Handbook on Parents' Rights

Dr. John D. Barge, State School Superintendent
"Making Education Work for All Georgians"

Office of Curriculum, Instruction and Assessment
Division for Special Education Services and Supports

http://www.doe.k12.ga.us

LOCAL EDUCATION AGENCY CONTACTS

It is important that you understand the rights provided you and your child with a disability. Our staff is available to assist you in understanding your rights and will provide further explanation of available procedures upon your request. If necessary, we will provide an interpreter or written translation to help you understand the information presented in the handbook. If you have any questions or would like additional information, please contact the special education department in your local school system.

SCHOOL CONTACT PERSON PHONE/EMAIL

Jeremy Heathcock/(706) 822-9902/jheathcock@chattooga.k12.ga.us

SPECIAL EDUCATION DIRECTOR PHONE/EMAIL

Parent Resources

Georgia Department of Education
Division for Special Education Services and Supports
1870 Twin Towers East
205 Jesse Hill Jr. Drive SE
Atlanta, GA 30334
404-656-3963 Fax: 404-651-6457
www.doe.k12.ga.us

GA Department of Education, Divisions for Special Education Services and Supports site is the first stop in understanding special education in Georgia. From Individuals with Disabilities Education Act (IDEA) to Individualized Education Programs (IEP) and Least Restrictive Environment (LRE), this is the first stop for information on special education in the state of Georgia.

Georgia Learning and Resource System (GLRS)
www.glrs.org

The Georgia GLRS is a network of 17 centers around Georgia that provide training and resources to educators and parents of students with disabilities

Georgia Council on Developmental Disabilities for Georgia
2 Peachtree St., N.W. Ste. 26-246
Atlanta, GA 30303-3142
404-657-2126 TDD: 404-657-2133 1-888-ASK-GCDD (275-4233)
www.gcdd.org

The Georgia Council on Developmental Disabilities, GCDD, is the state planning council created by a federal mandate through the Developmental Disabilities Act. The GCDD for Georgia promotes activities and creates opportunities which enable people with developmental disabilities to exercise their right to live, learn, work, and play in the place and manner of their choice.

Georgia Advocacy Office
150 Ponce De Leon Avenue
Decatur, GA 30030
404-885-1234 / 800-537-2329
www.thegao.org

The Georgia Advocacy Office (GAO) is a private non-profit corporation. Its mission is to work with and for oppressed and vulnerable individuals in Georgia who are labeled as disabled or mentally ill to secure their protection and advocacy. GAO's work is mandated by Congress, and GAO has been designated by Georgia as the agency to implement Protection and Advocacy within the state.

Parent to Parent of Georgia
www.parenttoparentof ga.org

The mission of Parent to Parent of Georgia is to support Georgia families and individuals from birth to age 26 affected by disabilities or special health care needs.

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YOUR RIGHTS AS PARENTS - REGARDING SPECIAL EDUCATION

The Individuals with Disabilities Education Act, 34 C.F.R.§ 300 *et seq*. (IDEA), the federal law concerning the education of students with disabilities, requires schools to provide parents of a child with a disability with notice containing a full explanation of the procedural safeguards available under the IDEA and U.S. Department of Education regulations.

Terms used in this document

The terms "Local Educational Agency (LEA)," "public agency, "agency," "local system," or "system" refer to school systems as designated by the state of Georgia to provide special education and related services to eligible children, including public nonprofit charter schools.

The term "parent" refers to the same broad definition of parent as found in the IDEA, including the biological or adoptive parent, a foster parent, a guardian authorized to make educational decisions for the child, a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, an individual who is legally responsible for the child's welfare, or a surrogate that has been appointed. (34 C.F.R. § 300.30]

A copy of this notice must be given to parents only one time a school year, except that a copy must also be given to the parents: (1) upon initial referral or parent request for evaluation to determine if the student is a student with a disability; (2) upon receipt of the first written formal complaint involving the student's school system; (3) upon receipt of the first due process complaint involving the student's school system in a school year; (4) when a decision is made to take a disciplinary action that constitutes a change of placement; (5) prior to accessing a student's or parent's public benefits or insurance for the first time; and (6) upon parent request. [34 C.F.R. § 300.504(a)]

As a parent of a child who has been referred for special education services or a child who is already receiving special education and related services, you and your child have certain rights which are protected by state and/or federal law. These rights are outlined in the next few pages. Please be sure to ask your school or school system for an explanation if there is anything in them that you do not understand, if you need them in a different language, or if you want them explained to you.

