

Part E—Procedural Safeguards

Due Process Procedures for Parents and Children

300.500 General responsibility of SEA, LEAs; definitions.

(a) **Responsibility of SEA and other public agencies.** The RIDE shall ensure that each LEA establishes, maintains, and implements procedural safeguards that meet the requirements of this part.

(b) **Definitions of "consent," "evaluation," and "personally identifiable."** As used in this part—

(1) **Consent** means that—

- (i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (iii)(A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
(B) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(2) **Evaluation** means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs; and

(3) **Personally identifiable** means that information includes—

- (i) The name of the child, the child's parent, or other family member;
- (ii) The address of the child;
- (iii) A personal identifier, such as the child's social security number or student number; or
- (iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

300.501 Opportunity to examine records; parent participation in meetings.

(a) **General.** The parents of a child with a disability must be afforded an opportunity to—

- (1) Inspect and review all education records with respect to—
 - (i) The identification, evaluation, and educational placement of the child; and
 - (ii) The provision of FAPE to the child; and
- (2) Participate in meetings with respect to—
 - (i) The identification, evaluation, and educational placement of the child; and
 - (ii) The provision of FAPE to the child.

(b) **Parent participation in meetings.**

- (1) Each LEA shall provide notice consistent with 300.345 to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of this section.
- (2) A meeting does not include informal or unscheduled conversations involving LEA personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) **Parent involvement in placement decisions.**

- (1) Each LEA shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.
- (2) In implementing the requirements of paragraph (c)(1) of this section, the LEA shall use procedures consistent with 300.345.
- (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the LEA shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
- (4) A placement decision may be made by a group without the involvement of the parents, if the LEA is unable to obtain the parents' participation in the decision. In this case, the LEA must have a record

of its attempt to ensure their involvement, including information that is consistent with the requirements of 300.345.

- (5) The LEA shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

300.502 Independent educational evaluation.

(a) General.

- (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.
- (2) Each LEA shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.
- (3) For the purposes of this part—
 - (i) **Independent educational evaluation** means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the child in question; and
 - (ii) **Public expense** means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

(b) Parent right to evaluation at public expense.

- (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA.
- (2) If a parent requests an independent educational evaluation at public expense, the LEA must, without unnecessary delay, and not later than 15 calendar days from receipt of a request, either—
 - (i) Initiate a due process hearing to show that its evaluation is appropriate; or
 - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria.
- (3) If the LEA initiates a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- (4) If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the LEA may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—

- (1) Must be considered by the LEA, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
- (2) May be presented as evidence at a hearing under this part regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) Agency criteria.

- (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the LEA uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
- (2) Except for the criteria described in paragraph (e)(1) of this section, a LEA may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

300.503 Prior notice by the LEA; content of notice.

(a) Notice.

- (1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time (ten school days) before the LEA—
 - (i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the LEA that also requires parental consent under 300.505, the LEA may give notice at the same time it requests parent consent.

(b) **Content of notice.** The notice required under paragraph (a) of this section must include—

- (1) A description of the action proposed or refused by the LEA;
- (2) An explanation of why the agency proposes or refuses to take the action;
- (3) A description of any other options that the agency considered and the reasons why those options were rejected;
- (4) A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action;
- (5) A description of any other factors that are relevant to the LEA's proposal or refusal;
- (6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- (7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(c) **Notice in understandable language.**

- (1) The notice required under paragraph (a) of this section must be—
 - (i) Written in language understandable to the general public; and
 - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
- (2) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure—
 - (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.

300.504 Procedural safeguards notice.

(a) **General.** A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum—

- (1) Upon initial referral for evaluation;
- (2) Upon each notification of an IEP meeting;
- (3) Upon reevaluation of the child; and
- (4) Upon receipt of a request for due process under these regulations Part E 508.

