hearing due to specific misrepresentations by the education agency that it had resolved the problem forming the basis of the written request; or the education agency's withholding of information from the parent that was required under this part to be provided to the parent. You or the education agency may not have a due process hearing until you (or your attorney), or the education agency, files a due process hearing request that includes all of the information listed above.

If after receiving the due process hearing request the SES Section determines that it includes all of the required information and is signed, the due process hearing will be initiated and the timeline begins on the workday received. A signature requirement is the same that a person would use for any other legal document such as a bank check or signing a contract. Exceptions may be made for persons without the ability to sign their name.

The party requesting the hearing shall not be allowed to raise issues at the hearing that were not raised in the written request for a hearing unless the other party agrees otherwise.

The education agency 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 education agency requests a hearing.

In order for a due process hearing to go forward, the request must be considered sufficient. The due process request will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the education agency) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above. Within five calendar days of receiving the notification that the receiving party (you or the education agency) considers a due process request insufficient, the hearing officer must decide if the due process request meets the content requirements, and notify you and the education agency in writing immediately.

You or the education agency may make changes to the hearing request only if the other party approves of the changes in writing and is given the chance to resolve the due process request through a resolution meeting, or no later than five days before the due process hearing begins, the hearing officer grants permission for the changes. If the complaining party makes changes to the due process request, the timelines for the resolution meeting and the time period for resolution start again on the date the amended request is filed.

Within ten calendar days of receiving a copy of your request for a hearing, the education agency will provide you written notice addressing the concerns of the request for hearing, if it has not previously done so. The response must include an explanation of why the education agency proposed or refused to take the action raised in the due process request, a description of other options that the child's IEP Team considered and the reasons why those options were rejected, a description of each evaluation procedure, assessment, record, or report the education agency used as the basis for the proposed or refused action, and a description of the other factors that are relevant to the educational agency's proposed or refused action. However, providing this information does not prevent the education agency from asserting that the due process request was insufficient.

If the education agency files the due process hearing request, you must, within ten calendar days of receiving the request, send the education agency a response that specifically addresses the issues in the complaint.

Prior to the opportunity for a hearing, the education agency, within 15 calendar days of receiving the parents' request for a hearing, will convene a meeting with the parents and the relevant member or members of the IEP Team (as determined by the education agency and the parent), including a member who has decision-making authority on behalf of the education agency, and who have specific knowledge of the facts identified in the written request for a hearing. The education agency may not include an attorney of the education agency if an attorney does not accompany the parent. The purpose of the meeting is for the parents of the child to discuss their hearing issues and the facts that form the basis of the hearing request.

The education agency is then provided the opportunity to resolve the hearing issues unless the parents and the education agency agree in writing to waive such meeting or agree to use the mediation process. If a resolution is reached at the resolution meeting or mediation, the parties shall execute a legally binding agreement that is signed by both the parent and a representative of the education agency who has the authority to bind the education agency. This agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States. If the parties execute such an agreement, a party may void such agreement within three business days of the agreement's execution. If the education agency has not resolved the hearing issues to the satisfaction of the parents within 30 days of the receipt of the written request for a hearing, the hearing may occur and all the applicable timelines for a hearing will commence. A final hearing decision will be reached within 45 calendar days after the hearing timeline commences (i.e., after the 30-day timeline to resolve the issues has expired) unless the hearing officer grants a specific extension at the request of either party. A copy of the decision is mailed to each of the parties.

Except where you and the education agency have both agreed to waive the resolution process or to use mediation, failure of the parent to participate in the resolution meeting will delay the timelines for the resolution process and the due process hearing until the parent's agree to participate in a meeting. If after making reasonable efforts and documenting such efforts, the education agency is notable to obtain the parent's participation in the resolution meeting, the education agency may, at the end of the 30 calendar day resolution period, request that a hearing officer dismiss your due process request. Documentation of such efforts must include a record of the education agency's attempts to arrange a mutually agreed upon time and place, such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent and any responses received; and detailed records of visits made to the home or place of employment and the results of those visits. If the education agency fails to hold the resolution meeting within 15 calendar days of receiving notice of the parent's due process request or fails to participate in the resolution meeting, the parent may ask a hearing officer to order that the 45 calendar day due process hearing timeline begin.

If the parent and the education agency agree in writing to waive the resolution meeting, then the 45 calendar day timeline for the due process hearing starts the next day. After the start of mediation or the resolution meeting and before the end of the 30 calendar day resolution period, if the parent and the education agency agree in writing that no agreement is possible, then the 45 calendar day timeline for the due process hearing starts the next day. If the parent and the education agency agree to use the mediation process, at the end of the 30 calendar day resolution period both parties can agree in writing to continue the mediation until an agreement is reached. However, if either party withdraws from the mediation process, then the 45 calendar day timeline for the due process hearing starts the next day.

At a minimum a hearing officer must not be an employee of the state education agency or the local education agency that is involved in the education or care of the child or any person having a personal or professional interest that would conflict with his or her objectivity in the hearing. A person who otherwise qualifies to conduct a hearing is not an employee of the education agency solely because he or she is paid by the education agency to serve as a hearing officer. He or she must possess the knowledge and the ability to: understand the provisions of the IDEA, federal and state regulations pertaining to the IDEA, and legal interpretations by federal and state courts; conduct hearings in accordance with appropriate, standard legal practice; and render and write decisions in accordance with appropriate, standard legal practice.

Each education agency shall keep a list of the persons who serve as due process hearing officers. The list must include a statement of the qualifications of each of those persons.

Any party to a hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities except state law prohibits non-attorney representation; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; obtain a written or electronic verbatim record of the hearing; and obtain written, or at the option of the parents, electronic findings of fact and decisions at no cost. In addition, you have the right to have the child present, open the hearing to

the public, and have the hearing conducted at a time and place that is reasonably convenient to you at no cost. At least five business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and the recommendations based on the offering party's evaluation that the party intends to use at the hearing. A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluations or recommendations at the hearing without the consent of the other party.

### **CIVIL ACTION**

The decision of the hearing officer is final except that any party aggrieved by the findings and decision made in a due process hearing has the right to bring a civil action in any state court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. An aggrieved party must file a notice of intent to file a civil action with all parties to the hearing within 30 calendar days upon receipt of the decision of the hearing officer. A civil action in a court of competent jurisdiction must be filed within 30 days of the filing of the notice of intent to file a civil action.

A hearing officer's decision on whether the child received a free appropriate public education must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that the child did not receive free appropriate public education only if the procedural inadequacies interfered with the child's right to free appropriate public education, significantly interfered with the parent's opportunity to participate in the decision-making process regarding the provision of free appropriate public education to the child, or caused a deprivation of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering an education agency to comply with the procedural safeguards requirements.

