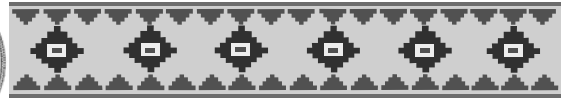
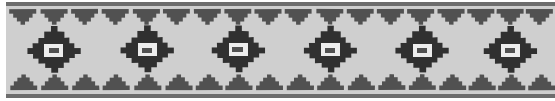


# PARENT AND CHILD RIGHTS IN SPECIAL EDUCATION

## *Revised Interim Procedural Safeguards Notice*



New Mexico Public Education Department—Special Education Bureau  
300 Don Gaspar, Santa Fe, New Mexico 87501

### What Is Special About Special Education?

Special education is instruction designed specifically to meet the unique needs of children with disabilities—those who have one or more disabilities as defined by federal law,\* or in the state of New Mexico, who are determined to be gifted. It is important to note that not all students who have a disability, are gifted, or who are struggling qualify for special education. To be eligible for special education or related services, the child must meet two requirements. First, he or she must be found to have an exceptionality—have a disability or be gifted. In addition, the nature of the exceptionality must be such that it directly affects his or her opportunity or ability to learn and progress in the educational program or environment provided for the general student population. Special education and related services are designed to help a child to learn the information and skills that other children are learning.



\*Federal law (IDEA-Part B 34 CFR Sec.300.7) defines thirteen categories of disability: autism, deafness, deaf-blindness, hearing impairment, mental retardation, multiple disability, orthopedic impairment, other health impairment (including ADD, ADHD), serious emotional disturbance, specific learning disability, speech or language impairment, traumatic brain injury, and visual impairment, including blindness.

### What Are Procedural Safeguards?

Procedural safeguards are procedures that are designed to protect, or safeguard, legal rights. You as a parent or guardian play a vital role in your child's education. A federal law called the *Individuals with Disabilities Education Act*, or IDEA, ensures that all children with qualifying disabilities have the opportunity to receive publicly funded special education and/or related services. The law also requires that parents be informed of, and included in, the educational decisions made regarding the child's educational needs. Under the IDEA, the child's and the parents' rights are spelled out and safeguarded. One of the requirements of the IDEA is to provide you with this document. It is designed to inform you of the policies set by federal regulations and state rules that apply to everyone responsible for the education and welfare of a child—schools and other public education agencies, teachers, service providers, and you, the family. All of these share the common goal of providing the child with his or her right to a free appropriate public education (FAPE).

**Note:** This “interim revised” version of the Procedural Safeguards Notice reflects key changes under the new IDEA 2004. A final version of this notice will be made available after final federal IDEA regulations are issued. *In addition:* the term *school* is used to describe any public education agency responsible for providing special education or related services.



*The IDEA requires that any child under the age of 18 have an adult responsible for protecting his or her rights and available for participating in the educational decisions about the child.*

*Depending on the circumstances, this may be the natural parent, an adoptive parent, a relative acting in place of a parent, a legal guardian, a foster parent, or a surrogate parent.*

## Who Speaks for Children Under the IDEA?

With a rare exception for some children who are in prison, the IDEA requires that every child who is below the legal age of adulthood (18 in New Mexico) must have some adult available to make educational decisions and protect the child's legal rights. Usually that person is a natural or adoptive parent. If no parent is available, the adult decision-maker may be any of the following:

- A person acting in the place of a parent, such as a grandparent
- Stepparent, or other relative that the child lives with
- A legal guardian (but not the state if the child is in state custody)
- A foster parent who has an ongoing, long-term personal relationship with the child
- If none of the above is available, a surrogate parent who is appointed by the school to make educational decisions and protect the child's educational rights

All of the above are included in the IDEA's broad definition of a "parent."

In New Mexico, children become legal adults at age 18. Under the IDEA, they are then entitled to make their own educational decisions and protect their own rights unless the courts have declared them incompetent and appointed guardians for them. Unless this is done before the child's 18<sup>th</sup> birthday, the child will automatically have all rights and responsibilities of adulthood when he or she reaches the age of 18. The school will inform you of the laws and options regarding transfer of rights *before* the child turns 18 years old.

**Note:** In the rest of this document, for simplicity, the terms *parent* or *you* are used to include any of the above kinds of decision-makers for a child or a student who is 18 or older and has not graduated from high school.

