



# Louisiana's Educational Rights of Children with Disabilities

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Louisiana Department of Education  
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# TABLE OF CONTENTS

INTRODUCTION AND PURPOSE.....	1
FEDERAL AND STATE LAWS.....	1
Federal Laws.....	2
State Law.....	2
BESE Regulations and Bulletins.....	2
Chapter I: STUDENT AND PARENT RIGHTS	
FAPE and Full Educational Opportunity.....	3
Prior Written Notice.....	4
Notice in Understandable Language.....	4
Native Language.....	5
Electronic Mail.....	5
Parental Consent Overview.....	5
Parental Consent for Initial Evaluation.....	6
Special Consent Rules for Wards of the State.....	6
Parental Consent for Services.....	7
Parental Consent for Reevaluations.....	7
Chapter II: EVALUATIONS AND REEVALUATIONS	
Evaluation Overview.....	9
Initial Evaluations.....	9
Reevaluations.....	9
Other Consent Requirements.....	10
Chapter III: INDEPENDENT EDUCATIONAL EVALUATION (IEE)	
Independent Educational Evaluation Overview.....	11
Definitions.....	11
Parental Right to Evaluation at Public Expense.....	11
Parent-Initiated Evaluations.....	12
Requests for Evaluations by Hearing Officers.....	12
Chapter IV: INDIVIDUALIZED EDUCATIONAL PROGRAM (IEP)	
Individual Educational Program Overview.....	13
Parent Participation in Meetings.....	14
IEP Team Attendance/Excusal.....	14
Transition IEP Meeting.....	15
Chapter V: CONFIDENTIALITY OF INFORMATION	
Confidentiality of Information Overview.....	16
Definitions.....	16
Notice to Parents.....	17
Access Rights.....	17
Record of Access.....	18
Records on More Than One Child.....	18
Types and Locations of Information.....	18
Fees.....	18
Amendment of Records at Parent's Request.....	18
Chapter VI: OPPORTUNITY FOR A HEARING	
Hearing Procedures.....	20
Result of Hearing.....	20
Consent for Disclosure of Personally Identifiable Information.....	20
Safeguards.....	20
Destruction of Information.....	21

# TABLE OF CONTENTS

## Chapter VII: COMPLAINT AND DISPUTE RESOLUTION

Dispute Resolution .....	22
IEP Facilitation.....	22
Informal and Formal Complaints and Early Resolution .....	23
Informal Complaints/Early Resolution Procedures .....	23
Formal Complaints .....	24
Mediation.....	26
How to Initiate Mediation Process.....	27
Due Process Hearing, Appeal, Court Action, and Attorney Fees.....	27
Resolution Meeting Process .....	29
Amending Your Complaint.....	31
Finality of Decision, Appeal, and Impartial Review.....	33
Attorney's Fees.....	34

## Chapter VIII: PROCEDURES WHEN DISCIPLING CHILDREN WITH DISABILITIES

Case-by-Case Determination.....	36
General Description.....	36
Additional Authority .....	36
Services .....	37
Manifestation Determination .....	37
Determination that Behavior was a Manifestation of Child's Disability.....	38
Special Circumstances .....	38
Definitions.....	38

## Chapter IX: CHANGE OF PLACEMENT DUE TO DISCIPLINARY REMOVALS

Removals .....	40
General Description.....	40
Authority of Hearing Officer .....	40
Placement During Appeals.....	40

## Chapter X: PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

General Description.....	43
Basis of Knowledge of Disciplinary Matters .....	43
Exception .....	44
Conditions that Apply if there is no Basis of Knowledge.....	44
Referral to and Action by Law Enforcement and Judicial Authorities.....	44
Transmittal of Records.....	44

## Chapter XI: REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN SCHOOLS AT PUBLIC EXPENSE

Definition.....	45
General Description.....	45
Reimbursement for Private School Placement.....	45
Limitation of Reimbursement .....	46

## Chapter XII: TRANSFER OF PARENTAL RIGHTS AT THE AGE OF MAJORITY

Transfer of Parental Rights Overview .....	47
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# TABLE OF CONTENTS

## Chapter XIII: SURROGATE PARENT

Surrogate Parents' Overview.....	48
----------------------------------	----

### APPENDIX

Request for Special Education Formal Complaint Investigation	
Request for Special Education Due Process Hearing	
Informal Early Resolution Intake Form	
Complaint Chronology	
Dispute Resolution Comparison Chart	
Parent's Acknowledgement/Agreement to Extend Informal Resolution	
Notice of LDE of Formal ERP Status	

# INTRODUCTION & PURPOSE

This handbook was developed to support parents of children with disabilities in understanding the Federal and State requirements under the Individuals with Disabilities Education Act (IDEA). It provides information that promotes working with your school district to help provide appropriate services to your child, while informing you of your child's rights. The handbook should serve as a tool that encourages partnerships to benefit all parties concerned in the education process.

To be an effective advocate for your child, you must:

- Be fully informed about the programs available in or through your school district;
- Be knowledgeable of your child's rights;
- Participate in Individualized Education Program (IEP) Team meetings; and
- Ask questions and voice concerns when you are unsure of the appropriateness of your child's program.

As partners in your child's education, both you and the school district have a responsibility to consider your child's needs and to provide an appropriate program to meet those needs. If you disagree with what is being proposed, you should present your questions and concerns to your local director of special education or file a complaint with the Louisiana Department of Education at the toll-free number 1-877-453-2721. For more information on filing a complaint, refer to the Appendix for the complaint procedures.

You are encouraged to be involved in every aspect of your child's educational program. You are your child's best advocate.

# FEDERAL AND STATE LAWS

A student with a disability is entitled to receive a free appropriate public education. Special education and related services must be available to meet the unique needs of your child and must be specifically designed for the individual student. The following Federal and State laws or regulations guarantee that a student with a disability has a full educational opportunity to benefit from a free appropriate public education (FAPE). State published regulatory bulletins are available to you through the school district and/or the Division of

Educational Improvement and Assistance in the Louisiana Department of Education. This information may also be obtained at [www.louisianaschools.net](http://www.louisianaschools.net).

### **Federal Laws**

Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Chapter 33,  
as amended by P.L. 105-17  
34 Code of Federal Regulations-Parts 300 and 301  
Section 504 of the Rehabilitation Act of 1973  
Family Education Rights and Privacy Act (FERPA)

### **State Law**

R.S. 17:1941, et seq. (R.S. 17:1944.B (8, 11, & 20))

### **BESE Regulations and Bulletins**

*Bulletin 1706*: Regulations for the Implementation of the Children with Exceptionalities Act; The Pupil Appraisal Handbook; *Bulletin 1573*: Complaint Management Procedures; and The Individualized Education Program (IEP) Handbook.



# CHAPTER I:

## Student & Parent Rights

### FAPE and Full Educational Opportunity

Students with disabilities and parents acting on their behalf have the right to a free educational opportunity and a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).

1. Full Educational Opportunity (FEO) means for the education to be effective equally, the school district is not required to produce identical results or levels of achievement for students with disabilities and students without disabilities, but must afford full opportunity to reach the same levels of achievement in the most integrated setting appropriate to the student's needs.
2. Free Appropriate Public Education (FAPE) means the student with a disability has the right to a free appropriate public education regardless of the nature or severity of the student's disability.
  - a) Appropriate education is the provision of special education and related services that are designed to meet the individual needs of a student with a disability.
  - b) Free education is the provision of special education and related services without cost to the student with a disability or to his or her parents, except for those fees that are imposed on students without exceptionalities.
3. FAPE- special education and related services that:
  - a) Are provided at public expense, under public supervision and direction, without charge.



