

*Louisiana's Educational Rights
of Children With Exceptionalities
In Public Schools*



Louisiana Department of Education

Cecil J. Picard

State Superintendent of Education

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LOUISIANA DEPARTMENT OF EDUCATION-Division of Special Populations

Introduction and Purpose

Both Federal and State laws and regulations governing the administration of educational programs for students with exceptionalities have recognized the role of parents in the special education process. The success of any student's program depends on the participation and commitment of all persons responsible for the student. A strong partnership between the school and the parents is essential.

To be an effective advocate for your child, you must

- Be fully informed about the programs available in or through your local educational agency (LEA),
- Be knowledgeable of your child's rights,
- Participate in IEP team meetings,
- 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 LEA personnel involved in your child's educational program have a responsibility to consider the child's needs and to provide an appropriate educational program to meet those needs. If you disagree with what is being proposed, actions—such as presenting your questions and concerns to your local director/supervisor of special education; filing a complaint with the Louisiana Department of Education, Division of Special

Populations; requesting mediation conferences, or requesting a due process hearing—can be initiated to resolve a dispute.

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

Federal and State Laws

A student with an exceptionality is entitled to receive a free appropriate public education. Special education and related services must be available to meet the unique needs of the student and must be specifically designed for the individual student. The following Federal and State laws or regulations guarantee that a student with an exceptionality has equal opportunity to benefit from a free appropriate public education. State published regulatory bulletins are available to parents through the LEA and/or the Division of Special Populations in the Louisiana Department of Education.

FEDERAL LAW

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

The Individualized Education Program (IEP) Handbook

Frequently Used Terms

These definitions are provided to help you become familiar with terms used in this handbook and Federal and State laws regulating the education of children with exceptionalities.

Becoming familiar with the meaning of certain words in the context of their use in special education can assist you in knowing your rights and in fulfilling your responsibility as a parent of a child with an exceptionality.

Business Day means Monday through Friday, except for Federal and State holidays.

Consent means that

- (1) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her own native language, or other mode of communication; and
- (2) 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

- (3) the parent understands that the granting of consent is voluntary and may be revoked at any time. However, if revoked, it is not retroactive.

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)].

Day means calendar day, unless otherwise indicated as school day, business day, etc.

Evaluation means procedures used to determine whether a student is a student with an exceptionality and the nature and extent of the special education and related services that the student needs. The term means procedures 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.

Free Appropriate Public Education (FAPE) means special education and related services that

- (1) are provided at public expense, under public supervision and direction, and without charge;
- (2) meet the standards of the Louisiana Department of Education (hereinafter referred to as Department);
- (3) include pre-school, elementary school, or secondary school education in Louisiana; and
- (4) are provided in conformity with an IEP.

Illegal Drug

- (1) means a controlled substance; but
- (2) 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.

Independent Educational Evaluation means an evaluation conducted by a qualified examiner who is not employed by the LEA responsible for the education of the student in question.

Parent, as used in this handbook, means a natural or adoptive parent of a child; a guardian but not the State if the child is a ward of the State; a person acting in the place of a parent of a student (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or a surrogate parent who has been appointed.

NOTE: A foster parent may qualify as a parent when the natural parent's authority to make educational decisions on the child's behalf has been extinguished under State Law; and the foster parent has an ongoing, long-term parental relationship with the child; the foster parent is willing to make the educational decisions required of parents; and has no interest that would conflict with the interests of the child.

Personally Identifiable means information that includes

- (1) the name of the student, the student's parent, or other family members;
- (2) the address of the student;
- (3) a personal identifier, such as the student's social security number or student number; or
- (4) a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty.

Public Expense means that the LEA either pays for the full cost of the procedure or ensures that the procedure is otherwise provided at no cost to the parent.

Local Education Agency (LEA) includes the State Educational Agency (Department), Local Educational Agencies (LEA), Intermediate Educational Units (IEU), and any other political subdivisions of the State that are responsible for providing education to students with disabilities.

School Day means any day, including a partial day, during which children are in attendance at school for instructional purposes.

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.