## An Overview of the Special Education Process

Every child is special because he or she is a unique individual. In the United States, we provide a free, public education to every child. Schools provide a general curriculum designed to meet the needs of most children and prepare them to function independently as adults and participate in their community. Special education services are provided to those students who, because of exceptionalities, need additional support in order to be able to learn and attain these same goals. Additionally, it is the goal of special education to provide services and supports to students in the least restrictive environment (LRE) alongside students without disabilities.

Decisions about a child's program and/or placement are not made lightly or easily. It takes a team of people using their combined knowledge and expertise to make decisions that are in the best interest of the child. A specific process is followed and you, the parent, are an essential part of the team. The child is also included whenever possible, and must be invited to participate if he or she is 14 or older.

In order to better understand your role and your rights in the decisions made about your child, it may be helpful to first look at how the special education process works in general. Then refer back to this page later as needed when reading about your rights.

- Step 1:** The child is referred for consideration of possible need for special education and/or related services. Referrals can come from the school or parents. Local school districts must provide screening and appropriate interventions through a Student Assistance Team (SAT) child study process before referring a child for a full special education evaluation, unless a student has an obvious disability or a serious and urgent problem.
- Step 2:** The child is evaluated. This may involve formal testing, observations, or even outside specialists. Parents must give written consent before an initial evaluation or a reevaluation.
- Step 3:** Based on all the information gathered, a group of qualified professionals and the parent decide whether the student is eligible for special education or related services. A student may be found to be *eligible* because he or she has a defined disability or giftedness that directly affects learning, or found to be *ineligible* because either the disability or giftedness does not directly affect learning, or there is no concrete evidence that a disability or giftedness exists.
- Step 4:** If the child is found eligible, a team meets to develop an Individualized Education Program (IEP). The IEP is the master plan for the child's special education and any related services, such as speech therapy or physical therapy, that the child needs to benefit from instruction. Parents must be invited to the meeting and to participate as members of the IEP team.
- Step 5:** Parent consent is required before beginning any special education or related services. Once developed, the IEP is implemented.
- Step 6:** The IEP must be formally reviewed at least once a year, more often if necessary or as requested by the school or parent.
- Step 7:** A child receiving services must be reevaluated at least every three years (unless you and the school agree that a specific reevaluation is not necessary).
- Step 8:** Eligibility must be reexamined and determined again after a reevaluation as in steps 2 and 3.
- Step 9:** If the child is found to still be eligible, the team begins again at step 4. If not, he or she exits the program.

In the sections that follow, more details will be explained regarding the rights of the child and you, the parent, in the special education process.

### What Is Prior Written Notice of Proposed Action?

Prior Written Notice (PWN) is a special kind of written notice that the IDEA requires the school to give to you. This notice must be provided after the IEP meeting and before the school takes or refuses to take any action regarding



#### *The Special Education Process*

1. Prereferral/Referral Interventions
2. Initial Evaluation
3. Determine if Eligible
4. IEP Development
5. IEP Implementation
6. IEP Review/Revision
7. Reevaluation
8. Determine if Eligible
9. Exit from Services OR Continue Services  
(Repeat steps 4-9.)



*Remember—  
In New Mexico, the age of adulthood is 18. This means that, unless a legal guardian has been previously appointed, on the child's 18<sup>th</sup> birthday, he or she is automatically considered an adult. All the associated rights and responsibilities of adulthood transfer to the student—including the right to make decisions with regard to his or her IEP.*

- 1) Evaluating your child to identify an exceptionality or to determine eligibility for special education and related services; or,
- 2) Initiating and/or changing the special education or related services provided for your child, including IEP development or changes.

Basically, the school is required to inform you before it can formally evaluate or reevaluate your child beyond what is done for all students, before it identifies or refuses to identify your child as exceptional, and before it can change your child's existing IEP.

The PWN must include what action the school proposes or refuses to take; the reasons for its decision; any other options that have been considered by the team and the reasons why those options were rejected; a description of the information the team used to arrive at its conclusion; a notice of procedural safeguards or information about how to obtain one; and sources for parents to contact to get help in understanding their IDEA rights.

The school must provide you this written notice in a manner that is understandable and in your native language or other mode of communication, unless it is clearly not feasible to do so. In certain cases, the notice may be given orally through a translator or other mode of communication.