Nothing in this part should be interpreted to prevent the parent from submitting a separate due process hearing request on an issue separate from a due process request already filed.

### **CHILD'S STATUS DURING PROCEEDINGS**

During the pendency of the resolution period, a due process hearing, or judicial proceeding, unless you and the state or your education agency agree otherwise, the child must remain in his or her current educational placement. If the hearing officer agrees with the parent that a change of placement is appropriate, that placement must be treated as an agreement between the state and the parent.

If the hearing involves an application for initial admission to public school, the child, with parental consent, must be placed in the public school until the completion of all the proceedings. If the hearing involves an application for initial services under Part B from a child transitioning from Part C to Part B and is no longer eligible for Part C services because the child turned three, the education agency is not required to provide the Part C services that the child was receiving. If the child is found eligible for special education and related services under Part B, and the parent consents to the initial provision of special education and related services, then the educational agency must provide those special education and related services that are not in dispute. However, if a parent requests a due process hearing regarding a disciplinary action, placement remains in the alternative education setting pending the decision of the hearing officer or until the expiration of the time period unless the parent and the education agency agree otherwise. A request for expedited hearing for discipline matters must occur within 20 school days of the date the hearing is requested, and the hearing officer must make a determination within ten school days after the hearing.

**State Enforcement Mechanisms.** For enforcement of a written agreement reached as a result of mediation or a resolution meeting, the State Education Agency (SEA) will allow other state enforcement mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a state court of competent jurisdiction or in a district court of the United States.

## **AWARD OF ATTORNEYS' FEES**

In any action or proceeding brought under Part B of the IDEA, the court may award reasonable attorneys' fees to a prevailing party who is the parent of a child with a disability; or to a prevailing party who is a state or local education agency against the attorney of a parent who files a hearing request or court case that is frivolous, unreasonable, or without foundation; or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or to a prevailing state or local education agency against the attorney of a parent, or against the parent if the parent's request or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or needlessly increase the cost of litigation. The fee shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished.

Attorneys' fees may not be awarded and related costs may not be reimbursed for services performed subsequent to the time of a written offer of settlement to the parent if the offer is made to the parent ten calendar days prior to the hearing; the offer is not accepted by the parent within ten calendar days; and hearing officer or court finds that the hearing decision obtained by the parents was not more favorable to the parents than the offer of settlement. Also, fees may not be awarded for attendance at any IEP Team meeting unless the meeting is convened as a result of the hearing officer's decision or court action. However, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. A resolution meeting is not considered an administrative hearing or court action for purposes of the attorney's fees provisions.

The amount of attorneys' fees awarded may be reduced if the parent or parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly prevailing rate in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; the time spent and legal services furnished were excessive considering the nature of the action or proceedings; or the attorney representing the parent did not provide to the education agency the appropriate information in the due process hearing request. The preceding items will not apply in any action or proceeding if the court finds that the state or local education agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of these rules.

## **ACCESS TO RECORDS**

Your education agency must permit you to inspect and review all education records of your child that are collected, maintained, or used by the participating agency under Part B of the IDEA. The participating agency must comply with a request without unnecessary delay and before any meeting regarding an individualized education program, or hearing relating to the identification, evaluation, educational placement, or provision of a free appropriate public education, or resolution session is conducted and in no case more than 45 days after the request has been made. Your right to inspect and review records includes your right to a response from the participating agency to reasonable requests for explanations and interpretations of the records; to have your representative inspect and review the records; and to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records. The participating agency may not charge a fee to search for or to retrieve information under this part, but may charge a fee for copies of records which are made for you under this part if the fee does not effectively prevent you from exercising your right to inspect and review those records. The agency may presume that you have authority to inspect and review records unless the agency has been advised that you do not have the authority under applicable state law governing such matters as guardianship, or separation, and divorce. If any education record includes information on more than one child, you may review only the information relating to your situation or be informed of that specific information. The participating agency must provide you, on request, a list of the types and locations of education records collected, maintained, or used by the participating agency. The participating agency must keep a record of parties obtaining access to education records collected, maintained, or used (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 review the records.

## **RIGHTS FOR CHILDREN**

Education agencies must afford to the child, rights of privacy similar to those afforded to parents regarding records taking into consideration the age of the child and type and severity of the disability. Although the rights of parents under the IDEA transfer to the child at the age of majority (age 19), the rights of parents regarding educational records under the *Family Educational Rights and Privacy Act* (FERPA) at 34 CFR Part 99 transfer to the child at age 18.

## **CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION**

Your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Your consent or the consent of an eligible child who has reached the age of 19 must be obtained before personally identifiable information is released to officials of participating agencies responsible for providing or paying for transition services. Also, if your child is in or is going to go to a private school that is not located in the same LEA you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the LEA where the private school is located and officials in the LEA where you reside.

## **AMENDMENT OF RECORDS AT PARENT'S REQUEST**

If you believe that information in your child's education records collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of the child, you may request that the education agency that maintains the information amend the information. The participating agency must decide whether to amend the information in accordance with your request within a reasonable period of time of receipt of the request. If the participating agency decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and advise you of your right to a hearing. The participating agency shall, on request, provide an opportunity for a hearing, which complies with FERPA procedures, to challenge information in your child's education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights. If, as a result of the hearing, it is determined that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, the participating agency must amend the information accordingly and so inform you in writing. If, as a result of the hearing, it is determined that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights, the participating agency must inform you of the right to place in the records it maintains on your child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the participating agency. Any explanation placed in the records must be maintained by the participating agency as part of the record as long as the record or the contested portion is maintained by the participating agency. If the records or the contested portion are disclosed by the participating agency to any party, the explanation must also be disclosed to the party.

**DESTRUCTION OF INFORMATION** You must be informed by the public agency when personally identifiable information collected, maintained, or used under Part B of the IDEA is no longer needed to provide education services to your child. The information must be destroyed at your request. However, a permanent record of a student'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. Information must be destroyed in a manner that maintains confidentiality.

## **CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FREE APPROPRIATE PUBLIC EDUCATION IS AT ISSUE**

Part B of the IDEA does not require an LEA 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 LEA made FAPE available to your child and you choose to place the child in a private school or facility. However, the public agency 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. Disagreements between the parents and the public agency regarding the availability of a program appropriate for the child and the question of financial reimbursement, are subject to the due process procedures. If the parents of a child with a disability who previously received special education



and related services under the authority of an public agency enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment. The cost of reimbursement may be reduced or denied if at the most recent IEP meeting that the parents attended before removal of the child from the public agency, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or at least ten business days (including any holidays that occur on a business day) prior to the removal of the child from the public agency, the parents did not give written notice to the public agency that they were rejecting the offered placement; or prior to the parents' removal of the child, the public agency informed the parents of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or a judicial finding of unreasonableness with respect to actions taken by the parents is found. **EXCEPTION:** The cost of reimbursement shall not be reduced or denied for a parent's failure to provide such notice if the school prevented the parent from providing such notice, the parent had not received this document, or compliance with this requirement would likely result in physical harm to the child; and may in the discretion of a court or hearing officer not be reduced or denied for failure to provide such notice if the parent is not literate and cannot write in English; or compliance would likely result in serious emotional harm to the child.