(b) **Contents.** The procedural safeguards notice must include a full explanation of all of the procedural safeguards available, and the State complaint procedures available relating to—

- (1) Independent educational evaluation;
- (2) Prior written notice;
- (3) Parental consent;
- (4) Access to educational records;
- (5) Opportunity to present complaints to initiate due process hearings;
- (6) The child's placement during pendency of due process proceedings;
- (7) Procedures for students who are subject to placement in an interim alternative educational setting;
- (8) Requirements for unilateral placement by parents of children in private schools at public expense;
- (9) Mediation;
- (10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (11) Civil actions;
- (12) Attorneys' fees; and
- (13) The State complaint procedures including a description of how to file a complaint and the timelines under those procedures.

(c) **Notice in understandable language.** The notice required under paragraph (a) of this section must meet the requirements of 300.503(c) regarding content of notice.

300.505 Parental consent.

(a) **General.**

- (1) Subject to paragraphs (a)(3), (b) and (c) of this section, informed parent consent must be obtained before—
 - (i) Conducting an initial evaluation or reevaluation; and

- (ii) Initial provision of special education and related services to a child with a disability.
- (2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.
- (3) Parental consent is not required before—
 - (i) Reviewing existing data as part of an evaluation or a reevaluation; or
 - (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
- (b) **Refusal.** If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the LEA may continue to pursue those evaluations by using the due process procedures or the mediation procedures if appropriate.
- (c) **Failure to respond to request for reevaluation.**
 - (1) Informed parental consent need not be obtained for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond.
 - (2) To meet the reasonable measures required in paragraph (c) (1) of this section, the LEA must use the procedures consistent with those in 300.345(d).
- (d) **Documentation of Receipt of Consent.** Each LEA shall document the receipt of parental consent, whether written or verbal, and maintain as part of the child's educational record such documentation.
- (e) **Limitation.** A LEA may not use a parent's refusal to consent to one service or activity under paragraphs (a) of this section to deny the parent or child any other service, benefit, or activity of the LEA, except as required by this part.

300.506 Mediation.

- (a) **General.** The RIDE offers and implements a conflict resolution procedure called "mediation" to allow parties to disputes involving any matter described in these regulations, or whenever a due process hearing is requested, to attempt to reach resolution of differences of opinion between the disputing parties (parent and LEA).
- (b) **Requirements.** The procedures must meet the following requirements:
 - (1) The procedures must ensure that the mediation process-
 - (i) Is voluntary on the part of the parties;
 - (ii) Is not used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under Part B of the IDEA; and
 - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
 - (2)
 - (i) The RIDE shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
 - (ii) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.
 - (3) The State shall bear the cost of the mediation process.
 - (4) A party may request mediation by contacting the RIDE or the LEA. Requests for mediation received by a LEA shall be forwarded to RIDE within five (5) school days.
 - (5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute. A mediation session will be conducted within ten (10) school days from the appointment of the mediator or within fifteen (15) days of the receipt of the request for mediation by the RIDE.
 - (6) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.
 - (7) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.
- (c) **Impartiality of mediator.**
 - (1) An individual who serves as a mediator under this part—
 - (i) May not be an employee of—
 - (A) Any LEA or any State agency ; or
 - (B) A SEA that is providing direct services to a child who is the subject of the mediation process; and
 - (ii) Must not have a personal or professional conflict of interest.

- (2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency solely because he or she is paid by the agency to serve as a mediator.

300.507 Impartial due process hearing; parent notice.

(a) General.

- (1) A parent or LEA may initiate a hearing on any of the matters involving a LEA's proposal to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child; or the refusal to initiate or change the identification, evaluation, educational placement of an eligible child or the provision of FAPE to the child; and on any matter relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child, including claims arising under section 504 of the rehabilitation act of 1973 if that claim is a part of and not independent of the request for a due process hearing.
- (2) When a hearing is initiated under paragraph (a)(1) of this section, the LEA shall inform the parents of the availability of mediation.
- (3) The LEA shall inform the parent of any free or low-cost legal and other relevant services available in the area if—
 - (i) The parent requests the information; or
 - (ii) The parent or the agency initiates a hearing under this section.