- b) Meet the standards of the LDE, including the requirements of these regulations.
- c) Include an appropriate preschool, elementary school, secondary school education in the state; and
- d) Are provided in conformity with an Individualized Education Program (IEP)

### **Prior Written Notice**

Prior written notice must be given to you whenever the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a FAPE.

The prior notice must include the following information:

- 1. Description of the evaluation procedure, assessment, record or report your school district used as a basis for the proposed or refused action;
- 2. A statement explaining that you have protections under the procedural safeguards provisions.
- 3. Identification of the employee or employees of your school district who may be contacted for assistance in understanding the provisions of the procedural safeguards.

### **Notice in Understandable Language**

Regarding the prior written notice language:

- 1. It must be written in language understandable to the general public and provided in the native language or other mode of communication you use most often, unless it is clearly not feasible to do so.
- 2. If your native language or other mode of communication is not a written language, your school district shall take steps to ensure that:
  - a) The notice is translated for you orally or by other means in your native language or other mode of communication;
  - b) You understand the content of the notice; and
  - c) There is written evidence that these requirements have been met.



## **Native Language**

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

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

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

## **Electronic Mail (E-Mail)**

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

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

## **Parental Consent Overview**

Parental consent means:

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

## **Parental Consent for Initial Evaluation**

Your school district cannot conduct an initial evaluation of your child to determine whether your child is eligible to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent.

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

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

If your child is enrolled in public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, your school district may, but is not required to, seek to conduct an initial evaluation of your child by utilizing the mediation or due process complaint, resolution meeting, and impartial due process hearing procedures (unless required to do so or prohibited from doing so under State law). Your school district will not violate its obligations to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances, unless State law requires it to pursue the evaluation.

## **Special Consent Rules for Initial Evaluation of Wards of the State**

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

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

Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent.

If a child is a ward of the State and is not living with his/her parent, the school district does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the school district cannot find the child's parent(s);

2. The rights of the parents have been terminated in accordance with the State law; or
3. A judge assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than the parent.

### **Parental Consent for Services**

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

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

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

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

### **Parental Consent for Reevaluations**

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

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

If you refuse to consent to your child's reevaluation, the school district may, but is not required to, pursue your child's reevaluation. As with initial evaluations, your school district does not violate its obligations under Part B of the IDEA if it declines to pursue the reevaluation.



## CHAPTER II

### Evaluations and Reevaluations

### Evaluation Overview

Evaluation means procedures used to determine whether a student is a student with a disability and the nature and extent of special education and related services that the student needs. Evaluation also refers to a procedure used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

### Initial Evaluations

The school district shall conduct an initial evaluation before any special education or related services are provided to your child.

You, the parent, or school district personnel may initiate a request for an initial evaluation to determine if your child is a student with a disability.

The school district shall conduct the initial evaluation within 60 business days of receiving parental consent to determine if your child has a disability and to determine the educational needs of your child. (Extensions may be made by the school district under special circumstances.)

### Reevaluations

The reevaluation may not occur more than once a year, unless the parent and the school district agree otherwise.

The reevaluation shall occur at least once every three years, unless the parent and the school district agree that a reevaluation is not necessary.

If data shows that your child is making satisfactory progress toward meeting annual goals on his/her IEP participating in the general education curriculum, then your permission may be requested to waive the triennial reevaluation. A reevaluation may be requested at any time by you or your child's teacher when additional information regarding new concerns or lack of progress has been identified.

### **Other Consent Requirements**

Your consent is NOT required before your school district may:

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

Your school district may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

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



## CHAPTER III:

### Independent Educational Evaluations (IEE)

#### Independent Educational Evaluations Overview

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

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

#### Definitions:

1. Independent Educational Evaluation (IEE) means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.
2. Public Expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

#### Parental Right to Evaluation at Public Expense

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

1. If you request an independent educational evaluation of your child at public expense, your school district must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that



its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless the school district demonstrates in a hearing that the evaluation of your child that you obtained did not meet the school district's criteria.

2. If your school district requests a due process hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the school district may ask why you object to the school district's evaluation. However, your school district may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

### **Parent-Initiated Evaluations**

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

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

### **Requests for Evaluations by Hearing Officers**

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



## CHAPTER IV:

### Individualized Education Program

#### Individualized Education Program Overview

A student with a disability has the right to an Individualized Education Program (IEP). An Individualized Education Program is an education plan that is developed, reviewed, and revised to meet the specific and unique needs of your child with a disability through direct special education and related services.

You and/or your child will receive prior written notice before an IEP meeting so that you and/or your child may participate in the IEP Team meeting.

The IEP Team must include:

1. One or both parents;
2. Not less than one regular education teacher for your child (if the child is, or may be, participating in the regular education environment);
3. Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;
4. A representative of the school district (who has certain specific knowledge and qualifications);
5. An individual who can interpret the instructional implications of evaluation results and who may also be a member of the team;

6. At your discretion or the school district, other individuals who have knowledge or special expertise regarding your child, including related services personnel as appropriate; and
7. Whenever appropriate, your child with a disability.

### **Parent Participation in Meetings**

Your school district should take steps to ensure you are present at each IEP Team meeting and are afforded the opportunity to participate, including:

1. Notifying you of the meeting early enough to ensure that you will have an opportunity to attend; and
2. Scheduling the meeting at a mutually agreed-upon time and place.

The notice should:

1. Include the purpose, time, and location of the meeting and who will be in attendance;
2. Inform you that you have the right to bring other persons on the IEP Team who has knowledge or special expertise regarding your child to assist in planning your child's educational program.

### **IEP Team Attendance/Excusal**

A member of the IEP Team is not required to attend a meeting, in whole or in part, if you and the school district agree in writing that the attendance of that member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

A member of the IEP Team may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves modification to or discussion of the member's area of the curriculum or related services, if:

1. The parent, in writing, and the school district consent to the excusal;
2. The member submits, in writing, to the parent and IEP Team, input into the development of the IEP prior to the meeting

You and the school district may agree to use alternative means of meeting participation, such as video and conference calls when conducting IEP Team meetings and carrying out administrative matters.

## **Transition IEP Meeting**

The school district must invite your child to attend his/her IEP Team meeting if the purpose is to discuss postsecondary goals for your child and the transition services needed to assist your child in reaching those goals.

Outside agencies may not be invited to attend your child's transition IEP meeting without permission from:

1. The student who has reached the age of majority (18) or;
2. The parent if it has been determined that the child is incompetent and unable to make such a decision.



## CHAPTER V:

### Confidentiality of Information

#### Confidentiality of Information Overview

Policies and procedures are in effect to ensure that the school districts comply with protecting your child's personally identifiable information.

#### Definitions

1. Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
2. Participating agency means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained.
3. Personally identifiable means information that has:
  - a) Your child's name, your name as the parent, or the name of another family member;
  - b) Your child's address;
  - c) A personal identifier, such as your child's social security number or student number; or
  - d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

## **Notice to Parents**

The Louisiana Department of Education must give adequate notice to fully inform you about confidentiality of personally identifiable information, including:

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

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

## **Access of Rights**

Each school district must permit you, the parent, to inspect and review any educational records relating to your child with respect to identification, evaluation, and educational placement of your child, and the provision of a FAPE to your child, which are collected, maintained, or used by your school district. The school district must comply with your request without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 days after the request has been made.