## **DISCIPLINE**

**Authority of School Personnel.** School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

School personnel under this section may 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, for not more than ten consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement).

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, during any subsequent days of removal the education agency must provide services to the child with a disability who is removed from the child's current placement. The child must continue to receive educational services, so as to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP, and receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except that the child must continue to receive educational services. The educational services may be provided in an interim alternative setting.

An education agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for ten school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

After a child with a disability has been removed from his or her current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. If the removal is a change of placement, the child's IEP Team determines appropriate services.

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

The child's IEP Team determines the interim alternative educational setting for services. For purposes of removals of a child with a disability from the child's current educational placement, a change of placement occurs if the removal is for more than ten consecutive school days, including partial school days of a half day or more, or the child has been subjected to a series of removals that constitute a pattern because the series of removals total more than ten school days in a school year, because the child's behavior is substantially similar to the child's behavior in previous incidents of misconduct that resulted in the series of removals, and because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. The education agency (a minimum of an administrator and the student's special education teacher) determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

**Notification.** On the date that the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the education agency must notify the parents of that decision, and provide the parents with a copy of the *Special Education Rights*.

### **Manifestation Determination.**

1. Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the education agency, the parent, and relevant members of the child's IEP Team (as determined by the parent and the education agency) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct in question was the direct result of the education agency's failure to implement the IEP.
2. The conduct must be determined to be a manifestation of the child's disability if the education agency, the parent, and relevant members of the child's IEP Team determine that either condition is met.
3. If the education agency, the parent, and relevant members of the child's IEP Team determine that there was a failure to implement the IEP, the education agency must take immediate steps to remedy those deficiencies.

**Determination that Behavior was a Manifestation.** If the education agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must:

1. Conduct a functional behavioral assessment, unless the education agency had conducted a functional behavioral assessment during the previous 18 months 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, and
3. Return the child to the placement from which the child was removed, unless the parent and the education agency agree to a change of placement as part of the modification of the behavioral intervention plan.

**Special Circumstances.** School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Department of Education or an education agency.
2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Department of Education or an education agency.
3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Department of Education or an education agency.

**Definitions.** For purposes of this section, the following definitions apply:

1. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the *Controlled Substances Act* (21 U.S.C. 812(c)).
2. Illegal drug means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
3. Serious bodily injury has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of Section 1365 of Title 18, United States Code.
4. Weapon has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of Section 930 of Title 18, United States Code.

**Appeal.** The parent of a child with a disability who disagrees with any decision regarding disciplinary placement or the manifestation determination, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a due process hearing.

**Authority of Hearing Officer.** A hearing officer hears and makes a determination regarding an appeal under this section. In making the determination, the hearing officer may return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of disciplinary requirements, or that the child’s behavior was a manifestation of the child’s disability, or order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others. The procedures may be repeated, if the education agency believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

**Expedited Due Process Hearing.** Whenever a hearing is requested, the parents or the education agency involved in the dispute must have an opportunity for a due process hearing.

1. The Department of Education is responsible for arranging the expedited due process hearing due to disciplinary action, which must occur within 20 school days of the date the hearing request is filed. The hearing officer must make a determination within ten school days after the hearing.
2. Unless the parents and education agency agree in writing to waive the resolution meeting, or agree to use the mediation process, a resolution meeting must occur within seven calendar days of receiving notice of the due process hearing request.
3. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process hearing request.
4. The decisions on expedited due process hearings are appealable.

**Placement During Appeals.** When an appeal has been made by either the parent or the educational agency, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period, whichever occurs first, unless the parent and education agency agree otherwise.

**Protections for Children Not Determined Eligible for Special Education and Related Services.**

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the education agency had knowledge, as specified below, that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred if:

1. The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services.
2. The parent of the child requested an evaluation of the child.
3. The teacher of the child, or other personnel of the education agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

**Exception.** A public agency would not be deemed to have knowledge if the parent of the child has not allowed an evaluation of the child, or has refused services under this part, or the child has been evaluated and determined to not be a child with a disability under this part.

**Conditions that Apply if No Basis of Knowledge.**

1. If a public agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.
2. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
3. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the education agency and information provided by the parents, the education agency must provide special education and related services in accordance with this part.

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

Nothing in this part prohibits an agency from reporting an alleged crime committed by a child with a disability to appropriate authorities or prevents 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.

Whenever law enforcement or judicial authorities are contacted by a public agency personnel reporting an alleged crime committed by a child with a disability, the IEP Team must, within two weeks of the child's return to school setting:

1. If a public agency does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors. Conduct a functional behavioral assessment unless the LEA has conducted a functional behavioral assessment during the previous 18 months before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child, or
2. If the behavioral intervention plan already has been developed, review the behavioral intervention and modify it, as necessary, to address the behavior.

**Transmittal of Records.**

1. An agency reporting an alleged crime committed by a child with a disability must ensure that education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
2. An agency reporting an alleged crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the FERPA.

## SPECIAL EDUCATION RIGHTS UNDER THE IDEA

### **Purpose(s) of this form:**

- To fully inform the parent or student (age 19 and older) of his/her rights.

### **When to use this form:**

- The parent or student (age 19 and older) must be given a copy of the rights.
- When a student is initially referred for an evaluation or when the parent requests an evaluation.
- Upon receipt of the first state complaint in a school year.
- Upon receipt of the first due process hearing request in a school year.
- Not later than the date on which the decision is made to take disciplinary action resulting in a change of placement.
- Upon request by the parent.
- At least once a year (the ALSDE is requesting that LEAs provide a copy of the *Special Education Rights* at the annual IEP Team meeting and document the date provided on the signature page of the IEP).

**NOTE:** LEAs are no longer required to provide a copy of *Special Education Rights* with each notice.

### **Things to remember when completing this form:**

- Take time to explain these rights to the parent so that they make an informed decision.
- Explain the rights that apply at the time of the meeting.