(b) Agency responsible for conducting hearing. The RIDE shall establish, implement, determine financial responsibility, and develop procedures for administering a system of due process under this section.

(c) Parent notice to the LEA.

- (1) **General.** The LEA must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the LEA in a request for a hearing under paragraph (a)(1) (2) of this section.
- (2) **Content of parent notice.** The notice required in paragraph (c)(1) of this section must include—
 - (i) The name of the child;
 - (ii) The address of the residence of the child;
 - (iii) The name of the school the child is attending;
 - (iv) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the parents at the time.
- (3) **Model form to assist parents.** The RIDE has developed a model form to assist parents in filing a request for due process that includes the information required in paragraphs (c)(1) and (2) of this section. The model form can be obtained by contacting the RIDE or the LEA.
- (4) **Right to due process hearing.** A LEA may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraphs (c)(1) and (2) of this section.

300.508 Impartial hearing officer.

(a) A hearing may not be conducted—

- (1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or
- (2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) The RIDE shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

300.509 Hearing rights.

(a) General. Any party to a hearing, has the right to—

- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
- (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

(b) Additional disclosure of information.

- (1) At least 5 business days prior to a hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.
- (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(c) Parental rights at hearings.

- (1) Parents involved in hearings must be given the right to—
 - (i) Have the child who is the subject of the hearing present; and
 - (ii) Open the hearing to the public.
- (2) The record of the hearing and the findings of fact and decisions must be provided by the LEA at no cost to parents.

(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, shall—

- (1) Transmit the findings and decisions to the State advisory panel.
- (2) Make those findings and decisions available to the public.

300.510 Finality of decision; appeal.

(a) **Finality of decision.** A decision made in a hearing is final except that any party involved in the hearing may appeal the decision to a civil court of competent jurisdiction.

(b) **Timeline to appeal.** The U.S. First Circuit Court of Appeals has established a deadline of thirty (30) days from receipt of the hearing decision in which to appeal a decision of a due process hearing decision to the Federal District Court for the District of Rhode Island.

300.511 Timelines and convenience of hearings.

(a) The LEA and RIDE shall ensure that not later than 45 days after the receipt of a request for a hearing—

- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each of the parties.

(b) A hearing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) of this section at the request of either party.

(c) Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

300.512 Civil action.

(a) **General.** Any party aggrieved by the findings and decision made by a due process hearing officer has the right to bring a civil action with respect to the complaint. The action may be brought in any State court of competent jurisdiction or in a Federal District Court without regard to the amount in controversy.

(b) **Additional requirements.** In any action brought under paragraph (a) of this section, the court-

- (1) Shall receive the records of the administrative proceedings;
- (2) Shall hear additional evidence at the request of a party; and
- (3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

(c) **Jurisdiction of district courts.** The district courts of the United States have jurisdiction of actions brought under the Section 615 of the Act without regard to the amount in controversy.

(d) **Rule of construction.** Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under RI Regulations 300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

300.513 Attorneys' fees.

(a) In any action or proceeding brought under the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(b)

- (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the Act.
- (2) Paragraph (b)(1) of this section does not preclude a LEA from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

(c) A court awards reasonable attorney's fees under section 615(i)(3) of the Act consistent with the following:

- (1) **Determination of amount of attorneys' fees.** Fees awarded under section 615(i)(3) of the Act 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 this subsection.
- (2) **Prohibition of attorneys' fees and related costs for certain services.**
 - (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—
 - (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
 - (B) The offer is not accepted within 10 days; and
 - (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
 - (ii) Attorneys' fees may not be awarded relating to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation that is conducted prior to the filing of a request for due process.
- (3) **Exception to prohibition on attorneys' fees and related costs.** Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
- (4) **Reduction of amount of attorneys' fees.** Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—
 - (i) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
 - (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
 - (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
 - (iv) The attorney representing the parent did not provide to the school district the appropriate information in the due process complaint.
- (5) **Exception to reduction in amount of attorneys' fees.** The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.