The right to inspect and review educational records under this section includes:

1. Your right to a response from the school district to your reasonable requests for explanations and interpretations of the records;

2. Your right to have your representative inspect and review the records; and
3. Your right to request that the school district provide copies of the records if you cannot effectively inspect and review the records, unless you receive those copies.

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

### **Record of Access**

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

### **Records on More than One Child**

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

### **Types and Location of Information**

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

### **Fees**

Each school district may charge a fee for copies of records, which are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records.

Each school district may not charge a fee to search for or to retrieve information.

### **Amendment of Records at Parent's Request**

If you believe that information in the education records collected, maintained, or used is inaccurate, misleading or violates the privacy or other rights of your



child, you may request the school district that maintains the information to change the information.

The school district must decide whether to change the information in accordance with the request within a reasonable period of time of receipt of this request.

If the school district refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of your right to a hearing as set forth under IDEA and the Family Education Rights and Privacy Act (FERPA).



## **CHAPTER VI:**

### **Opportunity for a Hearing**

#### **Hearing Procedures**

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

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

#### **Result of Hearing**

If, as a result of the hearing, the school district decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decisions of the school district.

Such an explanation placed in the records of your child:

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

#### **Consent for Disclosure of Personally Identifiable Information**

Unless the information is contained in education records and the disclosure is authorized without parental consent under FERPA, your consent must be

obtained before personally identifiable information is disclosed to parties other than officials of your school district. Your consent is not required before personally identifiable information is released to officials of your school district for purposes of meeting a requirement of Part B of the IDEA.

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

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

### **Safeguards**

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

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

All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures concerning confidentiality under Part B of the IDEA and FERPA.

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

### **Destruction of Information**

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

The information shall be destroyed at your request; however, a permanent record of your child's name, address, and telephone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.



## CHAPTER VII: Complaint and Dispute Resolution

### **Dispute Resolution**

Sometimes, you may disagree with the school district about your child's special education. The Department of Education has developed several processes for resolving the disagreement about your child's disability identification or eligibility, evaluation, the level of services or placement, the provision of FAPE, or payment for services that you have obtained. (See attached Louisiana Department of Education Dispute Resolution Comparison Chart.)

### **IEP Facilitation**

IEP facilitation is a new dispute resolution method developed by the Louisiana Department of Education. This option is available to parents and school districts when they both agree that it would be valuable to have a neutral person, such as an IEP Facilitator, present at an IEP meeting to assist them in discussing issues regarding your child's IEP. Typically, an IEP Facilitator is brought in when parents and school district staff are having difficulties communicating with one another regarding the needs of the student.

The IEP Facilitator assists in creating an atmosphere for fair communication and also oversees the successful drafting of an IEP for the student. Either the parent or the school district can request IEP facilitation; however, since the process is voluntary, both sides must agree to use this process. The process will be initiated by a request to the Dispute Resolution Section, at no cost to you or the school district.

## **Informal and Formal Complaints and Early Resolution**

Any parent, individual or organization acting on behalf of a student with a disability has a right to file a complaint with the Louisiana Department of Education whenever you, an individual, or organization believes that there exists a violation by the school district of State and Federal law regarding the educational rights of your child, a student with a disability.

### **Informal Complaints/Early Resolution Procedures**

It is the policy of the Louisiana Department of Education to encourage and support prompt and effective resolution of any administrative complaint in the least adversarial manner possible. The implementation of the Early Resolution Process (ERP) by each school district draws on the traditional model of parents and school districts working cooperatively in the educational interest of your child to achieve their shared goals of meeting the educational needs of students with disabilities.

1. Informal administrative complaints are procedures developed to allow for district-level resolution prior to the exercise of the Louisiana Department of Education's supervisory jurisdiction in addressing allegations that a school district is violating a requirement of Part B of the Act.
2. All informal complaints are handled at the local level by the school district's ERP representative.
3. Informal complaints are verbal complaints.
4. Informal complaints may be made with the Louisiana Department of Education or directly with the school district.
5. Informal complaints made to the Louisiana Department of Education shall only be made through the Louisiana Department of Education's Intake Coordinator(s) who shall refer the complaint to the ERP representative of the school district immediately, if possible, but not later than two calendar days after receiving the complaint.
6. Within the 15-day resolution period, you and the school district shall sign a resolution agreement or an agreement in writing to extend the resolution period. If no resolution agreement is signed and no extension agreement is signed, the school district's ERP representative shall provide you with the Department's explanation of Dispute Resolution Options, acknowledged by written receipt. You may then pursue any other dispute resolution option.

## Formal Complaints

1. Formal administrative complaints are procedures developed under the supervisory jurisdiction of the Louisiana Department of Education to address allegations that the school district is violating a requirement of Part B of the IDEA.
2. Formal complaints must be written and signed. Unless the parties have already attempted informal early resolution on the same issues, the complaint will be forwarded to the school district for an opportunity for local level resolution through the ERP before complaint investigation.
3. A parent, adult student, individual, or organization may file a signed written complaint by U.S. mail, facsimile, email, or TDD with the Louisiana Department of Education.
4. The party filing the complaint shall forward a copy of the complaint to the school district or public agency serving the student at the same time the party files the complaint with the Louisiana Department of Education.
5. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received. The Department of Education will provide the school district an opportunity to respond to the complaint and recommend a proposal to resolve the complaint through the ERP and/or provide parents with an opportunity to work with the school district to voluntarily engage in mediation or IEP facilitation.
6. Upon expiration of the resolution period, the complaint is reviewed, and the school district is notified and asked to provide specific information. Depending upon the nature of the complaint, an on-site visit may be made to the school district by the Department of Education. The complainant is given the opportunity to provide additional information to the Department either orally or in writing during the course of the investigation. All relevant information is reviewed, and a determination is made as to whether the school district is violating a requirement of applicable Federal or State statutes, regulations or standards. The Department of Education has 60 days from receipt of the complaint or 45 days from the end of the Early Resolution Period to issue a written decision to all parties on each of the allegations of the complaint.
7. Reconsideration of complaint findings - If you believe that the complaint finds are wrong in that it contains an error in one or more findings of fact and/or law, a reconsideration of the investigative findings and decision may be requested, in writing to the LDE's legal division and

simultaneously to the other party to the complaint in accordance with the following procedures.

- a) For each error submitted for reconsideration, the requestor shall provide the reference number assigned by the LDE to the complaint at issue; the page number of the written decision where such alleged error can be found; highlighted sections of data submitted for investigation that would assert a fact contrary to what is reflected in the written decision; and citations to applicable law, regulations, or jurisprudence, where applicable, to support the alleged error of law; and
- b) The requestor shall provide a written explanation that indicates how originally-submitted documentation changes the respective findings(s) of fact or law and/or how the alleged error impacts the conclusion of the LDE with respect to the allegation(s) at issue.
- c) Documents and other information not originally submitted regarding the allegations(s) shall not be accepted for review; and
- d) Reconsideration requests, including all documentation relevant to the reconsideration request, shall be received by the LDE no later than 10 calendar days after the date of receipt of the investigative report. Should the other party to the complaint wish to respond to the reconsideration request, the response shall be received by the LDE no later than 10 calendar days after the LDE received the original reconsideration request; and
- e) Reconsideration requests received by the LDE after the 10 calendar day deadline shall not be reviewed.
- f) Reconsideration requests received timely and that meet criteria shall be reviewed by a panel of individuals appointed by the division director and the LDE shall inform the complainant and the public agency of its determinations, in writing, within 30 calendar days from the date the LDE receives the written reconsideration request.
- g) Reconsideration request by third parties shall not be accepted.
- h) Reconsideration requests shall not be used to delay or deny implementation of FAPE for a student with a disability. The timeline for corrective actions cannot be delayed based on a request for reconsideration.