CONFIDENTIALITY OF INFORMATION:

The information about your child being a child with a disability eligible under the IDEA, his or her special education and related services, and other personally identifiable information is confidential and is not released to others within the system unless they have a legitimate need to know nor is it released to other agencies or groups except under limited circumstances.

Regarding when confidential information is released, you have the right to:

1. Restrict third party access to your child's records by withholding consent to disclose records except (a) in certain limited circumstances described in the federal regulations implementing the Family Educational Rights and Privacy Act of 1974, 34 C.F.R. Part 99 (FERPA), and (b) when the

records are released to officials of participating agencies for purposes of meeting a requirement under the IDEA;

2. Restrict the release of your child's personally identifiable information to officials of participating agencies that provide or pay for transition services to your child;

3. Restrict the release of your child's personally identifiable information to a private school that is not located in the LEA of your residence;

4. Be notified and receive copies before information in your child's record is destroyed;

5. Be told to whom information has been disclosed; and

6. Review and receive copies of all information sent to another agency where your child seeks or is eligible to enroll.

RECORDS:

"Education records" means the type of records covered under the definition of "education records" in the FERPA. Those regulations define "education records" as follows:

> Education records mean those records that are:
> (1) Directly related to the student; and
> (2) Maintained by an educational agency or institution or by a party acting for the agency or institution.
>
> The term does not include:
> (1) Records that are kept in the sole possession of the maker, are used only as a person memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
> (2) Records of the law enforcement unit of an educational agency subject to the provisions of § 99.8.
> (3) Records relating to an individual who is employed by an educational agency or institution that are made and maintained in the normal course of business; related exclusively to the individual in that individual's capacity as an employee; and are not available for use for any other purpose. However, records relating to an individual in attendance at an educational agency or institution who is employed as a result of his or her status as a student are education records.
> (4) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity; made, maintained, or used only in connection with treatment of the student; and disclosed only to individuals providing the treatment. For the purposes of this definition, "treatment" does not include remedial educational activities or activities that are a part of the program of instruction at the agency or institution.
> (5) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
> (6) Grades on peer-graded papers before they are collected and recorded by a teacher.

Regarding education records, you have the right to:

1. Inspect and review all education records relating to your child without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP), or due process hearing, or resolution session, and in no more than 45 days after your request has been made;.

2. Have your representative review the records;

3. Request that the public agency provide copies of the records if failure to provide those copies would effectively prevent you from exercising the right to inspect and review the records;

4. Have the public agency presume that you have authority to inspect and review records of your child unless the agency has been notified that you do not have authority under state law;

5. Inspect and review only the information relating to your child if any educational record includes information on more than one child;

6. Have the public agency keep a record of parties obtaining access to your child's personally identifiable information included in education records collected, maintained, or used under the IDEA (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records;

7. Have the public agency search for or retrieve educational records without charge;

8. Only be charged a fee for copies of records if the fee does not effectively prevent you from exercising your right to inspect and review those records;

9. Be informed of all types and locations of records being collected, maintained or used by the agency;

10. Ask for an explanation and interpretation of any item in the records;

11. Ask for an amendment of any record if the record is inaccurate, misleading, or violates the privacy or other rights of your child;

12. Have the agency decide whether to amend the information within a reasonable time after being asked to do so;

13. Be informed of a refusal to amend the record and your right to a hearing if the agency refuses to make the requested amendment;

14. Be informed, in writing, if the agency decides in a hearing that the information is inaccurate, misleading, or violative of the child's rights, and to have the record amended;

15. Be informed of the your right to place a statement in the record commenting on information or setting forth your reasons for disagreeing with the agency decision if it is decided in a hearing that information need not be amended; and

16. Have your explanation maintained in the record as long as the contested record is maintained, and disclosed if the contested record is disclosed.

INDEPENDENT EDUCATIONAL EVALUATION:

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child. "Public expense" means that the school system either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of the IDEA, which allow each state to use whatever state, local, federal and private sources of support that are available in the state to meet the requirements. [34 C.F.R. § 300.502(a)(3)(i - ii)]

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

If you request an independent educational evaluation of your child at public expense, your school system must, without unnecessary delay, either: (a) file a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) provide an independent educational evaluation at public expense, unless the school system demonstrates in a due process hearing that the evaluation of your child that you obtained did not meet the school system's criteria.

If your school system requests a hearing and the final decision of the administrative law judge (ALJ)/hearing officer is that your school system's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.

If you request an independent educational evaluation of your child, the school system may ask why you object to the evaluation of your child obtained by your school system. However, your school system may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school system's evaluation of your child.