300.514 Child's status during proceedings.

- (a) Except for provided in 300.526, during the pendency of any administrative or judicial proceeding regarding a complaint for due process, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
- (c) If the decision of a hearing officer in a due process hearing agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.

300.515 Surrogate parents.

- (a) **General.** The RIDE shall ensure that the rights of a child are protected if—
 - (1) No parent can be identified;
 - (2) The LEA, after reasonable efforts, cannot discover the whereabouts of a parent; or
 - (3) the child is a ward of the State under the laws of the State.
- (b) **Duty of public agency.** The duty of RIDE includes the assignment of an individual to act as a surrogate for the parents. This must include a method—
 - (1) For determining whether a child needs a surrogate parent; and
 - (2) For assigning a surrogate parent to the child.
- (c) **Criteria for selection of surrogates.**
 - (1) RIDE may select a surrogate parent in any way permitted under State law.
 - (2) A person selected as a surrogate—

- (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child;
 - (ii) Has no interest that conflicts with the interest of the child he or she represents; and
 - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (3) RIDE may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraphs (c)(2)(ii) and (iii) of this section.

(d) **Non-employee requirement; compensation.** A person who otherwise qualifies to be a surrogate parent under paragraph (c) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

(e) **Responsibilities.** The surrogate parent may represent the child in all matters relating to—

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child.

300.516 Reserved.

300.517 Transfer of parental rights at age of majority.

General. When a student with a disability reaches the age of majority under State law (age 18) that applies to all students (except for a student with a disability who has been determined to be incompetent under State law)—

- (1)(i) The LEA shall provide any notice required by this part to both the individual and the parents; and
- (ii) All other rights accorded to parents under IDEA transfer to the student; and
- (2) All rights accorded to parents under IDEA transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution.
- (3) Whenever the transfer of rights to the student at age eighteen (18) under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the LEA shall notify the individual and the parents of the transfer of rights.

RHODE ISLAND

PROCEDURAL SAFEGUARDS NOTICE

ADDENDUM FOR IDEA 2004

JANUARY 2006

Procedural Safeguards created by the reauthorized Individuals with Disabilities Education Act – (IDEA) 2004 should be added to the Procedural Safeguard Notice provided to parents of children with disabilities

The reauthorized Individuals with Disabilities Education Act – 2004 (IDEA 2004) created the following additions to be included with the procedural safeguards notice Local Education Agencies (LEAs) are required to provide parents of children with disabilities. (see attached)

Additional Procedural Safeguards Requirements: IDEA 2004:

1. Requirements regarding the provisions of procedural safeguards notice to parents – when procedural safeguards notice must be provided.

A copy of the procedural safeguards notice...shall be given to parents one time a year, except an additional copy shall also be given to the parents:

- Upon initial referral or parental request for evaluation;
- Upon the first occurrence of the filing of a complaint (for due process hearing) under Section 615(b)(6) of the IDEA 2004; and
- Upon request by the parent.

[615(d)]

2. Procedural Safeguards Notice on LEA Internet web site—

An LEA may elect to place a copy of the procedural safeguards notice on the LEAs Internet web site if such web site exists. (Section 615(d)(i)(A-B))

3. IDEA 2004 Additional Procedural Safeguards

Method of providing notices required under IDEA 2004 (Section 615(a))

The parent of a child with a disability may elect to receive notices required under IDEA

2004 by an electronic mail communication (email), if the LEA makes such option available.

[615(n)]

4. LEA may not use Due Process remedies (Section 615 of IDEA) to obtain parental consent for special education services.

If a parent of a child (with a disability) refuses to consent to special education and related services, the LEA may not pursue due process remedies available under the IDEA (Section 615 – due process hearing, mediation) to obtain parental consent to provide special education and related services.