### What Kinds of Actions Require a Parent's Consent?

Whether you are a parent, guardian, or adult student, it is important that you know and understand the information given to you regarding what the school plans to do or not to do, so that you can participate fully in making decisions. The school must obtain your informed consent in writing before it can evaluate or reevaluate your child for special education, and before it can first provide your child with special education or related services. By signing your name on the consent form, you are saying that you understand, give permission, and agree with the action for which consent is sought. If you need clarification or have questions, do not be afraid to ask.

Keep in mind that you and the school may have a difference of opinion. If you decide that you do not agree and do not give your consent for the proposed actions as stated, you can request a new IEP meeting, a facilitated IEP meeting, mediation, or an impartial due process hearing to resolve the difference of opinion. For more information on resolving differences, see page 9.

### What About Records?

Your child's school records may be used as one source of information about your child when determining his or her eligibility for special education or related services. You the parent, or someone who has your permission, can inspect and review any and all of your child's records kept by the school. You can review your child's records 1) before any meeting involving your child's IEP; or, 2) before a due process hearing. You can request to review the records at other times, but the school has up to 45 days to honor your request. You can also request a copy of the records, but the school may charge you a reasonable fee unless the fee would prevent you from acquiring a copy. Note that there may be certain instances in which the school will not allow viewing of full records. This may occur if there are names or information about individuals other than your child in the record, or if authorities direct the school to exclude certain people from viewing records.

You or your authorized representatives are entitled to have the school explain anything in your child's records that you do not understand. If, after reviewing the records, you feel there is incorrect information or something that violates the privacy rights of your child, you can ask the school to amend the records. If the school refuses, you may file a request with the school for a formal hearing to challenge the contents of the records. You can also ask that the records be destroyed once they are no longer needed for educational purposes.

The school is responsible for keeping student records as confidential as possible. You, the parent, may review the records kept by certain school personnel. School records will also need to be transferred to another school if your child moves to a new school.

## Educational Evaluation

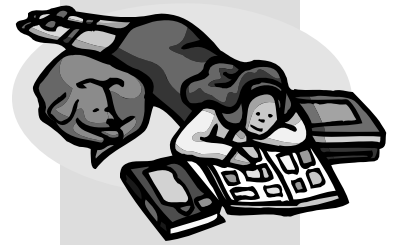
It would not be fair for one person or even a group to decide who is and who is not eligible for special education or related services based solely on their "feelings" or "impressions" of a student. Though some subjective data is useful, such as direct observations by parents or trained observers, there must also be an evaluation that uses objective, *measurable* information about the student's levels of performance, strengths, and weaknesses. This information is usually gathered by assessments or tests performed by an education diagnostician. By combining and analyzing the various types of information collected and drawing conclusions based on all the types of information gathered—both fact and opinion—the result is a more comprehensive picture of the student's abilities and skills.

If your child is suspected of having a disability and/or being gifted, and of possibly needing special education services, the school will need more information in order to be able to make that determination. On the other hand, if your child is already receiving special education or related services and a review is due or requested, the school will want to do a reevaluation. In either case, this may involve any number of different types of assessments and/or observations, depending upon the information the school needs to gather about your child specifically. The school will give you prior written notice of its intent to evaluate or reevaluate your child and how. The school will ask you for your consent for the evaluation and you will receive a copy of the results.

## Evaluation "Safeguards"

It is natural for you to be concerned about having your child evaluated—after all, the conclusions drawn from the evaluation are likely to determine not only if your child has a disability or is gifted, but also if he or she qualifies for special education services. These facts may help you rest easier about the process:

- You will be informed ahead of time what tests and other assessments will be given and used for the evaluation.
- You must give your informed written consent before any action is taken.
- Your child will not be discriminated against racially, culturally, or because of a disability. The evaluation tests and procedures will be given in the language and form most likely to yield accurate information about what your child knows and can do academically, developmentally, and functionally.