To request an Informal ERP, the Department of Education contact information is as follows:

Louisiana Department of Education  
Toll-Free Number: 877-453-2721  
Fax Number: (225)-342-1197

Contact your local school districts for your ERP representatives to obtain contact information.

Formal written complaints:  
Louisiana Department of Education  
Attention Legal Division  
Louisiana Department of Education  
P.O. Box 94064  
Baton Rouge, Louisiana 70804-9064  
Fax (225) 342-1197  
E-mail: [abie.dupont@la.gov](mailto:abie.dupont@la.gov)

Contact information for the school districts' Special Education Supervisors maybe found on the Department's website.

## **Mediation**

Mediation is a way to discuss and resolve disagreements between you and the school district with the help of an impartial third person who has been trained in effective mediation techniques. Mediation is a voluntary process, and both you and the school district must agree to participate in order for the mediation session to occur. The mediation sessions are scheduled in a timely manner and held in a location that is convenient to the parties in the dispute.

A mediator does not make decisions; instead, he/she facilitates discussion and decision-making. The discussions in a mediation session are confidential and may not be used as evidence in subsequent due process hearings or civil court proceedings. If the mediation process results in full or partial agreement, the mediator will prepare a written mediation agreement that must be signed by both you and the school's representative. In addition to describing the things you have agreed to, the mediation agreement will state that all discussions that occurred during the mediation are confidential and may not be used as evidence in a due process hearing or other civil court proceeding. The signed agreement is legally binding on both you and the school and is enforceable in court.

Mediation is available to resolve a disagreement between you and the school district regarding the identification, evaluation, placement, services, or the provision of a FAPE to your child. You may request mediation before, at the same time, or after requesting a due process hearing. Requesting mediation will not prevent or delay a due process hearing, nor will mediation deny any of your

other rights. You or the school district may suggest mediation, and it begins when both agree to participate. Participating in mediation is voluntary for both you and the school district. Your right to a due process hearing is not delayed or denied by requesting or declining to participate in mediation.

### **How to Initiate the Mediation Process**

In order to initiate the process, you or the school district must send the **Request for Mediation** to the Legal Division. The Legal Division will assign a mediator who will contact both you and the school district to schedule a timely meeting in a convenient location. You may request mediation by calling (225) 342-3572 or by sending written notice by fax to (225) 342-1197 or mailing written notice to the Louisiana Department of Education, P.O. Box 94064, Baton Rouge, Louisiana 70804-9064, Attention: Legal Division.

The Legal Division maintains a list of mediators who are trained, qualified, and knowledgeable about the laws and regulations relating to the provision of special education and related services. A mediator is assigned on a rotational basis.

No employee of the Department of Education, local school district, or other public agency providing special education services is eligible to be a mediator. A mediator must not have any personal or professional conflict of interest. A mediator is not considered to be an employee solely because he/she is paid to provide this service. The Legal Division bears the cost of the mediation process. The school district may establish procedures to offer you the opportunity to meet at a convenient time and location to have someone from a parent training center or alternative dispute resolution entity to discuss the benefits of the mediation process when you have opted not to participate in mediation with the school district. However, the Legal Division must approve any procedures established by the school district before they can be implemented, and the procedures cannot be used to delay or deny your right to a due process hearing if you decline to participate in such a meeting. The Legal Division pays for the cost of these meetings.

### **Due Process Hearing, Appeal, Court Action, and Attorney Fees**

#### **1. What is a Due Process Hearing?**

A due process hearing is a formal proceeding in which evidence is presented to an independent hearing officer to resolve a dispute between you and the school district regarding your child's disability identification, evaluation, eligibility, placement, services, or reimbursement of services you have obtained privately.

## **2. How to Request a Due Process Hearing?**

A request for a due process hearing must be made within one year of the date you knew or should have known about the alleged action forming the basis of your dispute with the school district. This one-year limit does not apply if you were prevented from requesting the hearing because the school district specifically misrepresented that it had resolved the problem you complained about; or if the school district withheld pertinent information from you that it was required to provide you under Part B of the IDEA. Only you, your attorney representing your child, or the school district may request a due process hearing regarding a student with a disability. Upon your request, the school district must provide you with information on free or low-cost legal and other relevant services in your area, if you or the school district files a request for a due process hearing.

To request a due process hearing, you need to send a signed, written request with the identified information to the Louisiana Department of Education, Attention Legal Division, Post Office Box 94064, Baton Rouge, Louisiana 70804-9064, and to the school district. The written request must include your name, address, and telephone number; your child's name and address (if different); the name of the school district and the school district the child attends; a statement of the reason for the hearing request, including a description of the problem and a statement of the facts relating to the problem; and a proposal for resolution to the problem, to the extent known to you.

You will not be able to have a due process hearing unless your written request for a hearing contains all of the information listed above.

## **3. Due Process Procedures**

Once a request for a hearing is received, an independent hearing officer is appointed, and he or she is provided with a copy of your hearing request. Otherwise, your request remains confidential. The Louisiana Department of Education will send you and the school district a letter notifying you of the hearing officer's appointment. In addition, the school district must abide by certain requirements within specific time periods after it receives your request for a due process hearing. The school district must also inform you of the availability of mediation and of any free or low-cost legal and other relevant services in the area.

Within 10 days of receiving your request for a due process hearing, the school district must do two things:

1. Send you written notice regarding the subject matter of your request for a due process hearing including:
  - a) An explanation of why the school district proposed or refused to take the action that is the subject of the due process hearing;
  - b) A description of the options the IEP Team considered and the reasons they were rejected;
  - c) A description of each evaluation procedure, assessment, record, or report the school district used as the basis for its decision; and
  - d) A description of the factors the school district believes are relevant to its proposal or refusal.
2. Send you a written response that specifically addresses the issues you raise in your request for a due process hearing.

**NOTE:** The school district is not required to send you this written notice after it receive your request for a due process hearing **IF** the school district previously sent you prior written notice on the same matter.

If the school district believes your letter requesting a due process hearing does not contain all of the required information listed above, it may send a letter to you and the hearing officer indicating that your request does not comply with the requirements. If the school district is going to send this letter, it must do so within 15 days of receiving your request for a due process hearing. The hearing officer then has 5 days to determine if your request is sufficient and will immediately inform both you and the district in writing of the decision. If the hearing officer agrees with the school district, you must resubmit the request for a due process hearing that meets all of the requirements. If the school district does not challenge the contents of your request for a due process hearing, it is considered to meet all of the requirements.

Within 15 days of receiving your request for a due process hearing, the school district must provide you with the opportunity for a resolution meeting to see if the matter can be resolved. The next section covers more information on the resolution meeting.

### **Resolution Meeting Process**

Prior to the opportunity for a due process hearing, the school district must convene a meeting called a “**resolution meeting**.” The meeting must include a representative from the school district with decision-making authority and relevant members of the IEP Team who have information about the facts alleged in the hearing request. Unless you bring your attorney to this meeting,

the school district may not have an attorney at the meeting. In this meeting you will discuss the facts that formed the basis of your request and give the school district an opportunity to resolve the issues raised in your request. You can agree with the school district to use an alternative means to hold the resolution meeting (e.g., via video conference or conference telephone call).

