

Due Process Procedural Safeguards/Parent Involvement

Due Process Procedures refers to the rights and procedural safeguards afforded to parents and children or students with disabilities under state and federal law. Parents of children or students with disabilities must be provided the opportunity to be involved in all aspects of developing, planning, acquiring, and implementing special education and related services specific to their child. When the natural parent cannot be located, or a court has extinguished all parental rights, the district has an obligation to ensure an individual is appointed to represent the child or student in accordance with state and federal law.

In some cases, parents and districts are not in agreement regarding the identification, evaluation, educational placement or provision of free, appropriate public education (FAPE) to the child or student. Parties are encouraged to resolve disputes over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of FAPE to a child with a disability through conciliation, mediation, facilitated team meetings, or other alternative process. Among the alternative processes also available for resolving disputes are the special education complaint process and the due process hearing system.

Required Policies

The LEA must have in effect policies that are consistent with State policies established under Code of Federal Regulations, title 34, sections 300.101 through 300.163, and sections 300.165 through 300.174. Among those required policies, the LEA must have a policy to ensure the confidentiality of personally identifiable information, in compliance with sections 300.610 through 300.627. These policies should be included in the district's comprehensive, documented the Total Special Education System (TSES) plan.

Due Process Procedural Safeguards/Parent Involvement

Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of Code of Federal Regulations, title 34, sections 300.500 through 300.536. (34 C.F.R. § 300.500.)

Each lead agency must

(a) Establish or adopt the procedural safeguards that meet the requirements of this subpart,; including the provisions on confidentiality in Code of Federal Regulations, title 34, sections 303.401 through 303.417, parental consent and notice in sections 303.420 and 303.421, surrogate parents in section 303.422, and dispute resolution procedures in section 303.430;

(b) Ensure the effective implementation of the safeguards by each participating agency (including the lead agency and EIS providers) in the statewide system that is involved in the provision of early intervention services under this part; and

(c) Make available to parents an initial copy of the child's early intervention record, at no cost to the parents. (34 C.F.R. § 303.400.)

As defined in this section, every district must ensure the following:

(3) children with a disability and their parents or guardians are guaranteed procedural safeguards and the right to participate in decisions involving identification, including assistive technology assessment, and educational placement of children with a disability. (Minn. Stat. § 125A.08(a)(3).)

Parents of pupils with disabilities have a right to be involved by the school district in the education decision-making process by participating or being afforded the opportunity to participate at each IEP meeting to develop, review, or revise the IEP. At the time of contact, the district shall inform the parents of their right to bring anyone of their choosing to accompany them to the meeting. The district shall inform the pupil's parents about the alternatives and methods of instruction as described in Minnesota Statutes, section 125A.05. (Minn. R. 3525.0700.)

The parents of an infant or toddler with a disability

(1) Determine whether they, their infant or toddler with a disability, or other family members will accept or decline any early intervention service under this part at any time, in accordance with State law; and

(2) May decline a service after first accepting it, without jeopardizing other early intervention services under this part. (34 C.F.R. § 303.420(d).)

Identification of Parent

Definition of Parent

Parent means

(1) A biological or adoptive parent of a child;

(2) A foster parent, unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;

(3) A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);

(4) An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or

(5) A surrogate parent who has been appointed in accordance with Code of Federal Regulations, title 34, section 300.519 or section 639(a)(5) of the Act. (34 C.F.R. § 300.30(a).)

(1) Except as provided in paragraph (b)(2) of this section, the biological or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

(2) If a judicial decree or order identifies a specific person or persons under paragraphs (a)(1) through (a)(4) of this section to act as the “parent” of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of this section. (34 C.F.R. § 300.30(b).)

Surrogate Parents

A. When a Surrogate is Required

Each public agency must ensure that the rights of a child are protected when —

(1) No parent (as defined in Code of Federal Regulations, title 34, section 300.30) can be identified;

(2) The public agency, after reasonable efforts, cannot locate a parent;

(3) The child is a ward of the State under the laws of that State; or

(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 1143a(6)). (34 C.F.R. § 300.519(a).)