Regarding independent educational evaluations, you have the right to:

1. Obtain an independent educational evaluation by a qualified examiner;

2. Have the independent educational evaluation, which was obtained at either public or private expense and meets the school system's criteria, (a) considered in meetings where placement or program decisions are made regarding a free appropriate public education (FAPE) for your child, and (b) used as evidence in a due process hearing;

3. Be told by your child's school system where an independent educational evaluation may be obtained at no expense or low expense, and the school system's applicable criteria for such evaluation;

4. An independent educational evaluation at public expense under the same criteria as those used by the public agency under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, if you disagree with the agency's evaluation, except that the public agency has the right to initiate a hearing regarding a FAPE to show that its evaluation is appropriate; and

5. Right to an independent educational evaluation at public expense when the evaluation is requested by an ALJ/hearing officer during a hearing.

NOTICE:

"Notice" means written information provided to the parent about proposed evaluations, meetings, and/or changes in program or eligibility or any other information related to the identification, evaluation, and services provided to a child with a disability under the IDEA. Written notice is provided to give you information and the opportunity to respond prior to the changes being made.

Regarding notice, you have the right to:

1. Be notified and present at all meetings before the school system initiates or changes (or refuses to initiate or change) the identification, evaluation, placement, or provision of a FAPE for your child;

2. Have that notice in writing, in your native language, or other principal mode of communication, at a level understandable to the general public;

3. Have the notice translated orally or by other means in your native language or other mode of communication, if your 's native language or other mode of communication is not a written language;;

4. Have the notice describe the proposed action, explain why it is proposed, describe the options considered by the school system, and explain why those other options were rejected;

5. Be notified of each evaluation procedure, test, assessment, record, or report the school system has used as a basis for any system-proposed action or basis for refusal;

6. A description of any other factors which are relevant to the agency's proposed action or basis for refusal;

7. A notice that includes a full explanation of all the procedural safeguards available to you;

8. Be notified of sources to contact to obtain assistance in understanding provisions of the IDEA;

9. Notice before a school system accesses your child's or your public benefits or insurance for the first time, and prior to obtaining the one-time parental consent and annually thereafter;

10. Prior written notice that contains all information in items 2 through 8 above before the agency initiates or changes or refuses to initiate or change the identification, evaluation, placement, or provision of a FAPE for your child;

11. To be present at all IEP Team meetings, including the right to (a) have the meeting at a mutually agreeable time and location, (b) be notified of whom will be in attendance, and (c) bring anyone with you that has knowledge or expertise about your child with a disability; and

12. Choose to receive all notices by email, if available in your school system. These include prior written notice, the procedural safeguards (parents' rights) notice, and notices related to due process complaints.

CONSENT:

"Consent" means:

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

2. You understand and agree in writing to that described action, and the consent describes that action and lists the records (if any) that will be released and to whom; **and**

3. You understand that the consent is voluntary on your part and you may withdraw your consent at any time. Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

Regarding consent, you have the right to:

1. Give consent before an *initial* evaluation of your child to determine whether your child is eligible under the IDEA to receive special education and related services. You must also receive prior written notice of the proposed action from the school system.

    a. If you refuse to provide consent or fail to respond to a request for consent, the school system may, but is not required to, pursue the initial evaluation by using mediation or due process hearing procedures to obtain that evaluation.

    b. Consent to an initial evaluation is NOT consent to provide services under the IDEA.

    c. The public agency does not violate its child find obligations if it does not pursue the evaluation if you do not provide consent.

2. Give consent before a reevaluation is conducted. This is true unless your school system can demonstrate that: (1) it took reasonable steps to obtain your consent for your child's reevaluation, **and** (2) you did not respond.

    a. If you refuse to consent to your child's reevaluation, the school system may, but is not required to, pursue your child's reevaluation by using mediation or due process hearing procedures to seek to override your refusal to consent to your child's reevaluation.

    b. As with initial evaluations, your school system does not violate its obligations under the IDEA if it declines to pursue the reevaluation in this manner.

3. NOT be subject to the procedures of mediation or a due process hearing to obtain consent if you are the parent of a child who is in home school or placed in private school at parental expense and you do not provide consent for the initial evaluation or reevaluation of your child, or you fail to respond to the request to provide such consent.

    a. The public agency is not required to consider the child eligible for services.

4. Give consent before initial placement can be made in special education. The school system must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services.

    a. If the parent fails to respond or refuses to provide consent for the initial provision of special education and related services, the school system may NOT use mediation or due process hearing procedures to obtain that consent.

    b. The school system will not be in violation of its child find responsibilities nor its obligation to make a FAPE available to your child if you do not consent.

    c. The school system is not required to convene an IEP Team meeting or to develop an IEP for a child for which consent for special education and related services has not been provided.