1. If the school district has not resolved the due process complaint to your satisfaction within 30 calendar days of receipt of the request for a due process hearing, the due process hearing may occur.
2. The 45-calendar-day timeline for issuing a final decision begins at the expiration of the 30-calendar-day resolution period, except as described below under Adjustments. It is voluntary. You do not have to attend a resolution meeting if you and the school district agree in writing to waive it, or if you both agree to use the mediation process.
3. If you and the school district have not agreed in writing to waive the resolution meeting, your failure to attend the resolution meeting will delay timelines for the resolution process and the due process hearing until you agree to attend and can result in the dismissal of your request for hearing.
4. If you and the school district come to an agreement during this meeting, you will both sign a legally binding written agreement that will be enforceable in a court of appropriate jurisdiction. After it is signed, both you and the school district have three business days to change your minds, and either of you may void the agreement during that time.
5. If you and the school district agree in writing to waive the resolution meeting or if you cannot resolve the issues in mediation or a resolution meeting within 30 days of the school district's receiving your request for a hearing, the due process hearing may occur.
6. If after making reasonable efforts and documenting such efforts, the school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your request for due process hearing. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed-upon time and place.
7. If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your request for due process hearing or fails to participate in the meeting, you may ask the hearing officer to order the 45-calendar-day due process hearing timeline.

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

### **Amending Your Complaint**

Once your request for a due process hearing has been determined to meet all of the requirements, you cannot change or add issues to the request unless one of the following occurs:

1. The school district agrees in writing that you can add or change issues and you have the opportunity to conduct a resolution meeting on the new or changed issues, OR
2. The hearing officer gives you permission to make changes (but this cannot occur within the last five days prior to the due process hearing).

If you are permitted to make changes or add issues to your request for a hearing, it may be treated as the first request for a due process hearing, and all of the timelines and events described above could begin again.

Before the hearing occurs, the independent hearing officer will contact you and the school district to make arrangements for a pre-hearing conference. One of the things you will decide at the pre-hearing conference is when the hearing will occur. The hearing will be held at a time and place reasonably convenient to you and the school district. The independent hearing officer will send you written notice about the time and the place of the hearing, as well as other procedural matters.

An independent hearing officer conducts the due process hearing. The Department of Education maintains a list of individuals who serve as independent hearing officers, along with a list of each individual's qualifications. Individuals who serve as independent hearing officers cannot be employees of the State Department of Education or the school district that is

involved in the student's care or education, and they cannot have any professional or personal interest that would conflict with his or her objectivity in conducting the hearing. In addition, the hearing officer must possess knowledge of the Federal statute and regulations governing special education services, as well as "legal interpretations" made by Federal and State courts; possess the knowledge and ability to conduct hearings in accordance with standard legal practice, and be able to render and write decisions in accordance with standard legal practice. An individual who otherwise qualifies to conduct a hearing is not an employee of the school district or agency solely because he or she is paid by the school district or agency to serve as the independent hearing officer.

You will not be able to raise issues at the hearing that you did not include in your hearing request, unless the school district agrees otherwise.

You and the school district have the right to be accompanied and advised by legal counsel and by individuals with knowledge and training with respect to special education or the problems of students with disabilities; present evidence, confront, cross-examine, and compel the attendance of any witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed at least 5 business days prior to the hearing; separate the witnesses so that they do not hear other witnesses' testimony; and be provided with an interpreter, if appropriate.

As a parent, you also have the right to decide whether your child (who is the subject of the hearing) will attend the hearing; have the hearing opened or closed to the public; and obtain a written or an electronic verbatim transcript of the proceedings, as well as a written or electronic copy of the independent hearing officer's written decision, including findings of fact, conclusions, and orders without cost to you.

Before the hearing, you are entitled to a copy of your child's educational record, including all tests and reports upon which the school's proposed action is based. In addition, at least 5 business days before the date of the hearing, you and the school district must disclose to each other the evaluations each intends to use in the hearing. Specifically, copies of all evaluations and recommendations based on those evaluations must be exchanged by that deadline. If either you or the school district fails to make these disclosures on time, the hearing officer may bar the evidence from the hearing. If an evaluation is underway and has not been completed, it is necessary to inform each other and the independent hearing officer.

The decision of the hearing officer is made on substantive grounds based on a determination whether the school provided your child with a free appropriate public education (FAPE). If your request for a hearing includes or is based on alleged procedural violations, the hearing officer may find that your child did



not receive a FAPE only if he or she finds that the procedural violations occurred and they:

1. Impeded your child's right to a FAPE;
2. Significantly impeded your opportunity to participate in the decision-making process regarding the provision of FAPE; or
3. Deprived your child of educational benefits. As part of his or her decision and order, the hearing officer may order the school district to comply with the procedural requirements.

The independent hearing officer must conduct the hearing and mail you and the school district a written decision within 45 calendar days from either:

1. The expiration of the 30-calendar-day period for resolution meeting; or
2. The expiration on the adjusted time period as described above to the 30-calendar-day resolution period. However, it may be longer than 45 days if the independent hearing officer grants a request for an extension of time from you or the school district. The independent hearing officer's decision is final, and the orders must be implemented UNLESS you or the school district files a civil action in State or Federal court of competent jurisdiction, within 90 days of receipt of the notification of the findings and decision of the hearing officer.

The school district (or in some cases, the Legal Division) is responsible for payment of the hearing officer's fees and the court reporter's charges. You are responsible for your costs of participating in the due process hearing (e.g., witness fees, your attorney's fees, costs of copying documents, etc.). Under certain circumstances, the school district may be required to reimburse you for your attorney's fees.

### **Finality of Decision, Appeal, and Impartial Review**

If you disagree with the independent hearing officer's written decision, you have the right to bring civil action in State or Federal court. You may be entitled to file a lawsuit under other State or Federal laws. However, if you are seeking a remedy that is also available under the IDEA or Article 7, you must first go through a due process hearing and administrative appeal.

Except when your child has violated a school district rule or has done something that could have hurt himself or someone else during any due process or court proceedings, your child stays in the current educational placement, unless you and the school district agree to another placement. If the hearing involves an application for initial admission to the school district, your

child, with your consent, must be placed in public school until the proceedings are finished.

### **Attorney's Fees**

The court may award reasonable attorney's fees if an attorney represents you during a due process hearing (including an appeal and subsequent civil action), if you ultimately prevail. You may also be eligible for an award of attorney fees if you are the prevailing party and were substantially justified in rejecting the school district's settlement offer. The school district may negotiate with you or your attorney regarding the amount of reimbursement and, if necessary, about who prevailed.

If agreement is not reached through these negotiations, you may file an action in State or Federal court for resolution of the disagreement. However, the school district or the Department of Education may seek attorney's fees against your attorney if your attorney requests a hearing or files a subsequent cause of action that is frivolous, unreasonable or without foundation or if your attorney continued to litigate after the litigation was obviously frivolous, unreasonable or without foundation. The school district or the Department of Education may also seek attorney's fees from you or your attorney if the hearing request was presented for any improper purpose, such as to harass, to unnecessarily delay, or to needlessly increase cost of litigation.

Mediation is not available to resolve a disagreement on attorney's fees. An action for attorney fees must be filed in a State or Federal court within 30 calendar days after a final decision that is not appealed. Any fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under the IDEA and Article 7.