STUDENT AND PARENT RIGHTS

Students with exceptionalities and their parents acting on their behalf have the right to:

I. an equal educational opportunity

For the education to be effective equally, the LEA is not required to produce identical results or levels of achievement for students with exceptionalities and students without, but must afford equal opportunity to reach the same levels of achievement in the most integrated setting appropriate to the student's needs.

II. a free appropriate public education

The student with an exceptionality has a right to a free appropriate public education regardless of the nature or severity of the student's exceptionality.

A. *Appropriate education* is the provision of special education and related services that are designed to meet the individual needs of student with an exceptionality.

B. *Free education* is the provision of special education and related services without cost to the student with an exceptionality or to his or her parents, except for those fees that are imposed on students without exceptionalities.

III. participate in meetings

Parents of a student with an exceptionality have a right to have the opportunity to participate in meetings with respect to the

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

The parent must be notified of the meeting early enough to ensure that he or she will have an opportunity to attend, and the meeting should be scheduled at a mutually agreed on time and place. The notice of the meeting must indicate the purpose, time, and location of the meeting and who will be in attendance. It must inform parents of the right to bring to the meeting other persons who have knowledge or special expertise regarding the student to assist in planning the student's educational program.

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 provisions if those issues are not addressed in the student's IEP. A meeting also does not include preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

IV. receive prior notice

- A. Written notice must be given to the parents of a student with an exceptionality at a reasonable time before the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of FAPE to the student.
- B. If the notice in paragraph A above relates to an action proposed by the LEA that also requires parental consent, the LEA may give notice at the same time it requests parental consent.

C. The prior notice must include the following information:

1. a description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any options considered or rejected by the LEA and the reasons why those options were rejected;
2. a description of each evaluation procedure, test, record, or report used as a basis for the proposed or refused action and any description of any other factors that are relevant to the LEA's proposal or refusal;
3. a statement that the parents of a student with a disability have protection under the procedural safeguards of IDEA;
4. identification of the employee or employees of the LEA who may be contacted for assistance in understanding the provisions of the procedural safeguards.

D. The notice must be in understandable language.

1. It must be written in language understandable to the general public and 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 LEA shall take steps to ensure that

- a. the notice is translated orally or by other means to the parent in his or her native language or other mode of communications;
- b. the parent understands the content of the notice; and
- c. there is written evidence that these requirements have been met.

V. give parental consent

Parental consent must be obtained before an LEA conducts an initial evaluation, a reevaluation or initially provides special education and related services to a student with an exceptionality.

VI. an evaluation

The parent and student may have a right to have an evaluation conducted if the student is suspected of having an exceptionality.

A reevaluation shall be conducted every three years or more frequently if conditions warrant, or if the parent or teacher requests a reevaluation.

VII. an independent educational evaluation (I.E.E.)

The parent of a student with an exceptionality has a right to obtain an independent educational evaluation of the student. Each LEA shall provide to the parent, upon request, information about where an independent educational evaluation may be obtained.

The parent of a student with an exceptionality has a right to an I.E.E. at public expense if the parent disagrees with an evaluation obtained by the LEA. If a parent requests an I.E.E. at public expense, the LEA has ten days to initiate a due process hearing to show that its evaluation is appropriate or to insure that an I.E.E. is provided at public expense. If the LEA initiates a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has a right to an I.E.E., but not at public expense.

An I.E.E. obtained at public expense shall meet the same criteria established by *Bulletins 1706 and the Pupil Appraisal Handbook*.

If the parent obtains an I.E.E. at private expense and it meets the mandated criteria, the evaluation must be considered in any decision made with respect to the provision of FAPE to the student and may be presented as evidence at a hearing regarding the student.

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

VIII. inspect and review records

The parent of a student with an exceptionality has a right to inspect and review all educational records with respect to the identification, evaluation and placement of the student and the provision of a free appropriate public education.