**NOTICE AND INVITATION TO A MEETING / CONSENT FOR AGENCY PARTICIPATION**

To: \_\_\_\_\_ Date Notice Sent: \_\_\_\_\_

Name of Parent or Guardian

This notice is to invite you to a meeting for student \_\_\_\_\_ DOB : \_\_\_\_\_ to be held:

Meeting Date: \_\_\_\_\_ Time: \_\_\_\_\_ Location: \_\_\_\_\_

**The purpose of this meeting is to:**

- ☐ Determine if Referral requires Evaluation (Provide Special Education Rights)
- ☐ Discuss the Need for Additional Data Collection
- ☐ Determine Initial or Continued Eligibility
- ☐ Develop an Initial IEP
- ☐ Develop an Annual IEP or Revise the current IEP
- ☐ Conduct an Annual Review of the current IEP
- ☐ Discuss Transition / Postsecondary Services
- ☐ Conduct Manifestation Determination
- ☐ Develop Functional Behavioral Assessment Plan
- ☐ Develop/Revise/Discuss Behavioral Intervention Plan
- ☐ Conduct a Resolution Session
- ☐ Other Reason to meet: \_\_\_\_\_  
\_\_\_\_\_

**The following people will be invited to meet with us:**

- ☐ Local Education Agency (LEA) Representative
- ☐ Someone Who Can Interpret the Instructional Implications of the Evaluation Results
- ☐ General Education Teacher
- ☐ Special Education Teacher
- ☐ Parent
- ☐ Student notified on \_\_\_\_\_ via \_\_\_\_\_

- ☐ Career / Technical Representative
- ☐ Agency Representative(s) for Transition (with parental consent / student age 19)  
Agency Name(s): \_\_\_\_\_  
\_\_\_\_\_

Agency notified via: \_\_\_\_\_

on \_\_\_\_\_

☐ Other: \_\_\_\_\_☐ Other: \_\_\_\_\_

Because your input is important to us, we encourage you to make every effort to attend this meeting. If you would like to participate by phone, please call the person below to make arrangements. You may bring other people whom you feel will be helpful to you in this process. If your child is transitioning from Early Intervention, you may request that an invitation be sent to the Early Intervention Program for the *initial* IEP Team meeting.

If you require notice and an explanation of your rights in your native language, the LEA/agency will accommodate you to ensure your understanding. You are fully protected under the rights addressed in your copy of the *Special Education Rights* document. If you want another copy of your rights, have any questions, wish to arrange a conference, or need additional accommodations please contact:

\_\_\_\_\_ at \_\_\_\_\_ or \_\_\_\_\_  
Contact Name Telephone number Email me

**FOR SCHOOL PERSONNEL - Documented attempts to contact parent/student (age 19) for the IEP Team meeting.**Results of 1<sup>st</sup> Attempt: \_\_\_\_\_2<sup>nd</sup> Attempt Date: \_\_\_\_\_ Action / Result: \_\_\_\_\_**PARENT – STUDENT (Age 19 or older)****Please check one of the following boxes, sign, date, and return this form to the contact (above) before:** \_\_\_\_\_

- ☐ I **WILL** be able to meet with you on the scheduled date and time.
- ☐ I will **NOT** be able to meet on the scheduled date and time, but would like to reschedule, please contact me at \_\_\_\_\_
- ☐ I will **NOT** be able to attend the meeting. The meeting may proceed without me.

**Please check one of the following boxes if agency(s) were invited (see if checked above):**

- ☐ I **Give** consent for the representative(s) from the other transition agency(s) to attend the meeting.  
(Excluding the following agency(s): \_\_\_\_\_ )
- ☐ I **DO NOT** give consent for representative(s) from the other transition agency(s) to attend the meeting.

**Signature of Parent or Student (Age 19)** \_\_\_\_\_ **Date** \_\_\_\_\_

## NOTICE AND INVITATION TO A MEETING/CONSENT FOR AGENCY PARTICIPATION

### **Purpose(s) of this form:**

- To inform the parent and student (age 19 and older) of the purpose(s) of the IEP Team meeting and provide the parent or student (age 19 and older) with an opportunity to attend, participate by phone, etc.
- To document that the parent or student (age 19 and older) has been invited to an IEP Team meeting within a time frame that allows the parent or student (age 19 and older) time to respond and reschedule if necessary.
- To provide documentation that all required persons were invited to the meeting, including the student at age 16 and older. Students who will be age 16 during the implementation of the IEP must be invited to the IEP Team meeting even if they are age 15 at the time of the IEP Team meeting.
- To verify that the parent or student (age 19 and older) has received an invitation in their native language.
- To document attempts to contact the parent or student (age 19 and older) regarding the meeting.
- To inform the parent or student (age 19 and older) who to call to make arrangements if they would like to participate in the meeting by phone.
- To inform the parent of the right to have a representative from Part C attend the initial IEP Team meeting for a child transitioning from EI to preschool. The parent is responsible for informing the public agency that they want a representative from EI to be invited.
- To document consent of the parent or student (age 19 and older) to include or exclude other agency representatives who may be responsible for providing or paying for transition services if one of the purposes of the meeting is to consider transition services.
- To document an annual review of the current IEP.
- To document that the parent has been invited to the annual review meeting

### **When to use this form:**

- Send this form to the parent or student (age 19 and older) every time an IEP Team meeting is scheduled.
- Purposes of meetings:
  - Determine if Referral Requires Evaluation
  - Discuss the Need for Additional Data Collection
  - Determine Initial or Continued Eligibility
  - Develop Initial IEP
  - Review/Revise IEP
  - Annual Review/Develop Annual IEP
  - Discuss Transition/Postsecondary Services
  - Conduct Manifestation Determination
  - Develop Functional Behavioral Assessment Plan
  - Develop/Revise Behavioral Intervention Plan
  - Conduct a Resolution Session

### **Things to remember when completing this form:**

- The date, time, and location of the meeting should be documented at the top of the page.
- Check all possible purposes of the meeting before sending the invitation. Purpose(s) of the meeting for which the parent or student (age 19 and older) have not been provided in the invitation may not be addressed unless the parent or student (age 19 and older) is in attendance and agrees to discuss the unchecked item(s). If this occurs it should be documented.
- Invite all IEP Team members required for the purpose(s) of the meeting.
- If the parent or student (age 19 and older) requests to participate by phone, ask the parent or student (age 19 and older) to check **I WILL BE ABLE TO MEET WITH YOU**. Ensure that you have the number where the parent or student (age 19 and older) can be reached at the scheduled time of the meeting.
- Include a copy of the *Special Education Rights* if the purpose of the meeting is to determine if the referral requires an evaluation.
- Type the name of the person signing as the education agency official in the space provided when completing the form in SETS.