5. One-time written consent before the school system accesses your child's or your public benefits or insurance for the first time. You also have the right to written notification before the school system assesses your child's or your public benefits or insurance for the first time, and each year thereafter.

6. Revoke consent at any time. If at any time subsequent to the consent for initial provision of services, you revoke consent *in writing* for the continued provision of special education and related services to your child, the school system:

    a. May decide not to continue to provide special education and related services to your child, but must, prior to ceasing the provision of services, provide prior written notice;

    b. May not use mediation or due process hearing procedures to obtain consent;

    c. Will not be in violation of the provision of a FAPE if you withdraw consent;

    d. Is not required to convene an IEP Team meeting or develop an IEP for further provision of services; and

    e. Is not required to amend your child's education records to remove any references to your child's receipt of special education and related services.

NOTE: Consent is not required prior to reviewing existing data as part of an evaluation or reevaluation or prior to administering a test that is administered to all children unless consent is required for all children.

DISPUTE RESOLUTION:

IDEA regulations set forth separate procedures for State complaints and for due process complaints and hearings. While a detailed explanation and description of all dispute resolution is contained in State Board Rule 160-4-7-.12 Dispute Resolution, both complaint procedures are explained below:

State Complaint Process

Any individual or organization may file a formal written state complaint (state complaint) alleging a violation of any IDEA requirement by a school system, the State Educational Agency (SEA), or any other public agency. A state complaint must be resolved by the SEA within a 60-calendar-day timeline, unless the timeline is properly extended.

State Complaint: The complaint must be a signed, written complaint that sets forth an alleged violation of the IDEA. The complaint shall include a statement that the local system has violated the requirements of IDEA and the facts on which the statement is based. The complaint must allege a violation that occurred not more than **one (1)** year prior to the date the complaint is received.

1. Whenever a state complaint is filed, there is a right to mediation, if both parties agree.

2. State complaints are investigated by the Georgia Department of Education (GaDOE) or its contractors. Both the complaining party and the public agency involved have the opportunity to provide information to the GaDOE during the investigation.

3. Decisions of state complaints are issued by the GaDOE within 60 calendar days, unless extended for extenuating circumstances.

4. The decisions of state complaints cannot be appealed.

Due Process Complaint Process

Only a parent, a child with a disability who has reached the age of majority, or a school system may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a FAPE to the child. For a due process complaint, an impartial due process hearing officer must hear the complaint (if it is not resolved through a resolution meeting or mediation) and issue a written decision within 45-calendar-days after the end of the resolution period, as described in this document in the section entitled "Resolution Process," unless the hearing officer grants a specific extension of the timeline at request of either you or the school system.

Due Process Complaint: The complaint must set forth an alleged violation that occurred not more than **two (2)** years before the date the complaining party knew or should have known about the alleged action that forms the basis for the complaint. A due process complaint is a request for a hearing to occur to resolve the matter. The two-year time limitation does not apply if the complaining party could not file a due process complaint within the timeline because: (1) the school system specifically misrepresented that

it had resolved the issues identified in the complaint; or (2) the school system withheld information from the complaining party that it was required to provide to the complaining party under Part B of the IDEA.

1. **Responsibility to file due process complaint notice**. A parent or school alleging a due process violation under IDEA, or his or her attorney, is required to provide a due process complaint notice to the other party (or their attorney) and the GaDOE. The notice must include the name and home address of the child; the name of the school the child attends; in the case of a homeless child or youth, the child's contact information and the name of the child's school; a description of the nature of the problem; and a proposed resolution. The party presenting the due process complaint must file this notice before a due process hearing can occur.

2. **Responsibility to provide sufficient notice of the nature of the problem for which you are filing a due process complaint**. If the school system feels that the parent's due process complaint notice is insufficient, the system must notify the hearing officer in writing within 15 days of receiving the complaint.

    a. ALJs/hearing officers then have up to 5 days to determine if the notice meets the requirements of the IDEA. Upon making a determination, the ALJ/hearing officer must immediately notify all parties in writing of the decision. If the ALJ/hearing officer determines that the complaint is sufficient, the school must respond to the due process complaint. If the ALJ/hearing officer determines that the complaint is not sufficient, the parent has the opportunity to resubmit a new complaint and the timelines start over.