A. The LEA must comply with a request by the parent to review the student's records without unnecessary delay.

- B. The parent has the right to inspect and review the student's records before any meeting regarding an individualized education program or hearing relating to the identification, evaluation or educational placement of the student or the provision of FAPE to the student, and in no case more than 45 days after the request has been made.
- C. The parent has the right to a response to a reasonable request for explanations and interpretations of the records.
- D. The parent has the right to request that the LEA provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.
- E. The parent has the right to have a representative (authorized in writing) inspect and review the records.
- F. The LEA may assume that the parent has authority to inspect and review records relating to his or her child unless the LEA has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.
- G. Each LEA must keep a record of parties obtaining access to education records (except access by parents and authorized personnel) including the name, the date access was given and the purpose for which the party is authorized to use the record.
- H. If any education records include information on more than one child, the parents 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.

- I. The parent has a right to be informed of the type and location of the records being collected, maintained, and used by the LEA.
- J. An LEA may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parent from exercising his or her right to inspect and review the records.
- K. The parent has a right to request that the student's records be amended when the parent believes that the information contained in the records is inaccurate, misleading, or otherwise is in violation of the student's privacy rights or other rights of the student.
- L. After receipt of a request by the parent of a student with an exceptionality to amend the student's records, the LEA must decide whether to amend the records or to refuse to amend the records within a reasonable time.
- M. If the LEA refuses to amend the records requested by the parent, the LEA must inform the parent of the refusal and advise the parent of a right to a hearing under the Family Educational Rights and Privacy Act (FERPA).
- N. The LEA shall on request provide an opportunity for a hearing to challenge information in the records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy rights or other rights of the student.

1. If, as a result of a FERPA hearing, the LEA decides that the information is inaccurate, misleading or otherwise in violation of the privacy rights or any other rights of the student, the LEA shall amend the information accordingly and so inform the parents.
 2. If, as a result of a FERPA hearing, the LEA is not required to amend the records because the records are not in violation of the privacy right or any other rights of the student, the LEA must inform the parents of their right to place in the record comments they may have on the records or comments setting forth any reasons for disagreeing with the decision of the LEA.
 3. Any comments by the parents placed in the records as a result of a FERPA hearing must be maintained by the LEA as part of the student's records as long as the records are maintained by the LEA.
 4. Any contested records maintained by the LEA and disclosed to any LEA or party who has a legitimate interest in the education of the student, as determined by the LEA, must include the parent's comments contesting the disclosed information or an explanation of the reasons for the objections to the records maintained.
- O. The parent has a right to be informed when personally identifiable information collected, maintained, or used by the LEA is no longer needed to provide educational services to the student.

- P. The parent has the right to have personally identifiable information no longer needed to provide educational services to the student destroyed. However, the LEA must maintain without limitation a permanent record of the student's name, address, telephone number, grades, attendance, classes attended, grade level completed and the year the student completed school.
- Q. When the LEA provides access to a student's record to parties other than the parents of the student or to the employees of a participating LEA involved in providing special education and related services to the student, the LEA must maintain a record of the parties reviewing the records, the date access was given, and the purpose for which the access was granted.
- R. When access is granted to records that contain information on more than one student, the LEA must grant access to only that information pertaining to that parent's child or access to the specific information on the student.
- S. A parent's right to view confidential records relating to the student may be presumed. However, this presumption may be rebutted if the LEA has knowledge that a parent does not have authority to review records under state law governing such matters as guardianship, separation and divorce.
- T. Statements regarding any current or previous disciplinary action taken against a student with an exceptionality must be transmitted to the same extent that disciplinary information is included in, and transmitted with, records of students without disabilities.

IX. an individualized educational program

The student with an exceptionality has a right to an individualized educational program (IEP). The parent and the student have a right to

- A. have full and effective notice before an IEP team meeting is convened;
- B. be invited to the meeting held at least annually at a mutually convenient time and place and receive a copy of the IEP; and
- C. have provisions for needed transitional services by the age of 16 or, when appropriate, for students 14 or younger.

X. file a complaint

Any parent, individual or organization acting on behalf of a student with an exceptionality has a right to file a complaint with the Department whenever the parent, individual, or organization believes that there exists a violation by the LEA of state and federal law regarding the educational rights of a student with an exceptionality.