The district shall appoint the surrogate parent when:

A. the parent, guardian, or conservator is unknown or unavailable;

B. the pupil is a ward of the commissioner of human services; or

C. the parent requests in writing the appointment of a surrogate parent. The request may be revoked in writing at any time. (Minn. R. 3525.2440.)

B. Agency Decision

The duties of a public agency under paragraph (a) of this section 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. (34 C.F.R. § 300.519(b).)

In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child’s case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section. (34 C.F.R. § 300.519(c).)

C. Selection

(d)(1) The public agency may select a surrogate parent in any way permitted under State law.

(2) Public agencies must ensure that a person selected as a surrogate parent

(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 personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and

(iii) Has knowledge and skills that ensure adequate representation of the child.

(e) A person otherwise qualified to be a surrogate parent under paragraph (d) 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. (34 C.F.R. § 300.519(d)-(e).)

The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent. (34 C.F.R. § 300.519(h).)

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section. (34 C.F.R. § 300.519(f).)

D. Surrogate Duties and Skills

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. (34 C.F.R. § 300.519(g).)

The district shall either make the information and training available to the surrogate parent or appoint a surrogate parent who has all of the following:

A. a knowledge of state and federal requirements;

B. a knowledge of district structure and procedures;

C. an understanding of the nature of the pupil's disability and needs; and

D. an ability to effectively advocate for an appropriate educational program for the pupil. (Minn. R. 3525.2455.)

E. Removal of Surrogate Parent

A surrogate parent may be removed by majority vote of the school board. The surrogate parent must be notified of the time and place of the meeting at which a vote is to be taken and of the

reasons for the proposed removal. The surrogate parent shall be given the opportunity to be heard. Removal may be for any of the following reasons:

A. failure to perform the duties required in the team meeting and IEP process and those cited in the Code of Federal Regulations, title 34, section 300, and United States Code, title 20, chapter 22, sections 1400 et seq.;

B. conflict of interest as referenced in the Code of Federal Regulations, title 34, section 300.515 (c)(2);

C. actions that threaten the well-being of the assigned pupil;

D. failure to appear to represent the pupil; or

E. the pupil no longer needs special education and related services. (Minn. R. 3525.2450.)

Transfer of Parental Rights at the Age of Majority

A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all students (except for a child with a disability who has been determined to be incompetent under State law) .

(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and

(ii) All other rights accorded to parents under Part B of the Act transfer to the child;

(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and

(1)(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency shall notify the child and the parents of the transfer of rights. (34 C.F.R. § 300.520(a).)

Notice to Parents

Prior Written Notice

A. When Required

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 before the public agency

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (34 C.F.R. § 300.503(a).)

Prior written notice must be provided to parents a reasonable time before the lead agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or

placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family. (34 C.F.R. § 303.421(a).)

B. Contents of Notice

- (1) The notice must be in sufficient detail to inform parents about—
- (2) (1) The action that is being proposed or refused;
- (3) (2) The reasons for taking the action; and
- (4) (3) All procedural safeguards that are available under this subpart, including a description of mediation in Code of Federal Regulations, title 34, section 303.431, how to file a State complaint in sections 303.432 through 303.434 and a due process complaint in the provisions adopted under section 303.430(d), and any timelines under those procedures. (34 C.F.R. § 300.421 (b).)

In addition to federal law requirements, a prior written notice shall:

- (1) inform the parent that except for the initial placement of a child in special education, the school district will proceed with its proposal for the child's placement or for providing special education services unless the child's parent notifies the district of an objection within 14 days of when the district sends the prior written notice to the parent; and
- (2) state that a parent who objects to a proposal or refusal in the prior written notice may request a conciliation conference under subdivision 7 or another alternative dispute resolution procedure under subdivision 8 or 9. (Minn. Stat. § 125A.091, Subd. 3a.)

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 must 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. (34 C.F.R. § 300.503(c).)

(1) The notice must be

- (i) Written in language understandable to the general public; and

(ii) Provided in the native language, as defined in section 303.25, 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, or designated EIS provider, must take steps to ensure that

(i) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;

(ii) The parent understands the notice; and

(iii) There is written evidence that the requirements of this paragraph have been met. (34 C.F.R. § 303.421(c).)