*An evaluation can offer a piece of information about a child, such as a score on a vocabulary test or a rating on a physical exam. An observation or opinion can add insight into the "how's and why's" of a child.*

*During an evaluation these are examined together, which helps paint a picture of the whole child—strengths, skills, abilities—and enables the team to better address his or her unique needs.*



*An IEP will state: present levels of academic and functional achievement and functional performance; annual goals; how progress will be measured; what special education and related services will be provided, including how often and by whom; to what extent the child will participate with other students in the general curriculum; what modifications, if any, will be used for instruction; assessment information; and, as appropriate, transition services. (preplanning for high school and beyond).*

- When the evaluation is complete, the school will schedule a meeting with you to discuss the results and conclusions drawn.
- If you disagree with the evaluation for your child, you have the right to request an independent educational evaluation (IEE) at public expense. An IEE is an evaluation done by a person who does not work for the school district, but who is a qualified evaluator. If you request an IEE, the school is required to provide you with information about where you can obtain one and what criteria the school will use to decide whether to accept the results and pay for the evaluation. However, if the school feels that its evaluation is appropriate, it can request a due process hearing, where a hearing officer decides if the school's evaluation was correct and complete. If the hearing officer decides in the school's favor, you can still get an IEE at your own expense. Any results will be considered in planning your child's program. The IEE can be used as evidence in a due process hearing.

## What Is an IEP and Will My Child Have One?

The evaluation is how the school decides if your child has a disability or is gifted **and** if he or she qualifies for special education and related services. If it is determined that your child meets the criteria for special education or related services (see page 1), the next step is to develop an Individualized Education Program (IEP) for him or her. An IEP is a written statement of the educational program designed specifically for that student to meet his or her unique, individual needs. Every child who receives special education services must have an IEP. The IEP has two general purposes: 1) to set reasonable annual learning goals for your child; and, 2) to state the supports, services, and classroom environment the school will provide to help achieve the annual goals

The IEP is developed by two parties—YOU, the parent and the school team. Each person who participates in the development of the IEP has information or insight about the child that will contribute to designing a program that is appropriate for him or her. Because you are the person who knows your child best, your active participation and input is very valuable.

The IEP meeting participants will vary depending on the needs of the child. However, generally participants will include you (the parent), at least one regular education teacher if the child is likely to be participating in the general educational program and environment, at least one special education teacher or specialist, one or more qualified school representatives, your child if appropriate, and anyone else you or the school invites who may have special expertise or knowledge about your child.

## An IEP Meeting

An IEP meeting is needed when there are plans to do any of the following:

- make decisions about a child's initial plan for special education and related services
- substantially change or review an existing IEP (an IEP must be reviewed at least once a year)
- change or review the child's program or placement
- evaluate or reevaluate a child
- whenever parents request it

As mentioned, you are a very important member of your child's IEP team. When scheduling a meeting, the school will make every effort to make sure you are informed, invited to participate, and included. You will receive written notice of an upcoming meeting. If you want to participate but cannot attend at that time, let the school know and an attempt will be made to reschedule. If you cannot attend for other reasons or do not respond, the school will attempt to involve you in other ways such as telephone conferences, home visits, or delivering written information for your review. If unsuccessful after trying in earnest to include you, the school can have the meeting without you and mail you your child's IEP and the school's Prior Written Notice of its proposed action. The school provides you with PWN so that you can review the IEP before any program begins and give you the opportunity to disagree with the school's plans for your child.

## What About Discipline?

- To function as a safe learning community, schools must have rules of conduct. Under the IDEA, children with disabilities may be suspended or placed in alternative settings to the same extent that these options would be used for children without disabilities. However, certain conditions apply regarding students with identified **disabilities** who are receiving special education and related services (Note: these conditions do not apply to students in New Mexico identified as gifted.)
- A child with a disability may be suspended for 10 days or less during a school year according to the same procedures that apply to all students. The school is not required to provide any educational services during the first 10 days of removals.
- If a child with a disability is suspended for more than 10 days during a school year, the school must provide services that will allow the child to continue to progress in the general curriculum and advance toward his or her IEP goals.
- If a child is removed from his or her IEP placement for more than 10 consecutive days during a school year (or when the removal otherwise represents a change of placement), a meeting must be held to determine if the undesirable behavior is directly related to or caused by a disability, or directly related to a failure by the school to implement the IEP. If it is, the child may not be suspended or expelled and the IEP team must modify the child's placement or services as needed. If the behavior is not the direct result of a disability or a failure to implement the IEP, the child may be suspended or expelled according to normal procedures but the school must continue to provide services that will enable the child to progress in the general curriculum and advance toward his or her IEP goals.
- The IEP team must also conduct a behavioral assessment and provide behavioral support services such as a Behavioral Intervention Plan (BIP) (or review it if already in place) when a child has been removed for more than 10 consecutive days in the school year or when the removal represents a change of placement.