Complaints may be filed with the Department in writing, by telephone call or in person. The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing or the complainant is requesting compensatory services.

Upon receipt of the complaint, the complaint is reviewed and the LEA is notified and asked to provide specific information. Depending upon the nature of the complaint, an on-site visit may be made to the LEA by the Department. 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 LEA is violating a requirement of applicable Federal or State statutes, regulations or standards. The Department has 60 days from receipt of the complaint to issue a written decision to all parties on each of the allegations of the complaint. To file a complaint by telephone, parents may call (225) 342-3572 or the Department's toll free number at (877-453-2721). A complaint may be mailed to the Louisiana Department of Education, P.O. Box 94064, Baton Rouge, Louisiana, 70804-9064, attention: Legal Division.

XI. request mediation

Mediation is a process by which the LEA and the parent seek to reach an agreement concerning an education decision proposed or refused by the LEA or the parent, and to which either the LEA or the parent disagrees. The parties have a right to

- A. a mediation conducted by a mediator who is not an employee of the LEA responsible for providing special education and related services to the student;
- B. a mediator trained in mediation with knowledge of special education and special education services to mediate the disagreement;

- C. the agreement in writing and receipt of a copy of the agreement; and
- D. a guarantee that a mediation conducted under this provision does not result in a waiver of the right to a due process hearing by either the LEA or the parent. Mediation is not required before a request for a due process hearing is made.
- E. request mediation by telephoning (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, attention: Legal Division.

XII. a due process hearing

- A. The student and the parent have a right to a due process hearing conducted by the Department.
 - 1. The parent of a student with an exceptionality, or the attorney representing a student with an exceptionality, may request a due process hearing by providing notice to the Department, which remains confidential. The written notice must include the student's name and address, the name of the school the student is attending, and 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 a proposed resolution of the problem to the extent known and available to the person requesting the hearing. (SEE sample at back cover.)

2. The LEA initiates a hearing by sending written notice to the parent and the Department. The written notice from the parent or LEA may be faxed to (225) 342-1197 or mailed to the Louisiana Department of Education, P.O. Box 94064, Baton Rouge, Louisiana, 70804-9064, attention: Legal Division.
3. When a hearing has been initiated, the Department shall inform the parent of the availability of mediation.

*NOTE: The Department may not deny or delay a parent's right to a due process hearing for failure to provide the required notice. However, attorney's fees to prevailing parents may be reduced if the attorney representing the parents did not provide the LEA with specific information about the student and the basis of the dispute. **

- B. A due process hearing may be initiated by the parent or the LEA in matters relating to
1. the LEA's proposal or refusal to initiate or change the identification, evaluation or educational placement of the student, or the provision of a free appropriate public education to the student.
 2. the parent's refusal to consent to the identification, evaluation or educational placement of the student or the provision of a free appropriate public education to the student. If the parent of a child with a disability refuses consent for initial evaluation or provision of

special education, the matter must be pursued in state or federal court.

- C. The Department must assure that not later than 45 days after the receipt of a request for a hearing, a final decision is reached and a copy mailed to all parties. A hearing officer may grant specific extensions of time beyond the 45 days at the request of either party.

- D. Any party's right to a due process hearing includes 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 exceptionalities;
 - 2. present evidence and confront, cross-examine, and compel attendance of witnesses;
 - 3. prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
 - 4. obtain written, or, at the option of the parent, electronic verbatim record of the hearing;
 - 5. obtain a written, or, at the option of the parent, electronic findings of facts and decisions.

Additional Disclosure Information

6. At least five 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 evaluation that the party intends to use at the hearing.
 7. The hearing officer may bar any party that fails to comply with the above requirement from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.
- E. The parent involved in the hearing has the right to
1. have the student who is the subject of the hearing present;
 2. open the hearing to the public;
 3. be informed upon request of any free or low cost legal and other relevant services available in the area if
 - a. the parent requests the information, or
 - b. the parent or the LEA initiates a hearing under this section; and
 4. receive the record of the hearing and the findings of fact and decisions at no cost.
- F. The hearing shall be conducted at a time and place reasonably convenient to the parent and student involved.