## NOTICE AND INVITATION TO A MEETING/CONSENT FOR AGENCY PARTICIPATION

(Continued)

- Record the date that the invitation was sent to the parent and student (age 19 and older) and the results. If there is no response (or if the response is to reschedule the meeting) after the first invitation is sent, a second contact must be made and the date of the contact recorded on this form. The action and results of the second contact must be documented.
- Agency representatives for transition who may be providing or paying for transition services may be invited to the IEP meeting but cannot attend without consent from the parent student (age 19 and older).**

### What happens next:

- If the parent or student (age 19 and older) checks “I **WILL** be able to meet with you on the scheduled date and time,” no further action is required with this form. If the parent or student (age 19 and older) checks this option, but does not attend the meeting or is not available by phone as scheduled, the meeting may be held with the other required IEP Team members.
- If the parent or student (age 19 and older) checks “I **WILL NOT** be able to meet on the scheduled date and time, but would like to reschedule, please contact me at \_\_\_\_\_,” document this in the **Results** space and reschedule the meeting at mutually agreed upon time and place.
- If the parent or student (age 19 and older) checks “I **WILL NOT** be able to attend the meeting. The meeting may proceed without me,” hold the meeting as scheduled with the other required IEP Team members.
- If the parent or student (age 19 and older) does not respond to two attempts (first and second notice) the public agency may conduct the meeting. The first invitation must be sent/given to the parent or student (age 19 and older) and may be followed up with a phone call, e-mail, etc. A second invitation if needed should be sent/given to the parent or student in an attempt to schedule the meeting and may be followed up with a phone call, e-mail, etc.
- If the parent or student (age 19 and older) checks, “I **Give Consent** for the representative from the other transition agency(s) to attend the meeting, “the public agency should invite the transition agency representatives to attend the meeting. If the parent or student (age 19 and older) checks this option but the transition agency representatives do not attend the meeting as scheduled, the meeting may be held with the other required IEP Team members
- If the parent or student (age 19 and older) excludes transition agency(s) the public agency may not include the transition agency representatives in the meeting.
- If the parent or student (age 19 and older) checks “I **DO NOT** give consent for representatives from the other transition agency(s) to attend the meeting,” the transition agency representative may not be invited to attend the meeting.
- If the parent or student (age 19 and older) does not respond to two attempts (first and second invitation) regarding consent for transition agency representatives to attend the meeting the public agency may conduct the meeting but must not invite the agency representatives for transition.
- If the purpose of the meeting was to determine if the referral requires evaluation and the referral is accepted, the parent or student (age 19 and older) must sign the *Notice and Consent for Initial Evaluation* before any evaluation(s) may be conducted.

**Note: The date the public agency receives a signed *Notice and Consent for Initial Evaluation* begins the 60 calendar day timeline to complete the initial evaluation.**

- If the purpose of the meeting was to determine initial or continued eligibility, a copy of the *Notice and Eligibility Decision Regarding Special Education Services* must be provided to the parent and student (age 19 and older).
- If the purpose of the meeting was to discuss reevaluation, the parent and student (age 19 and older) must also be provided a copy of the *Notice of IEP Team’s Decision Regarding Reevaluation*. If additional data collection/evaluation(s) are required, the parent or student (age 19 and older) must then sign the *Notice and Consent for Reevaluation* form unless two attempts to gain consent with no response can be documented.



## NOTICE AND INVITATION TO A MEETING/CONSENT FOR AGENCY PARTICIPATION

- If the purpose of the meeting was to develop the initial IEP, the parent or student (age 19 and older), must receive an invitation to the meeting using the *Notice and Invitation to a Meeting/Consent for Agency Participation*. The first invitation must be sent/given to the parent or student (age 19 and older) and may be followed up with a phone call, e-mail, etc. A second invitation if needed should be sent/given to the parent or student in an attempt to schedule the meeting and may be followed up with a phone call, e-mail, etc.
- If the purpose of the meeting was to conduct the annual review of the current IEP, the IEP Team must schedule an annual review meeting, but may not rewrite the IEP at that time. A meeting must be held by the annual review date to review the current IEP that will not expire until the TO date.
- If the purpose of the meeting was to develop/review/revise the IEP, the IEP Team will create the annual IEP, review or revise the current IEP. The parent or student (age 19 and older), must receive an invitation to the meeting using the *Notice and Invitation to a Meeting/Consent for Agency Participation*.
- If the purpose of the meeting was to discuss transition/postsecondary services, the student age 16 and older must receive an invitation to the IEP Team meeting. In the state of Alabama, transition must be addressed for students entering ninth grade.
- If the purpose of the meeting was to conduct a manifestation determination, the LEA, parent and relevant team members of the IEP Team (as determined by the parent and the LEA) must meet within 10 days to review all relevant information regarding the student's behavior and to determine whether the behavior in question is or is not a manifestation of the student's disability.
- If the purpose of the meeting is to develop/revise/discuss Behavioral Intervention Plan, the required IEP Team members must meet to determine the problem behavior, develop positive behavioral supports, strategies, and interventions to reduce occurring behaviors. The IEP Team can meet to discuss and or revise the behavior intervention plan as appropriate.
- If the purpose of the meeting was to conduct a resolution session, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge or facts identified in the due process hearing request. The purpose of the meeting is for the parents of the child to discuss the due process hearing request and the facts that form the basis of the request so that the LEA has the opportunity to resolve the issue.

**All notices must be sent to the parent even after the rights have transferred to the student at age 19. The notice and invitation must be sent to the parent or the student (age 19 and older) whichever one has IDEA decision making rights.**

# NOTICE OF PROPOSAL OR REFUSAL TO TAKE ACTION

The IEP Team has met to consider the following, regarding the educational program for:

STUDENT'S NAME: \_\_\_\_\_

- |  |   |                                    |                                |
|--|---|------------------------------------|--------------------------------|
| <input type="checkbox"/> Identification              | <input type="checkbox"/> Evaluation                                     | <input type="checkbox"/> Placement | <input type="checkbox"/> Other |
| <input type="checkbox"/> LEA Response to DPH Request | <input type="checkbox"/> Provision of Free Appropriate Public Education | <input type="checkbox"/> Other     |                                |

## DECISION REGARDING SPECIFIC ACTION PROPOSED OR REFUSED.

**It has been decided that action will be taken by the local education agency.**

Check one:

- ☐ The local education agency will take the proposed action immediately and without undue delay.
- ☐ The local education agency's proposed action will be taken in \_\_\_\_\_ calendar days to afford the parent a reasonable period of time to consider the proposed action.