The court may not award attorneys' fees for services performed after the school district made a timely written settlement offer to you, and the relief you finally obtained is not more favorable to you than the school district's settlement offer (unless you were justified in rejecting that settlement offer) and the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedures or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins and the offer is not accepted within 10 days; any meeting of the case conference committee, unless the meeting was convened as a result of an administrative proceeding or judicial action; a mediation session that was conducted prior to the time the due process hearing request was filed, or a resolution session.

The court may reduce an award for attorneys' fees if:

1. You or your attorney unreasonably protracted the final resolution of the controversy;
2. The fees unreasonably exceed the hourly rate prevailing in the community for similar services by attorneys of comparable skills, reputation, and experience, without a bonus or multiplier used in calculating the fee;
3. The time spent and legal services furnished were excessive, considering the nature of the action or proceeding; or,
4. Your attorney or you did not provide the school district with appropriate information in the due process hearing request.

The court may not reduce reimbursement for attorney fees if the court finds that the school district (or in some cases, the Louisiana Department of Education) unreasonably protracted the final resolution of the action or proceeding or there was a violation of USC §1415. The school district may use its Federal Special Education funds to pay for the costs of a due process hearing, but it cannot use those funds to pay your attorney's fees or its attorney's fees.



## CHAPTER VIII: Procedures when Disciplining Children with Disabilities

### **Case-by-Case Determination**

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

### **General Description**

School personnel may, under this section, remove your child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to students without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incident of misconduct (as long as those removals do not constitute a change of placement).

Once a child with a disability has been removed from his or her current placement for a total of 10 consecutive school days in the same school year, during any subsequent days of removal, that school district shall provide services to the extent required.

### **Additional Authority**

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, school

personnel may apply the same disciplinary procedures to students with disabilities in the same manner and for the same duration as the procedures would be applied to students without disabilities.

## **Services**

The services that shall be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.

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

After your child with a disability has been removed from his or her placement for 10 consecutive school days in that same school year, and if the current removal is for 10 consecutive school days or less and if the removal is not a change of placement, then school personnel, in consultation with at least one of your child's teachers, shall determine the extent to which services are needed 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.

## **Manifestation Determination**

Within 10 school days of any decision to change the placement of your child with a disability because of a violation of a code of student conduct, the school district, you, and relevant members of the IEP Team shall review all relevant information in the child's file, including your child's IEP, any teacher observations, and any relevant information provided by you to determine:

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

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

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

## **Determination that Behavior was a Manifestation of the Child's Disability**

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

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

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

## **Special Circumstances**

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

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

## **Definitions**

Controlled Substance means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act [21 U.S.C. 812(c)]

Illegal Drug means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal Law.

Serious Bodily Injury means a bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or faculty.

Weapon has the meaning given the term “dangerous weapon” under paragraph (2) the first subsection (g) of Section 930 of Title 18, United States Code.

Notification

On the date on which the decision is made to make a removal that constitutes a change of placement of a student with a disability because of a violation of a code of student conduct, the school district shall notify you of that decision and provide you with the procedural safeguards notice.



**CHAPTER IX:**  
**Change of Placement  
Due to Disciplinary  
Removals**

**Removals**

A removal of your child with a disability from his or her current educational placement is a change of placement if:

1. The removal is for more than 10 consecutive school days; or
2. Your child has been subjected to a series of removals that constitute a pattern because:
  - a) The series of removals total more than 10 consecutive school days in a school year;
  - b) Your child’s behavior is substantially similar to behavior in previous incidents that resulted in the series of removals;
  - c) Of such additional factors as the length of each removal, the total amount of time your child has been removed, and the proximity of the removals to one another.

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

**General Description**

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination, or the school district



that believes that maintaining the current placement of the student is substantially likely to result in injury to your child or others may appeal the decision by requesting a hearing.

### **Authority of Hearing Officer**

A hearing officer that meets the requirements shall conduct the due process hearing and a determination. The hearing officer may:

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

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

Whenever a hearing is requested, you or a school district involved in the dispute shall have an opportunity for an impartial due process hearing consistent with the requirements under the Due Process Complaint Procedures, Hearings on Due Process Complaints except as follows:

1. The Louisiana Department of Education or school district shall arrange for the expedited due process hearing, which shall occur within 20 school days of the date the Request for Due Process Hearing is filed. The hearing officer shall make a determination within 10 school days after the hearing.
2. Unless you and the school district agree in writing to waive the meeting or agree to use mediation, a resolution meeting shall occur within 7 days of receiving the notice of the Request for Due Process Hearing. The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the Request for Due Process Hearing.
3. The Louisiana Department of Education requires the exclusion of evidence not disclosed to the other party 3 business days before the hearing, unless the parties agree otherwise.

## **Placement during Appeals**

When an expedited hearing has been requested by either the parent or the school district, the student shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified whichever occurs first, unless you and the Louisiana Department of Education or school district agrees otherwise.



## CHAPTER X:

### Protections for Children not yet Eligible for Special Education & Related Services

**General Description**

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

**Basis of Knowledge of Disciplinary Matters**

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

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

## **Exception**

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

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

## **Conditions that apply if there is No Basis of Knowledge**

If prior to taking disciplinary measures against your child, a school district does not have knowledge that your child is a child with a disability, the child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

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

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services. If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district and information provided by you, the school district shall provide special education and related services in accordance with the IDEA.

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

Nothing in these regulations prohibits a school district from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State laws to crimes committed by a student with a disability.

## **Transmittal of Records**

If a school district reports a crime committed by a child with a disability, the school district shall ensure that copies of your child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime and may transmit copies of the child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act.



## **CHAPTER XI:**

### **Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense**

**Definition**

Parentally-placed private school students with disabilities mean students with disabilities enrolled by their parents in private, including religious schools or facilities that meet the definition of elementary and secondary school.

**General Description**

Part B of IDEA does not require a school district to pay for the cost of the education, including special education and related services, of your child with a disability at a private school or facility if the school district made a free appropriate public education available to your child and you chose to place the child in a private school or facility.

**Reimbursement for Private School Placement**

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private preschool, elementary school or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the school district to reimburse you for the cost of that enrollment if the court or hearing officer finds that the school district had not made a free appropriate public education available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if the placement does not meet the State standards that apply to education by the school districts and the Louisiana Department of Education.

## Limitation of Reimbursement

The cost of reimbursement for private school placement may be reduced or denied if:

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

However, the cost of reimbursement:

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



## CHAPTER XII:

### Transfer of Parental Rights at the Age of Majority

#### Transfer of Parental Rights Overview

When a student with a disability reaches the age of majority, which is age eighteen in Louisiana (except for a student with a disability who has been determined to be incompetent under State law), the school district must:

1. Provide any notice required to both you and your child; and
2. Transfer all other rights accorded to you and to your child; and
3. Transfer all rights accorded to you and to your child who may be incarcerated in an adult or juvenile, State, or local correctional institution.



## CHAPTER XIII: Surrogate Parents

### Surrogate Parents' Overview

Each school district must ensure that the rights of a child are protected when:

1. No parent can be identified;
2. The school district, after reasonable efforts, cannot locate a parent;
3. The student is a ward of the State; or
4. The student is an unaccompanied homeless youth as defined in the McKinney-Vento Homeless Assistance Act.