*An IEP meeting is not like a parent-teacher conference where you informally discuss your child's progress or needs. The IEP meeting is a formal gathering of a team of people for the purpose of setting annual goals for your child and determining what supports he or she needs to achieve them. Because of the scope and importance of the meeting, the school will make every reasonable effort to involve you, including providing an interpreter if needed, or person who can convey the information in a manner that you can understand.*



*A BIP is an individualized plan that provides specific actions for redirecting undesired behavior in a positive way. As a member of your child's IEP team, if a BIP is to be developed for your son or daughter, you will be able to give your input.*



*If you request a hearing to challenge a manifestation determination or a disciplinary placement for your child, he or she stays in the IAES until a hearing officer decides the matter or until the time period for the disciplinary procedure ends, whichever comes first. In disputes over non-disciplinary placement issues and other matters, your child will remain in his or her current placement until the matter is resolved.*

## Protecting Everyone's Right to a Safe School

Educators and parents share concerns over the issue of drugs, guns, and other weapons in schools. As a result, the IDEA has expanded the authority of school personnel regarding the removal of children with disabilities who bring or have drugs or weapons on school grounds or at school functions, or who inflict serious bodily injury on another person. For the protection of everyone's right to a safe school, *any* child may be removed to a temporary placement immediately for up to 45 school days for one of these violations.

The IDEA also allows a school to ask a state-appointed due process hearing officer to move a student to a temporary placement for up to 45 school days at a time if the school believes that the student presents a serious danger of injury to himself/herself or others in the child's current placement. The IDEA refers to these temporary placements as *interim alternative educational settings*, or *IAESs*. The IDEA requires that the setting be determined by the IEP team and be designed so that the child continues to receive all the special education and related services that their IEPs call for. It also requires the school, the parent, and relevant members of the IEP team to decide whether a child's behavior is a direct result of either a disability or the school's failure to implement the IEP, and to develop appropriate behavioral intervention services when a child is placed in an IAES for disciplinary reasons. Also, the school can report any student to law enforcement authorities for the commission of a crime. If the student is a child receiving special education services, the school can give the authorities copies of the student's special education records.

## About Educational Placement

Earlier in this guide you learned that the IDEA (federal law) and state rules gives children with disabilities (and gifted children in New Mexico) the right to a Free Appropriate Public Education (FAPE). Special education and related services are designed to do just that. Through the IEP process, a group of knowledgeable people (including you, the parent) decide what educational provisions may be necessary for the child based on his or her unique needs. The first possible route is to adjust or modify the child's educational program or provide extra supports so that he or she may continue to learn to the greatest extent possible alongside the rest of the students in the general education program and regular classroom environment. Though it is desirable to have students with disabilities or who are gifted working with others their own age and in the regular school environment to the greatest extent possible, sometimes that placement is not the most appropriate learning environment for a particular child. The goal is to give the student "freedom" to learn by removing obstacles that restrict him or her. This is called the Least Restrictive Environment (LRE) and it may be anything from the regular education classroom or special education classroom, to providing instruction in the home, a hospital, or a setting outside the school district. The decision in every case depends on the individual needs of the child.



If the school plans a change of placement for your child, you will be asked to attend an IEP meeting and given the reasons why the school is proposing the change. You always have the right to disagree with a proposed placement and the procedures for doing so will be described on the pages that follow. Keep in mind that a planned placement change for the purpose of providing the most appropriate program for a child's learning is different from a temporary placement in an *interim alternative educational setting* (IAES) for disciplinary reasons, as described above. An *IAES* is temporary. However, as indicated under "What About Discipline?" above, certain behaviors that the IEP team decides are the direct result of a child's disability *may* result in a *plan* to change placement long-term to better serve the child.

## Resolving Differences

As two parties with the same goal—to provide an opportunity for success for your child—you and the school need to openly communicate your opinions and concerns. This cooperative approach usually results in agreement and a smooth implementation of special education services for the child. However, each child and circumstances are unique and, as between any two parties, there may be times when you and the school may not agree on what is "best" for your child. Under federal law and state rules, both the school and the parents have the right to have their opinions heard and considered. So, you have the right to disagree with the school's findings, plans, or actions regarding your child. Also, after considering your opinions or requests, the school has the right to disagree with you.