## BASIS FOR DECISION(S)

## DESCRIPTION OF OTHER OPTIONS CONSIDERED AND WHY THE OPTIONS WERE REJECTED

## THE FOLLOWING EVALUATION PROCEDURES, ASSESSMENTS, RECORDS, AND/OR REPORTS WERE USED IN MAKING THE DECISION

- |                                       |                                      |   |   |
|---------------------------------------|--------------------------------------|---|---|
| <input type="checkbox"/> Vision       | <input type="checkbox"/> Observation | <input type="checkbox"/> Grades               | <input type="checkbox"/> Medical Records          |
| <input type="checkbox"/> Hearing      | <input type="checkbox"/> Speech      | <input type="checkbox"/> Developmental Scales | <input type="checkbox"/> Other Agency Information |
| <input type="checkbox"/> Intellectual | <input type="checkbox"/> Language    | <input type="checkbox"/> Work Samples         | <input type="checkbox"/> State Assessments        |
| <input type="checkbox"/> Achievement  | <input type="checkbox"/> Motor       | <input type="checkbox"/> Discipline Records   | <input type="checkbox"/> Other                    |
| <input type="checkbox"/> Behavior     | <input type="checkbox"/> Interview   | <input type="checkbox"/> Attendance Reports   | <input type="checkbox"/> Other                    |

My signature below verifies that if you require notice and an explanation of your rights in your native language, the LEA/agency has accommodated you to ensure your understanding. You are fully protected under the rights addressed in your copy of the *Special Education Rights* document. If you want another copy of your rights, have any questions, or wish to arrange a conference, please contact:

\_\_\_\_\_ at \_\_\_\_\_  
 (Name) (Telephone)

Signature of Education Agency Official

Date Provided/Sent: \_\_\_\_\_

## **NOTICE OF PROPOSAL OR REFUSAL TO TAKE ACTION**

### **Purpose(s) of this form:**

- To document that prior written notice has been provided to the parent each time the LEA proposes to, or refuses to, initiate or change the identification, evaluation, placement, and/or provision of a free appropriate public education (FAPE) to a student with a disability.
- To document the IEP Team's decision **not** to accept a referral for an evaluation to determine eligibility for special education services.
- To document the IEP Team's decision not to provide the special education/related service an IEP Team member is requesting to be included in the IEP.
- To document the IEP Team's decision to change the placement of the student.
- To document that the student will not be returning to school the next school year because the student:
  - Will be graduating from high school with the Alabama High School Diploma (AHSD).
  - Will be age 21 prior to August 1 of the next school year.
- To document that the parent and student have been notified that the student who has reached the age of majority (age 19) and is exiting school before age 21 and who has not earned the AHSD, still has the right to receive services to age 21.
- To document the LEA's response to a DPH request when the public agency did not provide a notice prior to the DPH request.
- To document minor changes on an IEP (i.e., misspelled words, grammatical errors). Check with your local special education coordinator for permission to use this process to make minor changes to the IEP.
- To document corrective actions after an internal/ALSDE monitoring review.
- To document that the parent or student (age 19 and older) has revoked consent for the provision of special education services.
- To document the new IEP being proposed.
- To document that an out-of-state IEP is being implemented until such time eligibility is determined in Alabama.
- To document the time frame in which action will be taken by the education agency regarding the stated decision.
- To document the IEP Team conducted an Annual Review Meeting.

### **When to use this form:**

- To indicate when the stated action will be implemented by the education agency either immediately and without undue delay or a number of calendar days to afford the parent a reasonable period of time to consider the proposed action.
- To indicate to the parent and student (age 19 and older) when the public agency proposes to, or refuses to, initiate or change the identification, evaluation, placement, and/or the provision of a free appropriate public education.
- When the IEP Team has decided not to evaluate the student when the student is initially referred for an evaluation (check Identification and Evaluation).
- When the IEP Team refuses to provide a service requested by an IEP Team member (check Provision of Free Appropriate Public Education).
- When the IEP Team is proposing to change the placement of the student (check Placement and Provision of Free Appropriate Public Education).
- Whenever the IEP is amended and when an annual IEP is developed.
- To provide prior notice of the student exiting school because of graduating with the AHSD or reaching age 21 prior to August 1 (check Placement and Provision of Free Appropriate Public Education).
- To provide documentation to the parent and student who has reached the age of majority (age 19) that the student who is exiting school before age 21 and who has not earned the AHSD, still has the right to receive services to age 21.
- When the IEP Team conducts an annual review of the current IEP.

## NOTICE OF PROPOSAL OR REFUSAL TO TAKE ACTION

- To give the completed form to the parent and student (age 19 and older) when a DPH request is received and this form has not been provided prior to the DPH request (check all that apply).
- To document minor changes on an IEP. Seek guidance from the local special education coordinator.
- To document minor corrections found during internal monitoring/ALSDE monitoring. Seek guidance from the local Special Education Coordinator. Examples are as follows:
  - A required evaluation was administered and considered by the IEP Team or Eligibility Committee but was omitted from the eligibility report.
  - A copy of the eligibility report was not given or sent to the parent and student (age 19 and older).
  - A copy of the IEP was not given or sent to the parent and student (age 19 and older).
  - The date of birth was recorded incorrectly on the IEP.
- Do **not** use this form to request additional data collection/evaluation. For this request, the IEP Team must meet and document the decision on the *Notice of IEP Team's Decision Regarding Reevaluation*.

### **Things to remember when completing this form:**

- Prior written notice must be provided in a timely manner. In the case of a proposal or refusal to take action this will allow the parent a reasonable time to fully consider the changes and respond to the action before it is implemented.
- Type the name of the person signing as the education agency official in the space provided when completing the form in SETS.

### **What happens next:**

- If action is required by the public agency regarding the decision, the action will be taken in the specified number of calendar days unless the IEP Team and parent agree otherwise that the proposed action will take place immediately without undue delay.
- Even if the parent was in attendance at the meeting you still need to give/send prior written notice to the parent and student (age 19 and older) when the public agency proposes to, or refuses to, initiate or change the identification, evaluation, placement, and/or the provision of a free appropriate public education. This includes when the IEP is developed or reviewed annually and any time the IEP is amended.



## PERSONS RESPONSIBLE FOR IEP IMPLEMENTATION (Required Form in SETS)

### **Purpose(s) of this page:**

- To document that each regular education teacher, special education teacher, case manager, related service provider (e.g., bus driver, OT, and PT) and any other service provider who is responsible for implementation of the IEP has access to the student's IEP.
- To document that each teacher and service provider has been informed of his or her specific responsibilities related to implementing the student's IEP.
- To document that each teacher and service provider has been informed of specific accommodations, modifications, and supports that must be provided for the student.
- To document that changes were made to the current IEP through an amendment process and that each teacher and service provider has been informed of his or her specific responsibilities related to implementing the student's IEP.