When the parent refuses initial consent for special education services:

- The LEA may not pursue due process remedies to obtain parental consent;
- The LEA shall not be in violation of the requirement to make available a Free Appropriate Public Education (FAPE) if the parent refuses consent for special education and related services;

- The LEA shall not be required to convene an Individualized Education Program (IEP) meeting or develop an IEP under this section if the parent refuses consent for special education and related services sought by the LEA
[614(a)(1)(D)(ii)]

5. IDEA 2004 mandates consent for wards of the state.

If the child is a ward of the state and is not residing with the child's parent, the LEA shall make reasonable efforts to obtain the informed consent from the parent (as defined in Section 602) of IDEA of the child for an initial evaluation to determine whether the child is a child with a disability. [However,] the agency shall not be required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if:

- Despite reasonable efforts to do so, the agency cannot discover the whereabouts of the parent of the child;
- The rights of the parents of the child have been terminated in accordance with state law; or
- The rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law, and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child. [614(a)(1)(D)(iii)]

6. IDEA 2004 provides parents and schools the opportunity to meet with a disinterested party.

An LEA or State Educational Agency (SEA) may establish procedures to offer to parents and schools that choose not to use the mediation process an opportunity to meet...with a disinterested party who is under contract with:

- A parent training and information center or community parent resource center in the state; or
- An appropriate alternative dispute resolution entity, to encourage the use, and explain the benefits of the mediation process to the parent(s). [615(e)(2)(B)]

7. IDEA 2004 adds "resolution sessions."

Prior to the opportunity for an impartial due process hearing under Section 615(f)(1)(A), the LEA shall convene a meeting with the parent(s) and the relevant member or members of the Individualized Education Program (IEP) team who have specific knowledge of the facts identified in the due process hearing request:

- Within 15 days of receiving notice of the parents' complaint;
- Which shall include a representative of the agency who has decision making authority on behalf of such agency;
- Which may not include an attorney of the LEA unless the parent is accompanied by an attorney; and
- Where the parents of the child discuss their due process hearing request, and the facts that form the basis of the due process hearing request, and the LEA is provided the opportunity to resolve the due process hearing request, unless the parents and the LEA agree in writing to waive such meeting, or agree to use the mediation process described in Section 615(e). [615(f)(1)(i)]

If the LEA has not resolved [the issues that are the subject of] the request for the due process hearing to the satisfaction of the parents within 30 days of the receipt of the request, the due process hearing may occur, and all of the applicable timelines for a due process hearing under this part shall commence. [615(f)(1)(B)(ii)]

In the case that a resolution is reached to resolve [the issues that are the subject of] the request for the due process hearing at a meeting described in Section 15(f)(1)(B)(i), the parties shall execute a legally binding agreement that is:

- Signed by both the parent and a representative of the LEA who has the authority to bind such LEA; and
- Enforceable in any state court of competent jurisdiction or in a district court of the United States.

[615(f)(1)(B)(iii)]

If the parties execute an agreement pursuant to Section 615(f)(1)(B)(iii), a party may void such agreement within three business days of the agreement's execution. [615(f)(1)(B)(iv)]

8. IDEA 2004 adds to mediation requirements.

In addition to the mediation (rights) explained in Section (F) of the attached, IDEA 2004 adds:

In the case that a resolution is reached to resolve [the issues in] the due process hearing request through the mediation process, the parties shall execute a legally binding agreement that sets forth such resolution and that:

- States that all discussions that occurred during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
- Is signed by both the parent and a representative of the LEA who has the authority to bind such LEA; and
- Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

[615(e)(2)(F)]

9. IDEA 2004 adopts current regulations regarding who may request a due process hearing.

Either the parent or the public agency may request a due process hearing with respect to any matter relating to identification, evaluation, or educational placement of the child, or the provision of a free and appropriate public education to such child. [34 CFR 300.507(a)(1); 615(b)(6)(A); 615(f)(1)(A)]