Procedural Safeguards Notice

A. When Required

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy must also be given to the parents

(1) Upon initial referral or parent request for evaluation;

(2) Upon receipt of the first State complaint under sections 300.151 through 300.153 and upon receipt of the first due process complaint under section 300.507 in a school year;

(3) In accordance with the discipline procedures in section 300.530(h); and

(4) Upon request by a parent. (34 C.F.R. § 300.504(a).)

B. Content of Procedural Safeguards Notice

The procedural safeguards notice must include a full explanation of all the procedural safeguards under Code of Federal Regulations, title 34, section 300.148, sections 300.151 through 300.153, section 300.300, sections 300.502 through 300.503, sections 300.505 through 300.518, sections 300.530 through 300.536, and sections 300.610 through 300.625 relating to

(1) Independent educational evaluation;

(2) Prior written notice;

(3) Parental consent;

(4) Access to education records;

(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including —

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;

(6) The availability of mediation;

(7) The child's placement during pendency of any due process complaint;

(8) Procedures for students who are subject to placement in an interim alternative educational setting;

(9) Requirements for unilateral placement by parents of children in private schools at public expense;

(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;

(11) State-level appeals (if applicable in the State);

(12) Civil actions, including the time period in which to file those actions; and

(13) Attorneys' fees. (34 C.F.R. § 300.504(c).)

C. Other Methods of Delivery

The notice required under paragraph (a) of this section must meet the requirements of section 300.503(c). (34 C.F.R. § 300.504(d).)

A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists. (34 C.F.R. § 300.504(b).)

Other Notice Requirements

A. IEP — Parent and Student Participation

(a) Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and

(2) Scheduling the meeting at a mutually agreed on time and place.

(b)(1) The notice required under paragraph (a)(1) of this section must

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in section 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and section 300.321(f) (relating to participation of the Part C service

coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).

(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must

(i) Indicate

(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with section 300.320(b); and

(B) That the agency will invite the student; and

(ii) Identify any other agency that will be invited to send a representative. (34 C.F.R. § 300.322(a)-(b).)

A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits. (34 C.F.R. § 300.322(d).)

B. Independent Educational Evaluation

Each public agency must 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. (34 C.F.R. § 300.502(a)(2).)

C. Mediation & Other Alternative Dispute Resolutions

The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if

(1) The parent requests the information; or

(2) The parent or the agency files a due process complaint under this section. (34 C.F.R. § 300.507(b).)

D. Due Process Complaint

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section. (34 C.F.R. § 300.508(c).)

Parent Election for E-Mail Notice

A parent of a child with a disability may elect to receive notices required by Code of Federal Regulations, title 34, section 300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option possible. (34 C.F.R. § 300.505.)

Procedural Safeguards Regarding Evaluation and Placement

Parent Participation

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

(2) Each public agency must provide notice consistent with Code of Federal Regulations, title 34, section 300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.

(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. 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. (34 C.F.R. § 300.501(b).)

A. Determination of Needed Evaluation Data

(a) As part of an initial evaluation (if appropriate) and as part of any reevaluation under this Part, the IEP Team and other qualified professionals, as appropriate, must

(1) Review existing evaluation data on the child, including

- (i) Evaluations and information provided by the parents of the child;
- (ii) Current classroom-based local or State assessments and classroom-based observations; and
- (iii) Observations by teachers and related services providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine —

(i)(A) Whether the child is a child with a disability as defined in section 300.8, and the educational needs of the child; or

(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;

(ii) The present levels of academic achievement and related developmental needs of the child;

(iii)(A) Whether the child needs special education and related services; or

(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and

(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.

(b) The group described in paragraph (a) of this section may conduct its review without a meeting. (34 C.F.R. § 300.305(a)-(b).)

The family-directed assessment must be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment; and

(iii) Include the family's description of its resources, priorities, and concerns related to enhancing the child's development. (34 C.F.R. § 303.321 (c)(2)(ii)-(iii).)

B. Team Members

(c)(1) Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in section 300.322(a) through (b)(1).

(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 public agency must 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 a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement. (34 C.F.R. § 300.501(c).)

The public agency must ensure that the IEP Team for each child with a disability includes

(1) The parents of the child. (34 C.F.R. § 300.321(a)(1).)

The public agency must ensure that the IEP Team for each child with a disability includes

(6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate. (34 C.F.R. § 300.321(a)(6).)