### **When to use this form:**

- This form must be completed for every student who has an IEP.
- This form may be completed at the end of an IEP Team meeting. If not completed at the IEP Team meeting, the form should be completed immediately following the meeting or at the beginning of the school year.
- This form must be completed when teachers and/or service providers change to ensure that the person now responsible for implementing the IEP has been informed of his/her responsibilities and he/she understands access to the student's IEP must be made available (e.g., amend the IEP, change of schedules).

### **Things to remember when completing this form:**

- Ensure every service provider and teacher is informed of his/her responsibilities for implementing the IEP.
- Ensure every teacher and service provider understands they have access to the IEP.
  - This does not require every teacher and service provider to be provided a copy of the IEP.
  - Every teacher and/or service provider **must** have access to the IEP and may receive a copy of the IEP in whole or in part that reflects their area of responsibility in implementing the IEP.
  - The IEP is a confidential record and must be protected at all times.
- Ensure the student's name is included in the space provided.
- Ensure the school year is included in the space provided.
- Ensure each person who signs this page includes the date of signature and his/her position.
- Ensure the person responsible for informing school personnel of their responsibility signs in the space provided.
- All service providers who are responsible for implementation of the IEP **must** sign this page.
- Type in the name of each person responsible for implementing the IEP in the space provided when completing the form in SETS. A copy with original signatures must be kept on file.

### **What happens next:**

- Implement the IEP as written.
- If the IEP is amended or a student's schedule changes, the persons responsible for IEP implementation affected by the changes must be informed of his/her responsibilities and new signatures obtained.

# Process 5

IEP MEETING TO AMEND THE ANNUAL IEP

Frequently Asked Questions

**5-1. Can Measurable Annual Goals and/or Benchmarks be changed without initiating another IEP Team meeting?**

Changes in the IEP can only be made through an IEP Team meeting or through the allowable amendment process. Regardless, notice must be provided to the parent explaining the changes made.

**5-2. Is it permissible for the public agency to have the IEP completed before the IEP meeting begins?**

No. Public education agency staff may come to an IEP meeting prepared with evaluation findings and proposed recommendations regarding the IEP content, but the public agency must make it clear to the parent at the beginning of the meeting that the services proposed by the public agency are only recommendations for review and discussion by the IEP Team. Best practice would be to seek input from the parent prior to the meeting and/or send a draft of the IEP to the parent so he/she has time to review the proposed IEP prior to the meeting.

**5-3. Who should have a copy of the IEP?**

The special education teacher and/or case manager of the student must have a copy of the IEP. The public agency is also required to provide a copy of the IEP to the parent at no cost. Others responsible for implementing parts of the IEP (e.g., regular education teacher(s), related service providers, and any other service provider) must be informed of their specific responsibilities related to implementing the IEP and the accommodations, modifications, and supports that must be provided in accordance with the student's IEP. The IEP must be "accessible" to these other providers but it is not a requirement that a personal copy of the entire IEP be provided. If a personal copy of the IEP is provided to other service providers, they must be made aware that the IEP document in whole or in part must be protected in a secure location and treated as a confidential document.

**5-4. Should a paraprofessional assigned to a student sign the *Persons Responsible for IEP Implementation*?**

Yes. Each regular education teacher, special education teacher, related service providers, and any other service provider must first be informed of his or her specific responsibilities related to implementing the student's IEP and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP. Secondly, once informed of his or her responsibilities, each individual responsible for the implementation of the student's IEP must sign the form *Persons Responsible for IEP Implementation*. The student's case manager must keep a copy of the form *Persons Responsible for IEP Implementation* with the individual signatures on file.

**5-5. Is a parent signature required on the IEP?**

There is not a requirement in the IDEA statute or the federal regulations that a parent sign an IEP for it to be implemented. The parent signature is a way of documenting parent participation.

**5-6. If a parent participated in the IEP meeting via conference call, should a signature page for the IEP be mailed to the parent for their signature?**

No. Simply document how the parent participated in the IEP Team meeting in the space provided for the parent signature. The parent must be provided a copy of the IEP.

**5-7. What must be considered when an IEP is developed, reviewed, or revised?**

In developing each student's IEP, the IEP Team must consider the strengths of the student; the concerns of the parent for enhancing the education of the child; the student's preferences and/or interests; the results of the initial or most recent evaluation of the student; and the academic, developmental, and functional needs of the student. The IEP Team must also consider "special instructional factors" for the student each time the IEP is reviewed.



**5-8. If the parent and the public agency are unable to reach agreement at an IEP meeting, what steps should be followed until agreement is reached?**

The IEP Team meeting serves as a communication vehicle between the parent and school personnel, and enables them, as equal participants, to make joint, informed decisions regarding the: (1) child's needs and appropriate goals; (2) extent to which the child will be involved in the general education curriculum and participate in the regular education environment and state and districtwide assessments; and (3) services needed to support that involvement and participation, and to achieve agreed-upon goals. The parent is considered an equal partner with school personnel in making these decisions; and, the IEP Team must consider the parent's concerns and the information provided by the parent regarding the child in developing, reviewing, and revising IEPs. The IEP Team should work toward consensus, but the public agency has ultimate responsibility to ensure that the IEP includes the services that the student needs in order to receive FAPE. It is not appropriate to make IEP decisions based upon a majority "vote." If the IEP Team cannot reach consensus, the public agency must provide the parent with prior written notice of the public agency's proposals or refusals, or both, regarding the student's education program, and the parent has the right to seek resolution of any disagreements by initiating an impartial due process hearing. Every effort should be made to resolve differences between the parent and school staff through voluntary mediation or some other informal step, without resorting to a due process hearing. However, mediation or other informal procedures may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under the IDEA.

**5-9. When should extended school year (ESY) services be provided?**

The IEP Team must consider ESY services at least annually as part of the provision of FAPE. The ESY services must be provided only if a student's IEP Team determines that the services are necessary for the provision of FAPE. If ESY services are needed, the IEP must clearly specify which goals and services are being extended, the beginning and ending dates for services, the location, and the amount of time committed. **5-9. Do you have to develop a new IEP for each senior even if the annual review signature date is in March or April?**

No. According to OSEP, an "annual review" of the IEP must be conducted every 365 days. As long as the implementation/duration dates go to the last day of school, another IEP doesn't have to be written in March or April. **You do have to meet by the Annual Review Due date to review the current IEP.**

- On the *Notice and Invitation to a Meeting/Consent for Agency Participation* form select 'Conduct an Annual Review of the current IEP'. If the IEP will be revised also select 'Develop an Annual IEP or Revise the Current IEP'.
- Do not change the implementation/duration dates on the IEP profile page.
- Do amend the IEP signature page to add all participants in the meeting
- If revisions to the IEP are made, also fill out the *Notice of Proposal or Refusal to Take Action* form.