XIII. appeal the due process hearing decision

Any party aggrieved by the decision and the findings of the hearing officer has the right to bring a civil action in State or Federal court. The civil action shall be filed in State or Federal court of competent jurisdiction without regard to the amount of controversy, within 90 days after notification of the findings and decision of the hearing officer is received, by the aggrieved person, agency, or party.

Student's status during proceedings

- A. During the pendency of any administrative or judicial proceeding regarding due process, unless the LEA and the parent(s) of the student agree otherwise, the student involved in the complaint must remain in his or her current educational placement.
- B. If the hearing procedure or judicial proceeding involves an application for initial admission to public school, then the student with parental approval must be placed in the public school program until the completion of all the proceedings.

XIV. recover attorney's fees

In any action or proceeding brought under the procedural safeguards of IDEA, the court, in its discretion, may award reasonable attorney's fees as part of the cost to the parent(s) of a student with an exceptionality that is the prevailing party. See 34CFR 300.513 for additional information.

XV. Discipline Procedures

A. Change of Placement for Disciplinary Removals

For the purposes of removal of a student with a disability from the student's current educational placement under XV (B-L), a change of placement occurs if

1. a student with a disability is removed from his or her current educational placement for more than 10 consecutive school days; or
2. a student with a disability is subjected to a series of removals that constitute a pattern because he or she cumulates more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the student is removed, and the proximity of the removals to one another.

B. Authority of School Personnel

School personnel may order

1. the removal of a student with a disability from the student's current educational placement for not more than 10 consecutive school days for any violation of school rules to the extent a removal would be applied to a student without a disability and may order additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct as long as the removals do not constitute a change of placement.

2. a change in placement of a student with a disability to an appropriate interim alternative educational setting for the same amount of time a student without a disability would be subject to discipline, but for not more than 45 days, if
 - a. the student carries or possesses a weapon at school or at a school function under the jurisdiction of the State or an LEA; or
 - b. the student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or at a school function under the jurisdiction of the State or LEA.

C. Authority of the Hearing Officer

A State Special Education Hearing Officer may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer in an expedited due process hearing

1. determines that the LEA has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others. *Substantial evidence* means beyond a preponderance of the evidence;
2. considers the appropriateness of the student's current placement;

3. considers whether the LEA has made reasonable efforts to minimize the risk or harm in the student's current placement, including the use of supplementary aids and services; and
4. determines that the interim alternative educational setting (IAES) that is proposed by school personnel who have consulted with the student's special education teacher meets all IAES requirements as set forth in paragraph F below.

D. FAPE for Students Suspended or Expelled from School

1. An LEA need not provide services during periods of removal to a student with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if services are not provided to a student without disabilities who has been similarly removed.
2. In the case of a student with a disability who has been removed from his or her current placement for more than 10 school days in that school year, the LEA, for the remainder of the removals, must provide services to the extent necessary to enable the student to progress appropriately in the general curriculum and advance appropriately toward achieving the goals set out in the student's IEP, if the removal is
 - a. under the school personnel's authority to remove for not more than 10 consecutive school days as long as the removal does not constitute a change of

placement. School personnel, in consultation with the student's special education teacher, determine the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

b. *for behavior that is not a manifestation of the student's disability.* The student's IEP Team determines the extent to which services are necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP.

3. The LEA must provide services that will enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP. The LEA must include services and modifications to address the behavior described below that are designed to prevent the behavior from recurring if the removal is

a. *for drugs or weapon offenses.* The IEP team determines the interim alternative educational setting.

b. *based on a hearing officer's determination that maintaining the current placement of the student is substantially likely to result in injury to the student*

or others if he or she remains in the current placement. School personnel, in consultation with the student's special education teacher, propose the interim alternative educational setting to the hearing officer.