Federal law and state rules provide several avenues for resolving differences. As they are discussed below, keep in mind that even in disagreement, the focus is the child's best interest and the outcome should be that the child is the "winner."

### The Avenues to Resolve Disputes ...

If you are in disagreement with the school on any aspect of your child's program, you have the right to be heard and your opinions considered. In many cases, differences can be resolved quickly and efficiently at the school or district level simply by asking for another IEP meeting. Obviously this is preferable to everyone concerned.

... And What You Need to Know About Them

#### ***Avenue 1: Working Directly With School Personnel***

- A.** This option is designed to resolve a problem as soon as it arises among the people directly involved. As the first step, you should voice your concerns directly to school- or district-level personnel responsible for your child's program. **Ask for a new IEP meeting.** In many cases, the school will gather information about the situation from all concerned and attempt to work with you to resolve the problem. You may also ask the school to provide a **facilitated IEP (FIEP)** meeting where an internal or external third party assists the parties in communication and problem solving as they reach consensus on the student's IEP.
- B.** An additional option is for you and the school to file a joint request with the Special Education Bureau (SEB) of the New Mexico Public Education Department (NMPED) for a **mediation** that is conducted by a state-assigned,

*Agreement is not a prerequisite for cooperation! When problems arise over differences of opinion, solutions can often be found by mutually respectful and open communication.*



*A facilitated IEP meeting is an excellent avenue for settling disagreements. The IEP Facilitator assists the parties in finding a solution together through the IEP process.*



state-funded, trained mediator. A mediator is trained to be objective in helping you and the school find a mutually agreeable solution to your dispute. Use of this option is voluntary, will not deny or delay any of your rights, and is intended to result in a legally binding written agreement between you and the school. The SEB will provide a mediator if you and the school jointly submit a signed, written request to the SEB in which you describe the matter(s) in dispute and any previous attempts to resolve these matters at the local level. If you and the school reach agreement about any IEP-related matters during mediation, **it will then be necessary to hold an IEP meeting to inform the student's service providers of their responsibilities under that agreement, and revise the student's IEP accordingly or develop an IEP Addendum.**

### ***Avenue 2: Contacting Available Resources for Help and Support***

- A.** There may be times when you feel you need more help or support. If so, there are many resources available to guide and help you. (Several are listed on the final page of this guide).
- You and your family can get advice and support by contacting parent assistance and advocacy groups in the community or state. Advocacy groups provide people to speak with or on your behalf with regard to ensuring that your rights are being exercised and protected.
  - In addition to community support, you can get a wealth of information and guidance by accessing state and federal websites, which offer extensive and detailed information for parents regarding special education.
- B.** You can also call the SEB of the New Mexico Public Education Department and ask to speak to the *Parent Liaison*. This person can answer your questions or may be able to act as an unofficial “go-between” by calling the school district in an informal attempt to resolve your concerns. You may also call or write to ask a question, or state a concern.

### ***Avenue 3: Filing a Formal State-Level Complaint or Request for a Due Process Hearing***

- A.** If you believe the school has violated some provision of your child's IEP or failed to follow the special education procedures required by law, you may file a formal complaint with the SEB. If you choose to file a formal **state-level complaint**, be sure that you state all the information needed for a response and/or investigation. If you want an investigation or a written “finding” from the state, your complaint must be signed by you or your designated representative, be submitted in writing to the SEB, must describe your concern and what right(s) under the law or procedure(s) you think the school has violated, and must describe the *facts* about the complaint and what steps have already been taken to try to resolve it. It must be signed by you or your representative. If the SEB accepts the complaint as sufficient, it will acknowledge the complaint to the parties in writing and inform them of any available state-funded alternative dispute resolution options such as mediation or a FIEP meeting. The SEB will normally investigate and respond within 60 days. Based on the information gathered, the SEB will make a finding as to whether the law has been followed or not. If it finds the school is not in compliance with the law, it may direct the school to correct the action.

- B.** Sometimes you and the school may not “see eye to eye” about the provisions of your child’s IEP or his or her placement despite honest attempts to do so. When that happens, and informal attempts to resolve such a dispute fail, you need to consider the option known as a **due process hearing**. A request for a **due process hearing** is filed with the SEB. This is a legal action in which a hearing officer makes a decision based on the facts and evidence presented. Since this is a formal proceeding, several legal requirements apply and must be followed.

