

LOUISIANA DEPARTMENT OF EDUCATION-Division of Special Populations

Introduction and Purpose

The Individuals with Disabilities Education Act (IDEA) and /or Bulletin 1706: Regulations for Implementation of the Children with Exceptionalities Act Subparts A and B require that local educational agencies make provisions for students with exceptionalities placed by their parents in private schools to participate in the programs carried out under these regulations. Although the rights of parentally-placed private school students are not the same as those of children with exceptionalities who are enrolled in public schools and served at public agency programs or public agency placements at private schools, the IDEA regulations and/or *Bulletin 1706 Subparts A and B*, afford these students and their parents certain procedural safeguards and rights. The purpose of this document is to provide an explanation of those safeguards and rights.

To be an effective advocate for your child, you must

- be fully informed about the programs available,
- be knowledgeable of your child's rights,
- participate in meetings,

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

Federal and State Laws

The following Federal and State laws and regulations govern the programs discussed in the handbook. State regulatory bulletins are available to parents through the LEA and/or the Division of Special Populations in the Louisiana Department of Education and via the Department of Education's website at www.doe.state.la.us.

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, and 20)

BOARD OF ELEMENTARY AND SECONDARY EDUCATION REGULATIONS AND HANDBOOKS

*Bulletin 1706: Regulations for Implementation of the Children with
Exceptionalities Act SubParts A and B*

The Pupil Appraisal Handbook

Complaint Management Procedures Handbook

Frequently Used Terms

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

Child with an Exceptionality means any child who is located, identified and evaluated in accordance with §430-436 of *Bulletin 1706* and determined according to the *Pupil Appraisal Handbook* either as having autism, deaf-blindness, a developmental delay, an emotional

disturbance, a hearing impairment, a mental disability, multiple disabilities, an orthopedic impairment, other health impairments, a specific learning disability, a speech or language impairment, a traumatic brain injury, a visual impairment or as having been identified as gifted and talented and, by reason of the exceptionality, need special education and related services.

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.

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.

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.

Local Education Agency (LEA), as used in this handbook, means the public school system of the parish in which the private school is located.

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.

Private School Students with Exceptionalities means children with exceptionalities enrolled by their parents in private schools or facilities. This classification does not include students with exceptionalities who are or have been placed in or referred to a private school or facility by a public agency as a means of providing special

education and related services.

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.

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

Service Plan means a plan that describes the specific special educational and related services that the LEA will provide to each private school student with an exceptionality in light of the services that the LEA has determined through the consultative process, with representatives of the private school, it would make available to private school students with exceptionalities.

Children with exceptionalities enrolled by their parents in private schools and their parents, acting on their behalf, have the following procedural rights as they relate to their location, identification, and evaluation for special education services.

I. The right to 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 or evaluation of 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 an exceptionality have protection under the procedural safeguards of IDEA and/ or *Bulletin 1706: Subparts A and B*; and
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 communication;
 - b. the parent understands the content of the notice; and
 - c. there is written evidence that these requirements have been met.

In addition:

- E. Notices scheduling meetings shall contain a description of the purpose of the meeting, date, time, location of the meeting, and a list of who will be in attendance.

II. The right to give parental consent

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

III. The right to 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.

IV. The right to 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 must meet the same criteria established by Bulletin 1706: *Subparts A and B and the Pupil Appraisal Handbook*.

If the parent obtains an I.E.E. at private expense and if the evaluation meets 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.

V. The right to 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 location, identification and evaluation of the student.

- 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 the location, identification, or evaluation of 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 an explanation and interpretation of the information and data contained in the student's records maintained by the LEA.

- D. The parent has the right to obtain copies of the student's records upon request, at a minimal cost or at no charge.
1. At no time may an LEA charge a parent for copies of the student's records, which in effect prevents the parent from obtaining, inspecting or reviewing the records or the files.
 2. The parent may not be charged by the LEA for any cost associated with searching for and retrieving of the student's records.
- E. The parent has the right to have a representative (authorized in writing) inspect and review the records.
- F. The parent has a right to be informed of the type and location of the records being collected, maintained, and used by the LEA.
- G. 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 in violation of the student's privacy rights or other rights of the student.
- H. After receipt of a request by the parent of a student with an exceptionality to amend the student's records, the LEA must decide within a reasonable time whether to amend the records or to refuse to amend the records.
- I. 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).

- J. 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, it 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 rights or any other rights of the student, the LEA must inform the parents of their right to place in the records 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.**

- K. 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.
- L. 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.
- M. 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.
- N. 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 student or access to the specific information on the student.
- O. 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.
- P. 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.

VI. The right to file a complaint

Any parent, individual or organization acting on behalf of a student with a 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 location, identification and evaluation of private school students with exceptionalities. Complaints may also be filed if it is believed that the LEA has failed to meet the IDEA Part B Regulation requirements with regard to the participation of private school children with disabilities in the IDEA Part B program consistent with their number and location; expenditure of the appropriate amount of funds; consultation with representatives for services determination; service provision as it relates to personnel standards, service plans, location of services or transportation if necessary for the child to benefit from or participate in the services provided. Complaints that the LEA did not meet the requirements as they relate to separate classes, funds not benefitting private schools, and the use of public and private personnel may also be filed.