10. IDEA 2004 establishes two (2) year limitation on requesting a due process hearing.

...Sets forth an alleged violation that occurred not more than two years before the date the parent or LEA knew or should have known about the alleged action that forms the basis of the complaint, or, if the state has an explicit time limitation for presenting such a complaint...in such time as the state law allows, except that the exceptions to the timeline described in Section 615(f)(3)(D) shall apply...[615(b)(6)(B)]

A parent or LEA shall request an impartial due process hearing within two years of the date the parent or LEA knew or should have known about the alleged action that forms the basis of the complaint, or, if the state has an explicit time limitation for requesting such a hearing under this part, in such time as the state law allows. [615(f)(3)(C)]

The timeline described in Section 615(f)(3)(C) shall not apply to a parent if the parent was prevented from requesting the hearing due to:

- Specific misrepresentations by the local educational agency (LEA) that it had resolved the problem forming the basis of the complaint; or
- The LEA's withholding of information from the parent that was required under this part to be provided to the parent. [615(f)(3)(D)]

11. IDEA 2004 requires party requesting a due process hearing to provide notice to the other party.

• Procedures that require either party, or the attorney representing a party, to provide a request for a due process hearing notice in accordance with Section 615(c)(2) (which shall remain confidential)² to the other party...and forward a copy of such notice to the state education agency (SEA) that shall include:

- The name of the child, the address of the residence of the child (or available contact information in the case of a homeless child), and the name of the school the child is attending;
- In the case of a homeless child or youth (within the meaning of Section 625(2) of the *McKinney-Vento Homeless Assistance Act* (42 U.S.C. 11434a(2)), available contact information for the child and the name of the school the child is attending;
- A description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and
- A proposed resolution of the problem to the extent known and available to the party at the time.

[615(b)(7)(A)]

...A party may not have a due process hearing until the party, or the attorney representing the party, files a notice that meets the requirements of Section 615(b)(7)(A)(ii). [615(b)(7)(B)]

The due process...notice required under Section 615(b)(7)(A) shall be deemed to be sufficient unless the party receiving the notice notifies the hearing officer and the other party, in writing, that the receiving party believes the notice has not met the requirements of Section 615(b)(7)(A). [615(c)(2)(A)]

12. IDEA 2004 specifies timelines for actions related to a request for a due process hearing.

If the LEA has not sent a prior written notice to the parent regarding the subject matter contained in the parent's due process request, the LEA shall, within 10 days of receiving the request for a due process hearing, send to the parent a response that shall include:

- An explanation of why the LEA proposed or refused to take the action raised in the complaint;
- A description of other options that the IEP Team considered and the reasons why those options were rejected:
- A description of each evaluation procedure, assessment, record or report the agency used as the basis for the proposed or refused action; and
- A description of the factors that are relevant to the agency's proposal or refusal. [615(c)(2)(B)(i)(I)]

A response filed by an LEA pursuant to Section 615(c)(2)(B)(i)(I) shall not be construed to preclude such LEA from asserting that the parent's due process request was insufficient where appropriate. [615(c)(2)(B)(i)(II)]

Except as provided in Section 615(c)(2)(B)(i), the non-complaining party shall, within 10 days of receiving the notice of request for a due process hearing, send to the other party a response that specifically addresses the issues raised in the request. [615(c)(2)(B)(ii)]

The party providing a hearing officer notification under Section 615(c)(2)(A) shall provide the notification within 15 days of receiving the request for a due process hearing. [615(c)(2)(C)]

Within five days of receipt of the notification provided under Section 615(c)(2)(C), the hearing officer shall make a determination on the fact of the notice of whether it meets the requirements of Section 615(b)(7)(A), and shall immediately notify the parties in writing of such determination. [615(c)(2)(D)]

A party may amend its request for a due process hearing notice only if:

- The other party consents in writing to such amendment and is given the opportunity to resolve the complaint through a meeting held pursuant to Section 615(f)(1)(B); or
- The hearing officer grants permission, except that the hearing officer may only grant such permission at any time not later than five days before a due process hearing occurs.