3. **Prior written notice regarding the subject matter of the due process complaint**. When the school system receives a due process complaint notice, it must first determine whether it provided prior written notice regarding the subject matter of the due process complaint. If it had not done so, the school system must provide a response to the parents within 10 days of receiving the due process complaint notice. Prior written notice must contain the following:

    a. An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

    b. A description of other options that the IEP Team considered and the reasons those options were rejected;

    c. A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and

    d. A description of the relevant factors in the school system's proposal or refusal.

4. **Resolution Session.** Within 15 days of when a complaint is filed, the system must convene a resolution session between the parents and relevant members of the IEP Team. A resolution session provides an opportunity for parents and school systems to resolve any issues in the due process complaint so that the parents and systems can avoid a due process hearing and provide immediate benefit to the child. The resolution session must occur before a due process hearing may proceed unless both parties agree to use the mediation process or they both agree in writing to waive the resolution session and mediation.

a. The session must include a representative of the school system who has decision-making authority on behalf of the school system.

b. The session may not include an attorney for the system unless the parent is also accompanied by an attorney.

c. The session provides an opportunity for the party who filed the due process complaint to discuss the complaint and the facts forming the basis of it and an opportunity for the responding party to resolve the complaint.

d. If the parties reach an agreement, they must execute a legally binding agreement that is signed by the parents and the school system representative.

e. The agreement is enforceable in any state court of competent jurisdiction or in a U.S. district court. Either party may void the agreement up to three (3) days after its execution.

f. If the due process complaint is not resolved to the satisfaction of the parent within 30 days of the receipt of the complaint through this resolution session, the parties may proceed to a due process hearing.

5. **Impartial Due Process Hearing.** Whenever a due process complaint is filed, the parties have the right to an impartial due process hearing conducted by GaDOE or a contracted impartial agent of the GaDOE. The hearing shall be at no cost to either party. However, each party is responsible for his, her, or its costs associated with hiring legal counsel or expert witnesses, unless a court awards the recovery of such costs to the prevailing party.

Regarding due process hearings, you have the right to:

1. Have the hearing chaired by an ALJ/hearing officer who is not employed by a public agency involved in the education of your child or otherwise personally or professionally interested in the hearing (the ALJ/hearing officer is not an employee of the agency solely because he or she is paid by the agency to serve as an ALJ/hearing officer).

2. A list of the persons who serve as ALJs/hearing officers, including a statement of the qualifications of each of those persons.

3. Be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities at a hearing.

4. Be told by the local system of any free or low-cost legal and other relevant services available (e.g., an expert on disability conditions that may be a witness at the hearing) when you request information or you or the system initiate a due process complaint.

5. An expedited due process hearing whenever you file a due process complaint regarding the manifestation of a disability

6. Have your child present at the hearing.

7. Have the hearing open to the public.

8. Present evidence and confront, cross-examine, and compel the attendance of witnesses at the hearing.

9. Have the hearing or an appeal set at a time and place reasonably convenient to you and your child.

10. Have, at least five (5) business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

11. Ask an ALJ/hearing officer to prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) business days before the hearing.

12. Have a written or, at your option, electronic, verbatim record of the hearing.

13. Obtain written or, at your option, electronic findings of fact and decisions within 45 days after the resolution session period, except that the ALJ/hearing officer may grant a specific extension of time at the request of either party.

14. The implementation of a final decision made by the ALJ/hearing officer, unless a party brings a civil action in a state court of competent jurisdiction or a U.S. district court. If a party chooses to bring a civil action, your child will remain in his or her present educational placement until the completion of all appeals unless both parties agree otherwise. Any corrective or compensatory actions required in the decision will not occur until completion of all appeals.

15. Appeal the decision of the ALJ/hearing officer by bringing a civil action in state or federal court within 90 days from the date of the decision of the ALJ/hearing officer.

16. Have your child remain in his or her present educational placement until completion of all hearing and appeal proceedings, unless you and the agency agree otherwise. This right does NOT apply to appeals regarding placement under discipline procedures, manifestation determinations, or when a school system believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others. During those appeals, the child must remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period specified in the disciplinary code or federal law, whichever occurs first, unless the parent and the State or school system agree otherwise.

17. Have your child placed in the public school program until the completion of all the proceedings if the due process complaint involves an application for initial admission to the public school.

NOTE: You may file a state complaint or a due process complaint if you disagree with a determination by the school system that your child's behavior was not a manifestation your child's disability.

Attorneys' Fees

U.S. District Courts can award reasonable attorneys' fees to prevailing parties, whether they are a parent, SEA, or local system as part of any settlement of a due process complaint or civil action. Attorneys' fees awarded to SEAs or local systems may only be granted under certain guidelines.