Your rights and responsibilities with regard to requesting a due process hearing are outlined below:

- You have the right to request an impartial due process hearing over any issue regarding the identification, evaluation, educational placement, or provision of a free appropriate public education of your child under the IDEA and state rules.
- To request a hearing, you must provide the request in writing to the district and SEB. The request must include complete information about the child (name, address or available contact information, and name of school and district); a description of the problem including known facts and any efforts you and the school have made to resolve the problem informally before filing this request; your proposed solution to the problem; your name, address, and telephone number and that of the child’s advocate or attorney, if any; a written statement that says the advocate or attorney named may represent your child; and your dated signature plus the dated signature of the advocate or attorney, if any. The request must be filed within two years of the date that you knew or should have known about the problem. The school will have an opportunity to respond in writing to your request. If you need help with this, ask the school to give you an official due process hearing request form.
- The school may also request a due process hearing to resolve a disagreement over the appropriateness of its evaluation, to request authorization to conduct an evaluation or a reevaluation when a parent refuses consent, or to ask a hearing officer to move a child to an interim alternative educational setting because his or her presence in the current placement poses a significant risk of injury to the child or others.
- As part of the due process procedure, the school will offer to hold a **Resolution Session** with you and other relevant members of the IEP team to address the issues raised in your request, unless you and the school agree jointly not to do so. You will also have the option of having a facilitated IEP meeting or a mediation at state expense to see if the issue can be resolved without a due process hearing. Often a dispute can be settled simply by bringing in an impartial person trained to help the parties find a plan that is mutually agreeable to both sides. Facilitated IEP meetings and mediation sessions are voluntary.



*If you have a complaint, it makes sense to first explore the dispute resolution option that will cause the least disruption of the child’s education and cost you little or no money.*

## What If I am Involved in a Due Process Hearing?

If you are involved in a due process hearing, whether it was initiated by you or by the school, here are some basics you should know:

- You have the right to a fair and impartial hearing before a state-appointed hearing officer who is knowledgeable about the laws governing special education and administrative hearing procedures.

*During a due process hearing, you have the right to be accompanied by an attorney and/or other individuals who have knowledge about students with disabilities or who are gifted.*



- The hearing will be scheduled at a time and place that is reasonably convenient for you and the school.
- You have the right to be accompanied by an attorney and/or other individuals who have knowledge about students with disabilities or who are gifted.
- Upon request, the SEB will inform you of any known free or low-cost legal services.
- During the hearing, you or your attorney may present evidence and written and oral arguments. You may require witnesses to attend and you may also confront and cross-examine the school's witnesses. No more than 5 business days before a hearing, you must share with the school all evaluations completed by that date, and any recommendations based on those evaluations, which you intend to use at the hearing. The school must share the same information with you. If you or the school fail to do this, the hearing officer may prohibit you or the school from using that information at the hearing.
- You may choose to have the hearing open to the public and to have your child present at the hearing.
- At any point during the proceedings you may have a mediation conference and/or the party requesting the hearing may withdraw its request.
- You should expect a written decision within 45 days of when the timeline for the hearing process began, unless the hearing officer grants an extension.
- You should expect to receive, at no cost to you, your choice of a written or electronic word-for-word record of the hearing and the hearing officer's findings and decision.
- The decision of the hearing officer is final unless either party files a civil action in a state or federal district court.
- A civil action must be filed no later than 30 days from receipt of the hearing decision.
- The findings and decisions of a hearing may be made public.
- The costs of a hearing are paid for by the school, with the exception of attorney's fees, which are the individual parties' responsibility. *In some cases, a court may award part or all of the attorney's fees to you (if you are the prevailing party) or to the school (if the school is the prevailing party). However, hearing officers are not authorized to award attorney's fees.*
- Except for disputes over disciplinary placements and manifestation determinations, the child remains in his or her current placement during due process proceedings until a final decision is reached, unless you and the school agree otherwise or the hearing officer directs other interim placement. Except in the case of short-term suspension (up to 10 days in a school year), the child will continue to receive special education and related services as directed by his or her IEP.

- At the conclusion of the hearing, either party has the right to bring a civil action in a court of law with respect to the due process hearing issues. The laws governing jurisdiction and procedures will apply to any action brought before the court. If the parent prevails in the court's decision, the court may, at its discretion, award reasonable attorney's fees. This means that if the parents decide to take the matter to court, they must pay for the lawyer's services, and that they may or may not get full or part reimbursement of these expenses if they win the case.