The duties of a school district include the assignment of an individual to act as a surrogate for the parents. This shall include a method:

1. For determining whether a student needs a surrogate parent; and
2. For assigning a surrogate parent to the student.

In the case of a student who is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the student's case, provided that the surrogate meets the following requirements:

1. The school district may select a surrogate parent in any way permitted under state law.



2. The school district shall ensure that a person selected as a surrogate parent:

- a. is not an employee of the Louisiana Department of Education, the school district, or any other agency that is involved in the education or care of the student;
- b. has no personal or professional interest that conflicts with the interest of the student the surrogate parent represents; and
- c. has knowledge and skills that ensure adequate representation of the student.

A person otherwise qualified to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

In the case of a student who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents until the school district can appoint a surrogate parent.

In the case of a student who is a ward of the state and is in foster care, a foster parent who does not meet the criteria of a parent, would still need to be considered for surrogate appointment by the school district.

In the case of a student who is a ward of the state and is in foster care, the foster care parent shall be considered the child's parent, and no surrogate need be appointed, provided that:

1. the natural parents' authority to make educational decisions on the child's behalf has been extinguished under state law;
2. the foster parent has an ongoing, long-term parental relationship with the child;
3. the foster parent is willing to make the educational decisions required of parents under IDEA; and
4. the foster parent has no interest that would conflict with the interests of the child.

The surrogate parent may represent the student in all matters relating to:

1. the identification, evaluation, and educational placement of the student;  
and
2. the provision of FAPE to the student.

The Louisiana Department of Education shall make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a school district determines that the child needs a surrogate parent.

Any person appointed as a surrogate parent shall be protected by the “limited liability” provisions.

# APPENDIX

## Request for Special Education Formal Complaint Investigation

If you believe that special education requirements have not been followed by a public school, you have the following formal dispute resolution options available to you: Mediation, Complaint Investigation, and/or Due Process Hearings as well as informal dispute options: Early Resolution Process, and IEP facilitation. Additional information about the formal complaint investigation procedures as well as other dispute resolution procedures can be found on the Louisiana Department of Education web site at. <http://www.doe.state.la.us>

This sample form has been designed for you to request a formal complaint investigation.

You may choose not to use this form to request a complaint investigation; however, all the information on this form must be included in your written request to LDE. Requests must be signed. A checklist for you to use prior to mailing/faxing the completed form can be found on the last page of this form.

Whether you use this form or write your own letter, you are required by law to send a copy of your request to the school district.

*Note: A complaint investigation **or** request for due process hearing **and** mediation can be requested at the same time. If you request a complaint investigation and a due process hearing, your complaint investigation request will remain on hold until the due process hearing has ended.*

If you are requesting a formal complaint investigation for one student, you are required to complete section **1. Student Information**. If you are requesting a complaint investigation for more than one student, skip section **1. Student Information** and complete the rest of the form.

**1. Student Information**

*In the space below, provide the student's complete name, mailing address, and phone numbers. Also provide the name of the District and campus where the student attends or attended school. The student's date of birth is required for identification purposes.*

*In the case of a homeless child or youth (within the meaning of section 752 (2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), provide available contact information for the child and the name of the school the child is attending.*

Name \_\_\_\_\_ Date of birth \_\_\_\_ / \_\_\_\_ / \_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone number \_\_\_\_\_ Alternate phone number \_\_\_\_\_  
Name of school district \_\_\_\_\_  
Name of campus student attends/attended \_\_\_\_\_

**2. Requestor Information**

*The requestor is the individual or organization filing the complaint. The requestor of a complaint may file on behalf of other students as a third party. The requestor must provide complete name and contact information.*

Name \_\_\_\_\_  
Relationship to student \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone number \_\_\_\_\_ Alternate phone number \_\_\_\_\_  
Fax number \_\_\_\_\_ Email Address \_\_\_\_\_

**3. Complaint Information**

*Your complaint must allege a violation of the Individuals with Disabilities Education Act (IDEA), its implementing regulations, and/or Bulletin 1706. The violation that is alleged must have occurred not more than one year prior to the date the complaint is received by The School district.*

*Below, please describe in detail each act that you allege violates Federal and/or state law or regulations, including when the act occurred and other events that are relevant to the allegation. You may describe what documents would be helpful for the Agency to review. Finally, you must provide a proposal for resolution of the*

*allegation or to the problem.*

*Pages for additional allegations are attached if needed.*

- a. What is the alleged violation? (Describe the nature of the problem.)
- b. What are the facts on which the allegation is based?
- c. What are significant dates and events that may be relevant to this allegation?
- d. If you have a proposal for how the issue stated in (a) could be resolved, please describe your proposal.
- e. What documents supporting the facts should be reviewed by the Agency regarding this allegation? (Optional)

**4. Signatures**

*By federal regulation, you must sign the request for complaint investigation/Request for Due process Hearing.*

Signature of person(s) filing the  
complaint \_\_\_\_\_  
Date \_\_\_\_\_

**5. Notification for Complaint Investigation**

*By federal regulation, you must send a copy of the request for complaint investigation to the school district. Indicate below when and to whom you sent the copy of the complaint letter.*

Date \_\_\_\_\_

\_\_\_\_\_  
Special Education Director or  
Superintendent

\_\_\_\_\_  
Address

Certified Mail Return Receipt Requested # (if  
applicable) \_\_\_\_\_

## Checklist

Before mailing/faxing your request for a complaint investigation, make sure the items below have been completed.

- You have provided the student's name, contact information, and name of the school district the student attends (section 1, when requesting a due process hearing or a complaint investigation on behalf of one student).
- You have provided your name, address, and contact information where you can be reached (section 2).
- You have provided detailed information as to when, where, and how the alleged violation took place (section 3).
- You have provided a proposed solution to the problem (optional) (section 3.e.).
- You have signed your complaint (section 4).
- You have provided a copy of your complaint to the school district (section 5).
- You have mailed your complaint in time for it to be received by the Division of IDEA Coordination no later than ONE YEAR after the last act or event of which you are complaining (section 3.c.).

### Mail or fax your complaint to:

Louisiana Department of Education  
Attn: Legal Division  
1201 North 3<sup>rd</sup> Street  
Baton Rouge, LA 70802  
Phone: (225) 342-3572  
Fax: (225) 342-1197

As well as the special education director or Superintendent of the school district about which you are complaining.

## Request for Special Education Due Process Hearing

If you believe that special education requirements have not been followed by a public school, you have the following dispute resolution options available to you: Mediation, Complaint Investigation, and/or Due Process Hearings.

This sample form has been designed for you to request a due process hearing. If you need assistance completing this form or would like to discuss your dispute resolution options, you may contact the Louisiana Department of Education. Additional information about the due process hearing procedures can be found on the Louisiana Department of Education web site at <http://www.doe.state.la.us>

You may choose not to use this form to request a due process hearing; however, all the information on this form must be included in your written request. Requests must be signed. A checklist for you to use prior to mailing/faxing the completed form can be found on the last page of this form.

Whether you use this form or write your own letter, you are required by law to send a copy of your request to the school district.