1. The attorney of a parent may be forced to pay the public agency's attorneys' fees when that attorney files a complaint or civil action that is frivolous, unreasonable, or without foundation, or if the attorney continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

2. The parents or their attorney may be forced to pay the public agency's attorneys' fees if the parents' due process complaint or subsequent civil action was presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

3. Not all legal and administrative proceedings and services are eligible for reimbursement. A court may not award attorneys' fees for any services performed subsequent to the time of a written offer of settlement that is made to the parents if:

    a. The offer is made in accordance with Rule 68 of the Federal Rules of Civil Procedure, or in the case of an administrative hearing, at any time more than 10 days prior to the hearing;

    b. The offer is not accepted within 10 days; and

    c. The court or administrative hearing officer find that the relief finally obtained by the parents is not more favorable than the offer of settlement. However, attorneys' fees may be awarded to parents who were substantially justified in rejecting the settlement offer.

4. In addition, IEP Team meetings are not eligible for reimbursement unless the meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the state, for a mediation session.

5. Attorneys' fees for Resolution Sessions are also ineligible for reimbursement

Mediation

Mediation may be requested by the parent, school system or any party to disagreements related to the IDEA.

1. Mediation shall be at no cost to either party, except that either party shall be responsible for the cost of an attorney or other representative or advisor.

2. Mediation is voluntary.

3. Mediation shall not be used to deny or delay a right to a hearing.

4. Mediations shall be scheduled in a timely manner and held in a location convenient to the parties in the dispute.

5. Mediations shall be conducted by a qualified and trained mediator who is impartial and randomly selected by the state.

6. Discussions during mediation are confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

7. If the dispute is resolved in mediation, the parties must enter into and sign a legally binding agreement that sets forth the resolution.

NOTE: Resolution session agreements, mediation agreements, and due process decisions are legally binding and may be enforced through state court of competent jurisdiction or U.S. district court.

NOTE: Any party may also file a state complaint alleging that a resolution agreement, a mediation agreement, or a due process decision has not been carried out by the parties. The GaDOE will conduct an investigation under the state complaint procedures and issue a written decision.

EVALUATIONS:

Evaluations may occur when a child is suspected of being a child with a disability who needs special education and related services. Evaluations (usually termed "reevaluations") may also occur to determine the current educational needs for a child who is eligible and is receiving special education and related services. A school system may refuse to evaluate your child, but the school system must provide you with prior written notice that explains its refusal and explains that you are entitled to a due process hearing to determine if your child should be evaluated.

In reference to evaluations, you have a right to:

1. Have a full and individual evaluation of your child's educational needs;

2. Have the evaluation conducted by a multidisciplinary team, including at least one specialist with knowledge in the area of the suspected disability;

3. Have your child assessed in all areas related to any suspected disability;

4. Have appropriate tests administered by qualified examiners;

5. Have a variety of assessment tools and other factors used to gather relevant functional, developmental, and academic information in determining the eligibility of your child for special education and related services and the appropriate educational program for your child;

6. Have more than one assessment or piece of data used to determine eligibility and the appropriate educational program;

7. Provide information on other privately obtained assessments (conducted by qualified examiners) and have that information considered in the process of determining whether your child is a child with a disability and the educational needs of your child;

8. Have the evaluation administered in your child's native language or mode of communication;

9. Have a reevaluation at least once every three years;

10. Have a reevaluation in less than three years if you or your child's teacher requests it. However, reevaluations shall not occur more frequently than one time per year unless you and the school system agree otherwise;

11. Have initial evaluations completed within 60 calendar days of receiving parental consent, unless the referral occurs less than 30 days prior to the end of the school year or in the summer;

    a. Any summer vacation period in which the majority of a school system's teachers are not under contract shall not be included in the 60-day timeline for evaluation. However, a school system is not prohibited from conducting evaluations over a summer vacation period.

    b. Holiday periods and other circumstances when children are not in attendance for five consecutive school days shall not be counted toward the 60-day timeline, including the weekend days before and after such holiday periods.

    c. Students who turn three during the summer period or other holiday periods must have an eligibility decision and IEP (if appropriate) in place by the third birthday.

12. Have the eligibility decision for initial determination based on: (a) the presence of a disability as defined in the IDEA; and (b) the documentation of the impact of the disability on the education of your child;

13. Have a copy of the evaluation report and documentation of eligibility provided to you at no cost and at the completion of the 60-day initial evaluation period or at the eligibility meeting, which as a matter of best practice, should occur within 10 calendar days of the completion of the initial evaluation.

NOTE: In the case of a previous revocation of consent to provide special education and related services, a new referral shall be treated as an initial evaluation.

