

AMENDMENTS TO “YOUR RIGHTS UNDER THE IDEA”

Effective July 1, 2005

NOTICE

The provisions of this section are unchanged.

CONSENT

The provisions of this section are unchanged.

EVALUATION AND PLACEMENT

The provisions of this section are unchanged except as follows:

A parent may initiate a request for an initial evaluation to determine if the child is a child with a disability, consistent with the parental consent requirement.

Such initial evaluation shall consist of procedures to determine whether a child is a child with a disability within 60 days of receiving parental consent for the evaluation, or, if the State establishes a timeframe within which the evaluation must be conducted, within such time frame.

The 60-day time frame shall not apply to a local educational agency if—

- 1) a child enrolls in a school served by the local educational agency after the timeframe has begun and prior to a determination by the child’s previous local educational agency as to whether the child is a child with a disability, but only if the subsequent local educational agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent local educational agency agree to a specific time when the evaluation will be completed; or
- 2) the parent of a child repeatedly fails or refuses to produce the child for the evaluation.

The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered an evaluation for eligibility for special educational and related services.

The parent of a child with a disability and a local educational agency may agree to use alternative means of participation, such as video conferences and conference calls, in IEP team meetings and placement meetings.

REEVALUATION

The provisions of this section are unchanged except as follows:

The parent and the local educational agency may agree to a reevaluation of a child with a disability more frequently than once a year.

A reevaluation of the student must be conducted at least once every 3 years, unless the parent and local education agency agree that a reevaluation is not necessary.

INDEPENDENT EDUCATIONAL EVALUATION

The provisions of this section are unchanged.

RECORDS

The provisions of this section are unchanged.

CONFIDENTIALITY OF INFORMATION

The provisions of this section are unchanged.

LEAST RESTRICTIVE ENVIRONMENT

The provisions of this section are unchanged.

HEARINGS

The provisions of this section have been replaced as follows:

Prior to the opportunity for an impartial due process hearing, the local education agency shall convene a meeting with the parents and the relevant members of the IEP Team who have specific knowledge of the facts identified in the complaint–

- 1) within 15 day of receiving the notice of the parents' complaint;
- 2) which shall include a representative of the local education agency who has decision-making authority on behalf of said local education agency; and
- 3) which may not include an attorney of the local education agency unless the parent is accompanied by an attorney; and
- 4) where the parents of the child discuss their complaint, and the facts that form the basis of the complaint, and the local education agency is provide the opportunity to resolve the complaint, unless the parents and local education agency agree in writing to waive such meeting, or agree to use the mediation process.

If the local education agency has not resolved the complaint to the satisfaction of the parents within 30 days of the receipt of the complaint, the due process hearing may occur, and all of the applicable time lines for a due process hearing shall commence.

In the case that a resolution is reached to resolve the complaint at a meeting described above, the parties shall execute a legally binding agreement that is–

- 1) signed by both the parent and representative of the local education agency who has the authority to bind the local education agency; and
- 2) enforceable in any State court of competent jurisdiction or in a district court of the United States.

If the parties execute an agreement pursuant to the above provision, a party may void such agreement within 3 business days of the agreement’s execution.

Parents are entitled to disclosure of all of the other party’s completed evaluations not less five (5) business days prior to the hearing.

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed, unless the other party agrees otherwise.

A parent or agency shall request an impartial due process hearing within two (2) years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing, in such time as the State law allows.

The timeline described above shall not apply to a parent if the parent was prevented from requesting the hearing due to–

- 1) specific misrepresentation by the local educational agency that it had resolved the problem forming the basis of the complaint; or
- 2) the local educational agency’s withholding of information from the parent that was required to be provided to the parent.

The right of a parent to file a complaint with a State education agency is not affected.

A parent has the right to file a separate due process complaint on an issue separate from a due process complaint already filed.

HEARING OFFICERS

The provisions of this section are unchanged except as follows:

A hearing officer conducting a hearing shall, at a minimum, not be a person having a personal or professional interest that conflicts with the person’s objectivity in the hearing.

The hearing officer shall possess knowledge of, and the ability to understand, the provisions of the Individual with Disabilities Education Improvement Act, Federal and State regulations pertaining to this title, and legal interpretations of this title by Federal

and State courts; shall possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

MEDIATION

The provisions of this section have been changed as follows:

Procedures must be established and implemented to allow parties to disputes involving any matter, including matters arising prior to the filing of a complaint for due process hearing, to resolve such disputes through a mediation process.

Schools that choose not to use the mediation process have an opportunity to meet with a disinterested party to discuss the benefits of mediation.

In the case that a resolution is reached to resolve the complaint through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that--

- 1) states that all discussions that occurred during the meditation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
- 2) is signed by both the parent and a representative of the agency who has the authority to bind such agency; and
- 3) is enforceable in any State court of competent jurisdiction or in a district court of the United States.

HEARING RIGHTS

The provisions of this section are unchanged.

APPEALS

The provisions of this section are unchanged except as follows:

A party aggrieved by the findings an decision made in a hearing has the right to bring a civil action in either Federal district court or State court of competent jurisdiction. The party bringing the action shall have 90 days from the date of the decision of the hearing officer to bring such an action, or, if the State has an explicit time limitation for bring such action, in such time as the State law allows.

SURROGATE PARENTS

The provisions of this section are unchanged except as follows:

In the case of a child who is a ward of the State, the surrogate may alternatively appointed by the judge overseeing the child's care provided that the surrogate meets the requirements.

In the case of an unaccompanied homeless youth as defined under the McKinney-Vento Homeless Assistance Act, the local educational agency shall appoint a surrogate.

The State shall make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after there is a determination by the agency that the child needs a surrogate.

ATTORNEY'S FEES

The provisions of this section are unchanged except as follows:

In any action or proceeding, the court, in its discretion, may award reasonable attorney's fees as part of the costs of the State educational agency or local educational agency who is the prevailing party—

- 1) against the parent attorney who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation or who continues to litigate after the litigation or clearly becomes frivolous, unreasonable or without foundation; or
- 2) against the parent attorney or the parent if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increases the cost of litigation.

An opportunity to resolve complaints meeting held prior to a due process hearing shall not be considered—

- 1) a meeting convened as a result of an administrative hearing or judicial action; or
- 2) an administrative hearing or judicial action for the purpose of awarding attorney fees.

COMPLAINT PROCEDURES OF THE STATE

The provisions of this section are unchanged.

TRANSFER OF PARENTAL RIGHTS TO THE STUDENT AT AGE OF MAJORITY

The provisions of this section are unchanged except as follows:

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

PLACEMENT OF CHILDREN IN PRIVATE SCHOOLS BY PARENTS

The provisions of this section are unchanged except as follows:

A district's obligation to reimburse educational expenses, if any, is limited to students enrolled in private elementary schools or secondary schools in the school district served by the local education agency.