## A Word About Private School

Public agencies are obligated to offer a Free and Appropriate Public Education (FAPE) to any child aged 3–21 within their jurisdiction who meets eligibility requirements. To do that, all children within that age group must be located, and if necessary, evaluated to determine eligibility for special education and related services. This includes children attending private school, homeschool, or no school at all, as well public school children.

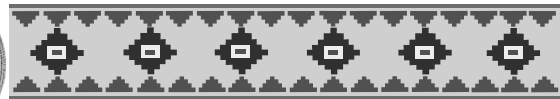
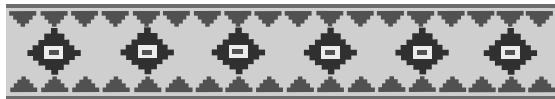
In most cases, a FAPE can be offered to a student in the public school setting. However, if it is determined by the public agency through the IEP process that a child's right to a FAPE is best served in a specialized private school, then the public agency funds that child's special education needs in the private setting.

Parents who choose to enroll their children with disabilities or gifted children in private schools **without** the participation of the public school in the decision are responsible for paying the private school tuition and costs. Though each school district is obligated to spend a portion of its federal IDEA funds to assist students with disabilities enrolled by their parents in private or home schools, these students are not entitled to receive all the special education and related services the child would receive if enrolled in public school. It is up to the school to decide, on an individual basis, how much support, if any, to offer a student. School districts will consult with appropriate representatives of private school and homeschool students to determine what services will be provided and where the services will be delivered. Students with disabilities that are parentally-placed in private schools or home schools receive service under a "services plan," which is different from an individualized education program.



### *NOTES:*





## Parent Resources

### NEW MEXICO PARENT ADVOCACY AND SUPPORT GROUPS

- ARC of New Mexico (505) 883-4630
- Colfax-Citizens for the Developmentally Disabled (505) 445-5674
- Developmental Disabilities Planning Council (505) 827-7590
- Governor's Committee on Concerns of the Handicapped (505) 827-6465
- Native American Protection and Advocacy Project  
P.O. Box 392 Shiprock, NM 87420 (505) 368-3216 (800) 862-7271
- Parents for Behaviorally Different Children (505) 265-0430 (800) 273-7232
- Parents Reaching Out (800) 524-5176



### FREE OR LOW-COST SERVICES

- Albuquerque Bar Association Volunteer Lawyers (505) 256-0417
- Legal Aid Society of Albuquerque (505) 243-7871
- New Mexico Protection & Advocacy System (800) 432-4682

### NEW MEXICO PUBLIC EDUCATION DEPARTMENT

300 Don Gaspar, Santa Fe, NM 87501

#### **NMPED: Special Education Bureau (505) 827-1457**

*Can provide forms and assistance with filing a complaint or due process hearing and answer questions about the law. Ask to speak to the **Parent Liaison**.*

### ONLINE RESOURCES IN SPECIAL EDUCATION

For more information about the topics in this guide or other issues regarding special education, extensive help and guidance is available online.

- The website of *National Information Center for Children and Youth with Disabilities* at [www.NICHCY.org](http://www.NICHCY.org) is a comprehensive source for administrators, educators, and parents.
- *The National Disability Rights Network: Protection & Advocacy for Individuals with Disabilities* at [www.ndrn.org](http://www.ndrn.org) is a non-profit membership organization for the federally mandated Protection and Advocacy (P&A) Systems Client Assistance Programs (CAP) for individuals with disabilities.
- Built on the concept of "parents helping parents," the *Pacer Center, Inc., (Parent Advocacy Coalition for Educational Rights)* at [www.pacer.org](http://www.pacer.org) offers a wide range of materials, information, and assistance to families.
- The information presented at [www.pbis.org](http://www.pbis.org) by the *Center on Positive Behavioral Interventions and Support* is available in both English and Spanish.
- View *the Individuals with Disabilities Education Improvement Act of 2004 (IDEA)* or further explore federal regulations and issues at the *United States Office of Special Education Programs (OSEP)* [www.ed.gov/offices/OSERS/OSEP](http://www.ed.gov/offices/OSERS/OSEP).
- Obtain the New Mexico state special education rules online through the *Public Education Department* at [www.ped.state.nm.us](http://www.ped.state.nm.us), as well as links to other topics related to special education in New Mexico.