E. Functional Behavior Assessment

1. Either before, or not later than 10 business days after either first removing a student with a disability for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under XV.A.1-2, including the action described in paragraph B.2.a-b above.
 - a. If the LEA did not conduct a functional behavior assessment and implement a behavioral intervention plan for the student before the behavior that resulted in the removal, the LEA must convene an IEP meeting to develop an assessment plan.
 - b. If the student already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.
 - c. As soon as practicable after developing the behavioral intervention plan and completing the assessment required by the plan, the LEA shall convene an IEP meeting to develop appropriate

behavioral interventions to address that behavior and shall implement those interventions.

2. If subsequently a student with a disability who has a behavioral intervention plan and who has been removed from his or her placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change in placement, the IEP team members must review the behavior intervention plan and its implementation to determine if modifications are necessary.
3. If one or more of the team members believes that modifications are needed, the IEP team shall meet to modify the plan and its implementation to the extent the team determines necessary.

F. Interim Alternative Educational Setting (IAES)

1. The IEP team determines the interim alternative educational setting referred to in XV.B.2 of this handbook.
2. Any interim alternative educational setting in which a student is placed under paragraph XV.B.2 and XV.C of this handbook, must
 - a. be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will

enable the student to meet the goals set out in that IEP; and

- b. include services and modifications to address the behavior described in paragraph XV.B.2 and C, that are designed to prevent the behavior from recurring.

G. Manifestation Determination Review

1. Whenever an action involving a removal that constitutes a change of placement for a student with a disability is contemplated, a manifestation determination review is required.
 - a. not later than the date on which the decision to take that action is made, the parent(s) must be notified of that decision and provided the procedural safeguards notice. (*Louisiana's Educational Rights of Children with Exceptionalities in Public Schools*) and,
 - b. immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the student's disability and the behavior subject to the disciplinary action.
2. The review must be conducted by the IEP team and other qualified personnel in a meeting.

3. In carrying out the manifestation determination review, the IEP team and other qualified personnel may determine that the behavior of the student was not a manifestation of the student's disability only if the IEP team and other qualified personnel
 - a. first consider, relative to the behavior subject to disciplinary action, all relevant information, including the following:
 - (1) evaluation and diagnostic results, including the results or other relevant information supplied by the parent of the student;
 - (2) observations of the student;
 - (3) the student's IEP and placement; and
 - b. then determine that -
 - (1) in relation to the behavior subject to disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;
 - (2) the student's disability did not impair the ability of the student to understand the impact and consequence of the behavior subject to disciplinary action; and

- (3) the student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.
- c. If the IEP team and other qualified personnel determine that any of the standards in paragraph XV.G.3.b of this handbook were not met, the behavior must be considered a manifestation of the student's disability.
 - d. If the IEP team and other qualified personnel determine that the behavior is a manifestation of the student's disability, the disciplinary removal cannot occur unless the removal results from a drug or weapon violation, or by a determination by a Hearing Officer. The IEP team may consider modifications to the student's program (e.g., additional related services, counseling, changes in the behavior management plan, increased time in special education, changes to class schedules, change of teacher).
 - e. The manifestation review meeting may be conducted at the same IEP team meeting that is convened to conduct the functional behavioral assessment.
 - f. If, in the review, the LEA identifies deficiencies in the student's IEP or placement or deficiencies in the implementation of the student's IEP or placement, it must take immediate steps to remedy those deficiencies.

H. Determination that behavior was not manifestation of disability

1. If the results of the manifestation determination review is that the behavior of the student with a disability was not a manifestation of the student's disability, the relevant disciplinary procedures applicable to students without disabilities may be applied to the student in the same manner in which they would be applied to students without disabilities except that FAPE as defined in paragraph XV.D of this handbook must be provided.
2. If the LEA initiates disciplinary procedures applicable to all students, the LEA shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

Student's status during due process proceeding. Except as provided in paragraph J.2 below, paragraph XIII of the handbook applies if a parent requests a hearing to challenge a determination made through the review described in paragraph G above, that the behavior of the student was not a manifestation of the student's disability.

I. Parent Appeal

1. If the student's parent disagrees with a determination that the student's behavior was not a manifestation of

the student's disability or with any decision regarding placement and discipline, the parent may request a hearing.