The determination of whether a child suspected of having a specific learning disability is a child with a disability as defined in section 300.8, must be made by the child's parents and a team of qualified professionals, which must include

(a)(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified by the SEA to teach a child of his or her age; and

(b) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. (34 C.F.R. § 300.308.)

C. Determination of Eligibility

(1) Evaluation Report and Documentation

Upon completion of the administration of assessments and other evaluation measures

(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in section 300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and

(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent. (34 C.F.R. § 300.306(a).)

(2) Written Report for a Child Suspected of Having a Learning Disability

Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. (34 C.F.R. § 300.311(b).)

D. Procedures for Determining Eligibility and Placement

In interpreting evaluation data for the purpose of determining if a child is a child with a disability under section 300.8, and the educational needs of the child, each public agency must

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered. (34 C.F.R. § 300.306(c)(1).)

E. Reevaluation

A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with sections 300.304 through 300.311

(2) If the child's parent or teacher requests a reevaluation. (34 C.F.R. § 300.303(a)(2).)

A reevaluation conducted under paragraph (a) of this section

- (1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and
- (2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary. (34 C.F.R. § 300.303(b).)

Parent Consent

- (a)(1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under Code of Federal Regulations, title 34, section 300.8 must, after providing notice consistent with sections 300.503 and 300.504, obtain informed consent, consistent with section 300.9, from the parent of the child before conducting the evaluation.
 - (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
 - (iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- (2) For initial evaluations only, if the child is a ward of the State and is not residing with the child's parent, the public agency is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if
- (i) Despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the child;
 - (ii) The rights of the parents of the child have been terminated in accordance with State law; or
 - (iii) 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.
- (3)(i) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parents fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under section 300.506 or the due process procedures under sections 300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.
- (ii) The public agency does not violate its obligation under section 300.111 and sections 300.301 through 300.311 if it declines to pursue the evaluation.
- (c)(1) Subject to paragraph (c)(2) of this section, each public agency
- (i) Must obtain informed parental consent, in accordance with section 300.300(a)(1), prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (a)(3) of this section.

(iii) The public agency does not violate its obligation under section 300.111 and sections 300.301 through 300.311 if it declines to pursue the evaluation or reevaluation.

(2) The informed parental consent described in paragraph (c)(1) of this section need not be obtained if the public agency can demonstrate that

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

(d)(1) 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.

(2) In addition to the parental consent requirements described in paragraph (a), (b) and (c) of this section, a State may require parental consent for others services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(3) A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a), (b), (c) or (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part.

(4)(i) If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures (described in paragraphs (a)(3) and (c)(1) of this section; and

(ii) The public agency is not required to consider the child as eligible for services under sections 300.132 through 300.144. (34 C.F.R. § 300.300(a),(c)-(d).)

The family-directed assessment must—(ii) Be based on information obtained through an assessment tool and also through an interview with those family members who elect to participate in the assessment (34 C.F.R. § 303.321(c)(2)(ii).)

The district must not proceed with the initial evaluation of a child, the initial placement of a child in a special education program, or the initial provision of special education services for a child without the prior written consent of the child's parent. A district may not override the written refusal of a parent to consent to an initial evaluation or reevaluation. (Minn. Stat. § 125A.091, Subd. 5.)

Parents' Right to Examine Records

The parents of a child with a disability must be afforded, in accordance with the procedures of sections 300.613 through 300.621, an opportunity to inspect and review all education records with respect to

- (1) The identification, evaluation, and educational placement of the child; and
- (2) The provision of FAPE to the child. (34 C.F.R. § 300.501(a).)

Right to an Independent Educational Evaluation

(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 public agency must 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. (34 C.F.R. § 300.502(a)(1)-(2).)

(3) For the purposes of this subpart

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Code of Federal Regulations, title 34, section 300.103. (34 C.F.R. § 300.502(a)(3).)

Independent 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 public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to sections 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency'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 public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a hearing to defend the public evaluation. (34 C.F.R. § 300.502(b).)

Parent-Initiated Evaluation

If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation

(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child. (34 C.F.R. § 300.502(c).)