LEAST RESTRICTIVE ENVIRONMENT:

"Least restrictive environment" is the term used to describe the right for a child with a disability to remain with his or her peers without disabilities to the maximum extent appropriate for his or her education. Each child is different and the IEP Team determines the setting for special education services to be delivered. A child should remain in the regular classroom with special education and related services provided in the regular classroom unless there is evidence that this environment is not successful even with supports and services.

Regarding the least restrictive environment, you have the right to:

1. Have your child educated with non-disabled children to the maximum extent appropriate as determined by the IEP Team;

2. Have your child remain in a regular education environment, unless a special class or separate school is needed. Removing a child from a regular class environment should be done only when the nature or severity of the disability is such that education in the regular class with the use of supplementary aids and services cannot be achieved satisfactorily;

3. Have available a continuum of alternative placements so that removal from the regular educational program can be the least restrictive situation;

4. Have supplementary services, such as resource room or itinerant instruction, to make it possible for your child to remain in a regular class placement for the majority of the school day;

5. Have your child placed in the school he or she would attend if non-disabled, unless your child's IEP requires some other arrangement;

6. Have your child participate in non-academic and extracurricular services and activities, such as meals, recess, counseling, athletics, and special interest groups, to the maximum extent appropriate to the needs of your child. The school system must ensure that each child with a disability has the supplementary aids and services determined by the child's IEP Team to be appropriate and necessary for your child to participate in nonacademic settings.

SURROGATE PARENTS:

A "surrogate parent" is a person appointed for a student for whom no parent can be identified or who is a ward of the state or whose parent's whereabouts cannot be discovered, after reasonable efforts by the school system.

1. When a child is a ward of the State, the surrogate may alternatively be appointed by the judge overseeing the child's case provided that the surrogate meets the requirements of the IDEA.

2. When a child is an unaccompanied youth, as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. § 11434a(6)), the local system shall appoint a surrogate in accordance with those requirements.

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

4. The school system must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a FAPE to the child. A surrogate parent must:

1. Have no personal or professional interest that conflicts with the interests of the student represented;

2. Have knowledge and skills that ensure adequate representation of the student; and

3. Not be an employee of the GaDOE, the local system, or any other agency that is involved in the education or care of the child.

PRIVATE SCHOOL PLACEMENT AT PUBLIC EXPENSE:

The IDEA does not require a school system to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the school system made a FAPE available to the child and the parent chose to place the child in a private school or facility. However, for students enrolled in private schools, the school system where the private school is located must include the child in the population of those whose needs are addressed under the IDEA provisions regarding children who have been placed by their parents in a private school.

1. When a child is placed by the parent in a nonprofit private elementary or secondary school, the system where the private school is located must consider the student an eligible child in any provision or consideration of proportionate share of federal funds. There is no individual entitlement to special education and related services when a child is parentally enrolled in a private elementary or secondary school in the circumstances described above.

2. If a child with a disability who has previously received special education and related services from the school system has been enrolled by his parents in a private elementary or secondary school without the consent of, or referral by, the school system due to a disagreement about the provision of a FAPE, a court or ALJ/hearing officer may require the school system to reimburse the parents for the cost of that enrollment if the court or ALJ/hearing officer finds that the school system had not made a FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate.

3. The cost of any reimbursement described in paragraph (2) above may be reduced or denied if:

    a. At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents failed to inform the IEP Team that they were rejecting the placement proposed by the school system to provide a FAPE to the child, including stating their concerns and their intent to enroll their child in private school at public expense; or

    b. The parents failed, at least 10 business days (including any holidays that occur on a business day) prior to removal of the child from the public school, to give the school system written notice that they were rejecting the placement proposed by the school system to provide a FAPE to the child, including stating their concerns and their intent to enroll their child in private school at public expense; or

c. Prior to the parents' removal of the child from the public school, the school system provided to the parents written notification of its intent to evaluate the child, along with a statement of an appropriate and reasonable purpose of such evaluation but the parents did not make the child available for the evaluation; or

d. Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

4. Reimbursement must not be reduced or denied for failure of the parent to provide notice referred to in paragraph (3) above if:

   a. The school prevented the parent from providing the notice;

   b. The parent had not received his or her notice of rights; or

   c. Compliance with the notice requirements would likely result in physical harm to the child.

5. Reimbursement may, in the discretion of the court or ALJ/hearing officer, not be reduced or denied for failure of the parent to provide notice referred to in paragraph (3) above if:

   a. The parent is illiterate or cannot write in English; or

   b. Compliance with the notice requirements would likely result in serious emotional harm to the child.

PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES:

School personnel may, for not more than ten (10) school days in a row, remove a child with a disability who violates the code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension without consulting the student's IEP Team. School personnel may also impose additional removals of not more than ten (10) days for separate incidents of misconduct, as long as those removals do not constitute a change of placement.

Once a child has been removed from his or her current placement for a total of ten (10), consecutive or non-consecutive, school days in the same school year, the school system must, during any subsequent days of removal in that school year, provide services that enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set forth in the child's IEP.

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

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

2. If the conduct in question was the direct result of the school system's failure to implement the child's IEP.

If the school system, parents, and relevant members of the IEP Team determine that either of these conditions was met, the conduct must be determined to be a manifestation of the child's disability. If the conduct was the result of the school system's failure to implement the IEP, the school system must take immediate action to remedy those deficiencies.

When the conduct is determined to be a manifestation of the student's disability, the IEP Team must conduct (or review if already in place) the functional behavioral assessment (FBA) and develop and implement (or review and modify) a behavioral intervention plan (BIP) for the student to address the behavior so as to prevent it from occurring in the future. The child shall be returned to the placement from which he or she was removed, unless the parent and the school system agree to a change of placement as part of the modification of the BIP.

If the determination is that the behavior of your child was not a manifestation of his or her disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except that the child must:

a. Continue to receive educational services so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP; and

b. Receive, as appropriate, a FBA, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

1. If your child carries a weapon to school or to a school function, knowingly possesses or uses illegal drugs, sells or solicits the sale of a controlled substance while at school or a school function, inflicts serious bodily injury on another person while at school, on school premises, or at a school sponsored function, school system personnel may order a change in the placement of your child to:

   a. An appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities), or

   b. An appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days without regard to whether or not the behavior was a manifestation of disability.

   The alternative educational setting shall be determined by the IEP Team.

2. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate.

3. An ALJ/hearing officer may order a change in the placement of your child to the IEP-determined appropriate interim alternative educational setting for not more than 45 days if the ALJ/hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others and determines that the interim alternative educational setting meets the requirements of paragraph (4).

4. Any interim alternative educational setting in which your child is placed pursuant to paragraph (1) or paragraph (4) in this section shall be selected so as to enable your child to continue to:

    a. Receive educational services in order to participate in the general curriculum, although in another setting, and to continue to progress toward the goals set out in the IEP; and

    b. Receive, as appropriate, the services and modifications of a FBA and BIP designed to address the behavior so that it does not recur.

5. If you request an expedited due process hearing regarding a disciplinary action described in paragraph (1)(b) or paragraph (3) to challenge the interim alternative educational setting or the manifestation determination, your child shall remain in the interim alternative educational setting pending the decision of the ALJ/hearing officer or until the expiration of the time period provided for in paragraph (1)(b) or paragraph (3), whichever occurs first, unless you and the State or the school system agree otherwise. Such expedited due process hearing must occur within 20 school days of the date the hearing is requested and must result in a determination within 10 school days after the hearing. A resolution session meeting must occur within seven (7) days of the date the hearing is requested, and the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request. The decision of an expedited due process hearing may be appealed.

6. If a child has not been determined eligible for special education and related services and violated a code of student conduct, but the school system had knowledge before the behavior occurred that the child was a child with a disability, then the child may assert the protections described in this notice.

    a. A school system has knowledge that the child may be a child with a disability if:

        i. The parent of the child has expressed concern in writing that the child is in need of special education and related services to supervisory or administrative personnel or the teacher of the child;

        ii. The parent requested an evaluation related to eligibility for special education and related services under the IDEA; or

        iii. The child's teacher or other school system personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the school system's director of special education or to other supervisory personnel of the school system.

    b. A school system <u>does not have</u> knowledge if:

i. The child's parent has not allowed an evaluation of the child, has refused special education and related services, or has revoked consent for the delivery of special education and related services; or

ii. The child has been evaluated and determined not to be a child with a disability eligible for services under the IDEA.

If you would like a further explanation of any of these rights, you may contact the following persons or organizations for assistance:

1. The special education director for your local school system;

2. The Division for Special Education Supports and Services at the Georgia Department of Education, located at Suite 1870, Twin Towers East, Atlanta, Georgia 30334-5010. The telephone number is (404) 656-3963; and

3. Regional Georgia Learning Resource System (GLRS) Centers. Their contact information is located at http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/Georgia-Learning-Resources-System.aspx.

The rules for special education are posted on the Georgia Department of Education's website at http://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/Special-Education-Rules.aspx.