*Note: A complaint investigation **or** request for due process hearing **and** mediation may be requested at the same time. If you request a complaint investigation and a due process hearing, your complaint investigation request will remain on hold until the due process hearing has ended.*

### 1. Student Information

*In the space below, provide the student's complete name, mailing address, and phone numbers. Also provide the name of the District and campus where the student attends or attended school. The student's date of birth is required for identification purposes.*

*In the case of a homeless child or youth (within the meaning of section 752 (2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a (2)), provide available contact information for the child and the name of the school the child is attending.*

Name \_\_\_\_\_ Date of birth \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone number \_\_\_\_\_ Alternate phone number \_\_\_\_\_  
Name of school district \_\_\_\_\_  
Name of campus student attends/attended \_\_\_\_\_

## 2. Requestor Information

*The requestor is the individual or organization filing the complaint/request for due process hearing. The requestor of a complaint may file on behalf of other students as a third party. The requestor must provide complete name and contact information.*

Name \_\_\_\_\_  
Relationship to student \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Phone number \_\_\_\_\_ Alternate phone number \_\_\_\_\_  
Fax number \_\_\_\_\_ Email Address \_\_\_\_\_

## 3. Request Information

*Your Request must allege a violation of the Individuals with Disabilities Education Act (IDEA), its implementing regulations, and/or Bulletin 1706. The violation that is alleged must have occurred not more than one year prior to the date the complaint is received by The School district.*

*Below, please describe in detail each act that you allege violates Federal and/or state law or regulations, including when the act occurred and other events that are relevant to the allegation. You may describe what documents would be helpful for the Agency to review. Finally, you must provide a proposal for resolution of the allegation or to the problem.*

*Pages for additional allegations are attached if needed.*

- a. What is the alleged violation? (Describe the nature of the problem.)
- b. What are the facts on which the allegation is based?
- c. What are significant dates and events that may be relevant to this allegation?
- d. If you have a proposal for how the issue stated in (a) could be resolved, please describe your proposal.
- e. What documents supporting the facts should be reviewed by the Agency regarding this allegation? (Optional)

## 4. Signatures

*By federal regulation, you must sign the request for complaint investigation/Request for Due process Hearing.*

Signature of person(s) filing the  
complaint \_\_\_\_\_

Date \_\_\_\_\_



**Informal Early Resolution Intake Form**

Date: \_\_\_\_\_ Intake by: \_\_\_\_\_

Caller's Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Time Spent on Intake (in Minutes): \_\_\_\_\_

Relationship:     Parent     Advocacy Group Other (specify)

Student's Name: \_\_\_\_\_

Age: \_\_\_\_\_ Date of Birth: \_\_\_\_\_ Grade: \_\_\_\_\_ SSN: \_\_\_\_\_

School: \_\_\_\_\_

Exceptionality: \_\_\_\_\_

What is this caller's problem/concern?

A. What is the alleged violation? Describe the nature of the problem (violation of the Individuals with Disabilities Education Act (IDEA), its implementing regulations, and/or *Bulletin 1706*). The violation that is alleged must have occurred not more than one year prior to the date the complaint is received by the school district.

B. What are the facts on which the allegation is based?

C. What are significant dates and events that may be relevant to this allegation?

D. Please describe your proposal for how this matter can be resolved.



## Louisiana Department of Education Dispute Resolution Comparison Chart

Questions	IEP Facilitation	Mediation	Informal ERP	State Complaint and Formal ERP	Due Process Hearing
Who can initiate the process?	Parent or Local School District or Public Agency, but must be voluntary for both	Parent or Local School District or Public Agency, but must be voluntary for both	Parent or Local School District or Public Agency, but must be voluntary for both	Any individual or organization, including those from out of state	Parent or Local School District or Public Agency
What is the time limit for filing?	None specified	None specified	One year of when the party knew or should have known of the problem	One year of when the party knew or should have known of the problem	One year from date of the alleged violation
What issues can be resolved?	The contents of an IEP	Same as due process complaint, including matters arising prior to the filing of a due process complaint	Alleged violations of IDEA and State and Federal implementing regulations	Alleged violations of IDEA and State and Federal implementing regulations	Any matter related to the identification, evaluation, or educational placement or provision of free appropriate public education (FAPE)
What is the timeline for resolving the issues?	None specified	None specified	Fourteen days from receipt of Informal complaint unless extension granted upon joint request of both parties	Forty-five days from end of the ERP unless a specific extension is granted	Forty-five days from the end of the resolution period unless specific extensions to the timeline are granted
Who resolves the issues?	IEP Team (Decisions are made by consensus.) The neutral IEP facilitator does not participate in any way in decisions.	Parent and Local School District or Public Agency with a mediator. The process is voluntary and both parties must agree to any resolution.	Parent and Local School District or Public Agency by agreement. If not, parent may proceed directly to formal complaint or due process.	LDE Complaint Investigator	Hearing Officer

## **Parent's Acknowledgement**

### Notice of Early Resolution Timelines and State Dispute Resolution Options

LEA Docket Number: \_\_\_\_\_

[INSERT NAME OF SCHOOL DISTRICT] ("District), and [INSERT NAME OF PARENT] ("PARENTS"), on behalf of [INSERT NAME OF STUDENT].

I hereby acknowledge receipt of:

Notice of Early Resolution Timelines

State Dispute Resolution Options

PARENT'S NAME \_\_\_\_\_

PARENT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

## **Agreement to Extend Informal Resolution**

[INSERT NAME OF SCHOOL DISTRICT] ("District), and [INSERT NAME OF PARENT] ("PARENTS"), on behalf of [INSERT NAME OF STUDENT] agree that:

1. Complainant has requested informal resolution about special education services regarding [Insert name of student],
2. Complainant acknowledges that he/she has been fully informed pursuant to *Bulletin 1706*, §151C3 that unless the complainant agrees to extend the timeline by written agreement, informal resolution terminates on the 15th day and the complainant is free to seek resolution by other means.
3. Complainant agrees to waive his/her right to seek other resolution for the stated period and agrees to extend the resolution period through [Insert specific date].

PARENT'S NAME \_\_\_\_\_

PARENT'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

DISTRICT REP'S NAME \_\_\_\_\_

DISTRICT REP'S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

## Notice to LDE of Formal ERP Status

To: LDE Dispute Resolution Officer  
State of Louisiana  
Department of Education  
Legal  
1201 N. Third Street  
Baton Rouge, Louisiana 70802

Docket Number [Insert docket number]

[Insert name of district] (“District”) and [Insert name of parents] (“Parents”) agree that:

1. Pursuant to the *Bulletin 1706*, beginning [Insert date of receipt of request], the parties have been engaged in Formal ERP and: (check one)

- The parties were unable to reach an agreement.
  
- A resolution agreement was signed and complainant wishes to withdraw written complaint.
  
- Parties need additional time to reach resolution and jointly request that the resolution period be extended to [date].

PARENT’S NAME \_\_\_\_\_

PARENT’S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

DISTRICT’S NAME \_\_\_\_\_

DISTRICT REP’S NAME \_\_\_\_\_

DISTRICT REP’S SIGNATURE \_\_\_\_\_ DATE \_\_\_\_\_

## State Board of Elementary and Secondary Education

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Executive Director

For further information, contact:  
**Susan W. Batson, Acting Director**  
Division of Special Populations  
P. O. Box 94064  
Baton Rouge, LA 70804  
(225) 342-3513

The Louisiana Department of Education (LDE) does not discriminate on the basis of sex in any of the education programs or activities that it operates, including employment and admission related to such programs and activities. The LDE is required by Title IX of the Education Amendments of 1972 (Title IX) and its implementing regulations not to engage in such discrimination. LDE's Title IX Coord. is Patrick Weaver, Deputy Undersecretary, LDE, Exec. Office of the Supt.; PO Box 94064, Baton Rouge, LA 70804-9064; 877-453-2721 or [customerservice@la.gov](mailto:customerservice@la.gov). All inquiries pertaining to LDE's policy prohibiting discrimination based on sex or to the requirements of Title IX and its implementing regulations can be directed to Patrick Weaver or to the USDE, Asst. Sec. for Civil Rights.

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