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.

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 the complainant on each of the allegations of the complaint. To file a complaint by telephone, parents may call (225) 342-3661.

XI. The right to request mediation

Mediation is a process by which the LEA and the parent seek to reach an agreement in disputes regarding the identification and /or evaluation of the student. 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.

XII. The right to a due process hearing

The student and the parent have a right to a due process hearing conducted by the Department on matters related to the

location, identification and evaluation of students with exceptionalities enrolled by their parents in private schools. The parent of the private school student with an exceptionality or the attorney representing the student may request a due process hearing by providing notice to the LEA responsible for conducting the child-find activities. The notice must include the student's name and address, the name of the school the student is attending, a description of the nature of the problem, and a proposed resolution of the problem to the extent known and available to the parent. The LEA initiates a hearing by sending written notice to the parent and the Department.

Note: Neither the Department nor the LEA may deny or delay a parent's right to a due process hearing for failure to provide the required notice. (See sample at back cover.) 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.

A. A due process hearing may be initiated by the parent or the LEA under the following circumstances:

1. The LEA proposes to initiate or change the identification or evaluation of the student, and the parent disagrees with the proposal or change.
2. The LEA refuses to initiate or change the identification or evaluation of the student and the parent disagrees with the refusal or change.

B. Any party to a due process hearing has the opportunity for direct participation, representation by counsel and

other procedural rights. The Department must assure that, not later than 45 days after the receipt of a request for a hearing, a final decision has been 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. 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 a written, or, at the option of the parent, an electronic verbatim record of the hearing;
5. obtain a written, or, at the option of the parent, an electronic finding 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.
- C. 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 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.
- D. Each hearing and each review involving oral arguments must be conducted at a time and place reasonably convenient to the parent and student involved.
- E. The Department after deleting any personally identifiable information shall
1. transmit the findings and decision to the State Advisory Panel, and
 2. make those findings and decisions available to the public.

XIII. The right to appeal the due process hearing decision

- A. Any party to a hearing may appeal the decision to the Department. The appeal must be submitted by certified mail within 15 days of receipt of the hearing decision.

- B. The State Level Review Panel shall conduct an impartial review of the hearing. The panel shall
 - 1. examine the entire hearing record;
 - 2. ensure that the proceedings at the hearing were consistent with the requirements of due process;
 - 3. seek additional evidence if necessary; if a hearing is held to receive additional evidence, the rights in Section XII.B. 1-7 and C. 1-4 of this handbook apply;
 - 4. afford the parties an opportunity for oral or written argument or both, at the discretion of the reviewing officials;
 - 5. make a decision upon completion of the review; and
 - 6. prepare written findings and the decision that are to be distributed to the parties.

- C. The Department shall ensure that, not later than 30 days after the receipt of a request for a review, a final decision is reached and a copy of the decision is mailed to all parties.

- D. The Department, after deleting any personally identifiable information, shall

1. transmit the findings and decisions to the State Advisory Panel, and
 2. make those findings and decisions available to the public.
- E. The decision made by the reviewing officials is final unless a party brings a civil action.
- F. *The right to appeal the review panel's decision.* Any party aggrieved by the decision and the finding of the State Level Review Panel has the right to file a civil action in any State or Federal court. The civil action should be filed in the State court within 30 days of the decision. This time requirement does not apply to Federal court.

XIV. Student's status during proceedings.

1. 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.

XV. The right to recover attorney's fees

In any action or proceeding brought under the procedural safeguards of IDEA and *Bulletin 1706: Subparts A and B*, 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 who is the prevailing party. See 34 CFR 300.513 for additional information.

XVI. The right to a surrogate parent

The student with an exceptionality has a right to have a surrogate parent assigned whenever appropriate.

- A. A surrogate parent must be appointed by the LEA if the parent cannot be identified and if, after reasonable efforts, the parent cannot be located or 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 noneducational care for the student and who meets the standards in C. above.

Additional IDEA Information for Students with Disabilities

XIX. Payment for Education of Students Enrolled in Private Schools Without Consent of or Referrals by the LEA

A 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 a 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 that enrollment 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 that 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 student, 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;
- 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
- d. 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 parent is 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;
- c. the school personnel prevented the

parent from providing such notice; or

- d. the parents had not received prior notice, pursuant to the prior notice requirements.

A Sample Letter Requesting a DUE PROCESS HEARING

(Name)
(LEA)
(Telephone Number)

(Date)

(Director/Supervisor of Special Education)
(LEA)
(Address)

Dear _____:

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

(The issue(s) should involve the identification or evaluation of the student.)

The specific reasons for the request are

(Include here a description of the nature of the problem.)

I feel that this issue could be resolved by

(Describe a proposed resolution of the problem to the extent to which you are aware.)

Sincerely,

cc: School Principal
Attorney

(At your discretion, you may send a copy of this letter to individuals who have a substantial interest in this dispute: for example, you may send a copy to the local principal and anyone you have engaged to represent you, such as an attorney or a member of a parent advocacy group.)