**5-10. What if the parent gets upset and leaves the IEP meeting?**

If the parent gets upset and leaves the IEP meeting, the meeting may continue. An IEP Team member should document that the parent was present during part of the meeting. Each IEP Team member should document his or her participation and position(s) he/she is serving in by signing and dating on the appropriate line(s). The parent must be provided a copy of the IEP as well as a *Notice of Proposal or Refusal to Take Action* form if this was an annual IEP Team meeting. If this was an IEP amendment meeting, the parent must receive a copy of the revised IEP and a *Notice of Proposal or Refusal to Take Action* form explaining the changes.

**5-11. What is the role of the parent at an IEP Team meeting?**

The parent should participate as an equal partner with school personnel in developing, reviewing, and revising the IEP. This is an active role in which the parent (1) provides critical information regarding the strengths of the child and expresses concerns for enhancing the education of the child; (2) participates in discussions about the student's need for special education and related services; and (3) joins with other participants in deciding how the student will be involved in the general education curriculum and participate in state and district- wide assessments, and what services will be provided and in what setting.

**5-12. What are the requirements for public agencies in regard to parent participation in the IEP Team meeting?**

Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including notifying the parent of the meeting early enough to ensure that he/she will have an opportunity to attend; and scheduling the meeting at a mutually agreed on time and place. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls or alternative means such as video conferences. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parent that he/she should attend. In this case, the public agency must keep a record of reasonable efforts (at least two attempts) to arrange a mutually agreed on time and place such as detailed records of telephone calls made or attempted and the results of those calls, copies of correspondence sent to the parent and any responses received, and detailed records of visits made to the parent's home or place of employment and the results of those visits. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting including arranging for an interpreter for a parent with deafness or whose native language is other than English. The public agency must provide the parent a copy of the child's IEP at no cost to the parent.

**5-13. Which related services provider should be invited to the IEP Team meeting?**

Any service provider(s) who is responsible for implementing services identified in the IEP may be invited to the IEP Team meeting. If the service provider(s) does not attend the meeting, the IEP Team should seek input from the service provider(s). The public agency must ensure that the service provider(s) is informed of his or her specific responsibilities related to implementing the student's IEP.

**5-14. Does a parent and public agency have the option of inviting any individual of their choice to be participants on a student's IEP Team?**

The parent or the public agency may include individuals who have knowledge or special expertise regarding the student. The determination as to whether an individual has knowledge or special expertise shall be made by the parent or public agency who has invited the individual. The public agency must get consent from the parent or a student who has reached the age of majority to invite transition agency representatives who would be responsible for providing or paying for transition services. The public agency also determines which individuals from the public agency will fill the required IEP Team member's position.

**5-15. If the parent indicates on the request to attend an IEP Team meeting that he/she will attend, but then calls the day before the meeting and wants to reschedule, what is the public agency's responsibility?**

The public agency has the responsibility to hold the IEP meeting at a mutually agreed upon time and location. Therefore, if the parent informs the public agency before the scheduled meeting that the time, date, or location needs to be changed, the public agency has the responsibility to reschedule the meeting. If after attempts to reschedule with the parent the rescheduling would prohibit the public agency from meeting a timeline (i.e., before the IEP lapses), the public agency should inform the parent that the IEP Team must meet before the specified timeline.

**5-16. If the parent indicates on the request to attend an IEP Team meeting that he/she will attend, but then does not come to the meeting, what is the public agency's responsibility?**

If the parent checks that he or she will meet as scheduled but does not attend, the meeting may be held as scheduled. Only the purposes of the meeting checked on the *Notice and Invitation to a Meeting/Consent for Agency Participation* form may be discussed.

**5-17. Who can serve as a public agency representative?**

Any representative of the public agency who:

- a. Is qualified to provide the provision of, specially designed instruction to meet the unique needs of the students with disabilities.
- b. Is knowledgeable about the general education curriculum.
- c. Is knowledgeable about the availability of resources of the public agency.
- d. Has the authority to commit agency resources and ensure that IEP services are provided.

A public agency may designate a public agency member of the IEP Team to serve as the agency representative, if the above criteria are satisfied.

**5-18. Must there be a public agency representative present at each IEP Team meeting?**

Yes. A representative of the public agency should be in attendance for each IEP Team meeting. However, according to the excusal clause a public agency representative is a member who may be excused. Special Education Services **highly** recommends that public agency representatives attend **all** IEP Team meetings.

**5-19. Which regular education teachers should attend the IEP Team meeting?**

A regular education teacher who has knowledge of the general education curriculum for the grade the student will be in during the implementation of the IEP and who may be a regular education teacher of the student (if the student is or may be participating in the regular education environment) should participate as a team member in the development, review, and revision of the IEP. If more than one regular education teacher will be working with the student, the public agency representative may designate who will attend the meeting. The IEP Team is encouraged to seek input from teachers who do not attend. Each public agency must ensure that the student's IEP is accessible to each regular education teacher who is responsible for its implementation and each teacher is informed of his or her specific responsibilities related to implementing the student's IEP; and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.

**5-20. Must those invited to the IEP Team meeting be present for the entire IEP meeting?**

A member of the IEP Team is not required to attend an IEP Team meeting, in whole or in part, if the parent of a student with a disability or student (age 19 or older) and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed at the meeting. A member of the IEP Team may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the parent, or student (age 19 or older), and the public agency consent to the excusal in writing; and the member submits, in writing to the parent or student (age 19 or older) and the IEP Team, input into the development of the IEP prior to obtaining consent for the excusal of the IEP Team member.

**5-21. If service providers such as Occupational Therapists and Physical Therapists cannot attend the IEP Team meeting, do they have to get consent in writing to be excused from IEP Team meetings?**

No. Only the required public agency IEP Team members must have written consent to be excused from the IEP Team meeting. The required public agency IEP Team members are as follows:

- a. Not less than one regular education teacher of the student (if the student is, or may be, participating in the regular education environment).
- b. Not less than one special education teacher of the student, or where appropriate, not less than one special education provider of the student.
- c. A representative of the public agency who:
  - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of students with disabilities.
  - Is knowledgeable about the general education curriculum.
  - Is knowledgeable about the availability of resources of the public agency.
  - Has the authority to commit agency resources and be able to ensure that IEP services will be provided.
- d. A public agency may designate a public agency member of the IEP Team to also serve as the agency representative, if the above criteria are satisfied.
- e. An individual who can interpret the instructional implications of results and who may already be one of the above mentioned IEP Team members. The IEP Team is encouraged to seek input from service providers who do not attend. Each public agency must ensure the student's IEP is accessible to each service provider who is responsible for its implementation and is informed of his or her specific responsibilities related to the implementation of the student's IEP; and the specific accommodations, modifications, and supports that must be provided for the student in accordance with the IEP.