2. The Department shall arrange for an expedited hearing in any case described in the above paragraph if a hearing is requested by a parent.
3. Review of decision
 - a. In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the LEA has demonstrated that the student's behavior was not a manifestation of the student's disability.
 - b. In reviewing a decision under XV.B.2 of this handbook to place a student in an interim alternative educational setting, the hearing officer shall apply the standards in paragraph XV.C of this handbook.

J. Placement during Appeal

1. If the parent(s) requests a hearing regarding a disciplinary action described in paragraph XV.B.2 and XV.C to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the hearing officer or until expiration of the time period provided for in XV.B.2 and XV.C, whichever occurs first, unless the parent and the State or LEA agree otherwise.

2. Current placement -

If a student is placed in an interim alternative educational setting pursuant to paragraphs XV.B.2 and XV.C and school personnel propose to change the student's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the student must remain in the current placement (student's placement prior to the interim alternative educational setting), except as provided in paragraph XV.J.3 of this section.

3. Expedited hearing

- a. If school personnel maintain that it is dangerous for the student with a disability to be in the current placement (placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.
- b. In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in paragraph XV.C of this handbook.
- c. A placement ordered pursuant to 3b above may not be longer than 45 days.

d. The procedures in 3a above may be repeated as necessary.

K. Protections for Students not yet Eligible for Special Education and Related Services

1. A student who has not been determined to be eligible for special education and related services under IDEA, and who has engaged in behavior that violated a rule or code of conduct of the LEA, including any behavior described in paragraphs XV.B and XV.C, may assert any of the protections provided for in this section if the LEA had knowledge (as determined in accordance with section 2 below) that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

2. Basis of Knowledge

An LEA must be deemed to have knowledge that a student is a student with a disability if

a. the parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the LEA that the student is in need of special education and related services;

b. the behavior or performance of the student demonstrates the need for these services in

accordance with the definition of a student with a disability;

- c. the parents of the student have requested an evaluation of the student; or
- d. the teacher of the student or other personnel of the LEA has expressed concern about the behavior or performance of the student to the director of special education of the LEA or to other personnel in accordance with the LEA's established student find or special education referral system.

3. Exceptions

An LEA would not be deemed to have knowledge under section 2 above, if as a result of receiving the information specified in that paragraph, the LEA either

- a. Conducted an evaluation and determined that the student was not a student with a disability, or
- b. Determined that an evaluation was not necessary and provided notice to the student's parent of its determination.

4. Conditions that apply to no-basis knowledge

- a. If an LEA does not have knowledge that a student is a student with a disability (in accordance with sections 2 and 3 above) prior to taking disciplinary measures against the student, the student may be

subjected to the same disciplinary measures as those applied to students without disabilities who engaged in comparable behaviors.

b. Limitations -

1. If a request is made for an evaluation of a student during the time period in which the student is subjected to disciplinary measures, the evaluation must be conducted in fewer than sixty days without exception or extensions.
2. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
3. If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA shall provide special education and related services.

L. Expedited due process hearings

Expedited due process hearings addressed in paragraph XV.C through XV.J of this handbook must

1. meet the requirements of paragraph XII of this handbook;

2. be conducted by a State Special Education Due Process Hearing Officer;
 3. result in a written decision that is mailed to the parties within twenty business days of the LEA's receipt of the request for the hearing, without exceptions or extensions;
 4. have time lines that are the same for hearings requested by the parents or the LEA;
 5. be conducted according to guidelines established in §508 of *Bulletin 1706* and paragraph XIII of this handbook where appropriate, and according to guidelines established by the Department.
 6. the decisions on expedited due process hearing are appealable consistent with the procedures established in §512 of *Bulletin 1706* and paragraph XIII of this handbook.
- M. Referral to, and action by, law enforcement and judicial authorities.
1. Nothing in IDEA prohibits an LEA from reporting a crime committed by a student with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.