The applicable timeline for a due process hearing under this part shall recommend at the time the party files as amended notice, including the timeline under Section 615(f)(1)(B). [615(c)(2)(E)(i)(ii)]

13. IDEA 2004 sets guidelines for issues raised at a due process hearing.

The party requesting the due process hearing shall not be allowed to raise issues at the due process hearing that were not raised in the notice filed under Section 615(b)(7), unless the other party agrees otherwise. [615(f)(3)(B)]

14. IDEA 2004 specifies legal basis for hearing officer decisions.

Subject to Section 615(f)(3)(E)(ii), a decision made by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free and appropriate public education. [615(f)(3)(E)(i)]

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free and appropriate public education only if the procedural inadequacies:

- Impeded the child's right to a free and appropriate public education;
- Significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of a free and appropriate public education to the parents' child; or
- Caused a deprivation of educational benefits. [615(f)(3)(E)(ii)(I-III)]

Rule of construction – Nothing in this subparagraph shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under Section 615. [615(f)(3)(E)(iii)]

Rule of construction – Nothing in this paragraph shall be construed to affect the right of a parent to file a complaint with the SEA. [615(f)(3)(F)]

15. IDEA 2004 specifies a timeline for bringing a civil action.

The party bringing the [civil] action shall have 90 days from the date of the decision of the hearing officer to bring such an action or, if the state has an explicit time limitation for bringing such action under Part B, in such time as the state law allows.

[615(i)(2)(B)]

16. IDEA 2004 clarifies that parents may file separate due process requests on additional issues.

Nothing in this section shall be construed to preclude a parent from filing a separate request for a due process hearing on an issue separate from a request already filed.

[615(o)]

17. IDEA 2004 adds provisions regarding the awarding of attorneys’ fees.

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys’ fees as part of the costs:

- To a prevailing party who is an SEA or an LEA against the attorney of a parent who files a request for a due process hearing or subsequent cause of action that is frivolous, unreasonable or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly become frivolous, unreasonable or without foundation; or
- To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

[615(i)(3)(B)(i)(II)(III)]

- Provides that attorneys’ fees are not available for the resolution session meetings required by Section 615(f)(1)(B)(I) for bringing such action under Part B, in such time as the state law allows:

[615(i)(2)(B)]

A meeting conducted pursuant to Section 615(f)(1)(B)(i) shall not be considered:

- A meeting convene as a result of an administrative hearing or judicial action; or
- An administrative hearing or judicial action for purposes of Section 615(i).

[615(i)(3)(D)(iii)]

18.IDEA 2004 changes IEP Team Attendance (under certain circumstances)

IDEA 2004 does not change the IEP team membership requirements. (Section 614(d)(B)

There are exceptions when the full IEP team membership may not be required in order to conduct an IEP meeting.

1.Section 614(d)(C)

(C) IEP TEAM ATTENDANCE—

(i)ATTENDANCE NOT NECESSARY—

A member of the IEP Team shall not be required to attend an IEP meeting, in whole or in part, if the parent of a child with a disability and the local educational agency agree that the attendance of such member is not necessary because the member’s area of the curriculum or related services is not being modified or discussed in the meeting. (ii) EXCUSAL—A member of the IEP Team may be excused from attending an IEP meeting, in whole or in part, when the meeting involves a modification to or discussion of the member’s area of the curriculum or related services, if—

(I) the parent and the local educational agency consent to the excusal; and

(II) the member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

(iii) WRITTEN AGREEMENT AND CONSENT REQUIRED – A parent's agreement under clause (i) and consent under clause (ii).

See Rhode Island Department of Elementary and Secondary Education at:
http://www.ridoe.net/Special_needs/stateregs.htm