Independent Evaluation Requested by Hearing Officer at Public Expense

If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense. (34 C.F.R. § 300.502(d).)

Consistency with 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 public agency 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 public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (34 C.F.R. § 300.502(e).)

Dispute Resolution

Parties are encouraged to resolve disputes over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability through conciliation, mediation, facilitated team meetings, or other alternative process. All dispute resolution options are voluntary on the part of the parent and must not be used to deny or delay the right to a due process hearing. All dispute resolution processes under this section are provided at no cost to the parent. (Minn. Stat. § 125A.091, Subd. 6.)

Alternative Dispute Resolution, Generally

In addition to offering at least one conciliation conference, a district must inform a parent of other dispute resolution processes, including at least mediation and facilitated team meetings. The fact that an alternative dispute resolution process was used is admissible in evidence at any subsequent proceeding. State-provided mediators and team meeting facilitators shall not be

subpoenaed to testify at a due process hearing or civil action under federal special education law nor are any records of mediators or state-provided team meeting facilitators accessible to the parties. (Minn. Stat. § 125A.091, Subd. 8.)

Conciliation Conference

A public agency may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party .

(i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and

(ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents. (34 C.F.R. § 300.506(b)(2).)

A parent must have an opportunity to meet with appropriate district staff in at least one conciliation conference if the parent objects to any proposal of which the parent receives notice under subdivision 3a. A district must hold a conciliation conference within ten calendar days from the date the district receives a parent's objection to a proposal or refusal in the prior written notice. Except as provided in this section, all discussions held during a conciliation conference are confidential and are not admissible in a due process hearing. Within five school days after the final conciliation conference, the district must prepare and provide to the parent a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible in evidence in any subsequent proceeding. (Minn. Stat. § 125A.091, Subd. 7.)

Mediation

Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process. (34 C.F.R. § 300.506(a).)

(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 hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and

(iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (34 C.F.R. § 300.506(b)(1).)

(i) The State must 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) The SEA must select mediators on a random, rotational, or other impartial basis. (34 C.F.R. § 300.506(b)(3).)

The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section. (34 C.F.R. § 300.506(b)(4).)

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. (34 C.F.R. § 300.506(b)(5).)

(6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that

(i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

(8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part. (34 C.F.R. § 300.506(b)(6)-(8).)

(1) An individual who serves as a mediator under this part

(i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and

(ii) Must not have a personal or professional interest that conflicts with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under Code of Federal Regulations, title 34, section 300.228 solely because he or she is paid by the agency to serve as a mediator. (34 C.F.R. § 300.506(c).)

Mediation is a dispute resolution process that involves a neutral party provided by the state to assist a parent and a district in resolving disputes over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability. A mediation process is available as an informal alternative to a due process hearing but must not be used to deny or postpone the opportunity of a parent or district to obtain a due process hearing. Mediation is voluntary for all parties. All mediation discussions are confidential and inadmissible in evidence in any subsequent proceeding, unless the:

(1) parties expressly agree otherwise;

(2) evidence is otherwise available; or

(3) evidence is offered to prove bias or prejudice of a witness. (Minn. Stat. § 125A.091, Subd. 9.)

If the parties resolve all or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is in writing and signed by the parties and each party is given a copy of the document. The written resolution or agreement shall state that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The resolution or agreement is legally binding upon the parties and is enforceable in the state or federal district court. A party may request another mediation to resolve a dispute over implementing the mediated agreement. (Minn. Stat. § 125A.091, Subd. 10.)

Facilitated Team Meeting

A facilitated team meeting is an IEP, IFSP, or IIP team meeting led by an impartial state-provided facilitator to promote effective communication and assist a team in developing an individualized education program. (Minn. Stat. § 125A.091, Subd. 11.)

Infants and Toddlers

(b) A parent may resolve a dispute regarding issues in Minnesota Statutes, section 125A.42, paragraph (b), clause (5), through mediation. If the parent chooses mediation, mediation must be voluntary on the part of the parties. The parent and the public agencies must complete the mediation process within 30 calendar days of the date the Office of Dispute Resolution receives a parent's written request

for mediation. The mediation process may not be used to delay a parent's right to a due process hearing. The resolution of the mediation is not binding on any party.