2. An LEA reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime.
3. An LEA reporting a crime under this section may transmit copies of the student's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

XVI. Transfer of parental rights at the age of majority

When a student with an exceptionality reaches the age of majority, which is eighteen in Louisiana (except for a student with an exceptionality who has been determined to be incompetent under State law), the LEA shall

- A. provide any notice required by IDEA and *Bulletin 1706* to both the individual and the parents; and
- B. transfer all other rights accorded to parent(s) under IDEA and *Bulletin 1706* to the student; and
- C. transfer all rights accorded to parents under IDEA and *Bulletin 1706* to students who are incarcerated in an adult or juvenile, State, or local correctional institution.

XVII. Surrogate parent(s)

- A. A surrogate parent must be appointed by the LEA

1. if the parent cannot be identified;
 2. if, after reasonable efforts, the parent cannot be located; or
 3. if the student is a ward of the State.
- B. The LEA has a duty to establish a method of assigning a surrogate parent and a method for determining when a student needs a surrogate.
- C. The LEA has a duty to determine whether the surrogate parent will have a conflict of interest in serving as a surrogate parent and whether the person has adequate skills and knowledge to serve as a surrogate parent.
- D. The surrogate parent may not be an employee of any public or nonpublic agency that is involved in the education or care of the student. However, the fact that the surrogate parent is paid by the LEA does not make the surrogate parent an employee of the LEA.
- E. An LEA may select as a surrogate a person who is an employee of a private agency that provides only non-educational care for the student and who meets the standards in C above.
- F. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child.

Additional Relevant Information

XVIII. Payment for Education of Students Enrolled in Private Schools without Consent of, or Referrals by, the LEA

An LEA is not required to pay for the cost of the education, including special education and related services, of a student with an exceptionality at a private school or facility if that LEA made a free appropriate public education available to the student and the parents elected to place the student in a private school or facility.

A. Reimbursement for Private School Placement

If the parents of a student with an exceptionality, who previously received special education and related services under the authority of an LEA, enroll the student in a private elementary or secondary school without the consent of or referral by, the LEA, a court or a hearing officer may require the LEA to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the LEA had not made a free appropriate public education available to the student in a timely manner prior to the enrollment in a private school, and that the private placement is appropriate.

B. *Limitation on Reimbursement*

1. The cost of reimbursement for private school placement may be reduced or denied if
 - a. at the most recent IEP team meeting the parents attended prior to removal of the student from the LEA, the parents did not inform the IEP team that

they were rejecting the placement proposed by the LEA to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

- b. ten business days (including any holidays that occur on a business day) prior to the removal of the student from the LEA, the parents did not give written notice to the LEA of the information described in paragraph a; or
- c. prior to the parents' removal of the student from the LEA, the LEA informed the parents, through the prior notice requirements, of its intent to evaluate the student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the student available for such evaluation; or there is a judicial finding of unreasonableness with respect to actions taken by the parents.

2. *Exception*

Notwithstanding the notice requirement in paragraph B.1.a above, the cost of reimbursement may not be reduced or denied for failure to provide such notice if

- a. the parents are illiterate and cannot write in English;

- b. compliance with paragraph B.1.a above would likely result in physical or serious emotional harm to the student;
- b. the school personnel prevented the parent from providing such notice; or
- c. the parents had not received prior notice, pursuant to the prior notice requirements.

Sample Letter Requesting a Due Process Hearing

Parent's Name

Parent's Address

Parent's Telephone Number

Today's Date

Louisiana Department of Education

Legal Division

P.O. Box 94064

Baton Rouge, LA 70804-9064

Dear Legal Division:

The purpose of this letter is to request an impartial due process hearing for **(your child's name)**, born on **(his/her birth date)**, and enrolled at **(name of his/her school)**. We are requesting this hearing to resolve the issue of

(The issue(s) should relate to your child's special education identification, evaluation or placement or the provision of a Free Appropriate Public Education for your child.)

The specific reasons for the request and facts about the issues include the following:

(State your specific concerns about the issue.)

I believe that this issue could be resolved by

(Described how you feel this problem could be resolved.)

Include this statement in your letter:

I understand that federal law requires that this request for a due process hearing remain confidential.

Sincerely,

(Sign your name)

cc: (others as you determine appropriate)

NOTES