(c) Resolution of a dispute through mediation, or other form of alternative dispute resolution, is not limited to formal disputes arising from the objection of a parent or guardian and is not limited to the period following a request for a due process hearing.

(d) The commissioner shall provide training and resources to school districts to facilitate early identification of disputes and access to mediation. (Minn. Stat. § 125A.43(b)-(d).)

Due Process Hearings

When a Hearing Must be Held

Whenever a due process complaint is received under Code of Federal Regulations, title 34, section 300.507 or section 300.532, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in sections 300.507, 300.508, and 300.510. (34 C.F.R. § 300.511(a).)

If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to sections 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria. (34 C.F.R. § 300.502(b)(2).)

(e) A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by State law.

(f) The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to

(1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or

(2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent. (34 C.F.R. § 300.511(e)-(f).)

(A parent or a district is entitled to an impartial due process hearing conducted by the state when a dispute arises over the identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability. The hearing must be held in the district responsible for ensuring that a free appropriate public education is provided according to state and federal law. The proceedings must be recorded and preserved, at state expense, pending ultimate disposition of the action. The parent and the district shall receive, at state expense, a copy of

the hearing transcript or recording and the hearing officer's findings of fact, conclusion of law, and decisions. (Minn. Stat. § 125A.091, Subd. 12.)

Initiation of a Hearing/Filing a Due Process Complaint

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section. (34 C.F.R. § 300.508(c).)

A. Due Process Complaint Format and Content

(a)(1) A parent or a public agency may file a due process complaint on any of the matters described in section 300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in section 300.511(f) apply to the timeline in this section.

(b) The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if

- (1) The parent requests the information; or
- 2) The parent or the agency files a due process complaint under this section. (34 C.F.R. § 300.507.)

The due process complaint required in paragraph (a)(1) of this section must include

- (1) The name of the child;
 - (2) The address of the residence of the child;
 - (3) The name of the school the child is attending;
 - (4) In the case of a homeless child or youth (within the meaning of section 725(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;
 - (5) 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
 - (6) A proposed resolution of the problem to the extent known and available to the party at the time. (34 C.F.R. § 300.508(b).)
- (a) A parent or a school district may file a written request for a due process hearing regarding a proposal or refusal to initiate or change that child's evaluation, individualized education program, or educational placement, or to provide a free appropriate public education.
- (b) The parent shall include in the hearing request the name of the child, the address of the child's residence, the name of the school the child attends, a description of the child's problem 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 parents at the time.
- (c) A parent or a school district may file a written request for a hearing under United States Code, title 20, section 1415, paragraph (k).
- (d) A parent or school district filing a request for a hearing under this subdivision must provide the request to the other party and a copy of the request to the department. Upon receiving a request for a hearing, the department shall give to the child's parent a copy of the procedural safeguards notice available to a parent under federal regulations.
- (e)(1) If the parent of a child with a disability files a written request for a hearing, and the school district has not previously sent a written notice to the parent under subdivision 3a, regarding the subject matter of the hearing request, the school district shall, within ten days of receiving the hearing request, send to the child's parent a written explanation of why the school district proposed or refused to take the action raised in the hearing request. The explanation must include a description of other options that the individualized education program team considered and the reason why those options were rejected; a description of each evaluation procedure, assessment, record, or report that the school district used as the basis for the proposed or refused action; and a description of the factors that are relevant to the school district's proposal

or refusal. A response by a school district under this subdivision does not preclude the school district from asserting that the parent's request for a hearing is insufficient under clause (2) of this paragraph; and

(2) a hearing may not occur until the party requesting the hearing files a request that meets the requirements of paragraph (b). The request under paragraph (b) is considered sufficient unless the party receiving the request notifies the hearing officer and the other party in writing within 15 days of receiving the request that the receiving party believes the request does not meet the requirements of paragraph (b). Within five days of receiving a notice under this subdivision, the hearing officer shall determine whether the request meets the requirements under paragraph (b) and notify the parties.

(f) Except as provided in paragraph (e), clause (1), the party receiving a request for a hearing shall send to the party requesting the hearing a written response that addresses the issues raised in the hearing request within ten days of receiving the request. (Minn. Stat. § 125A.091, Subd. 14.)

B. Complaint Filing Requirements for Both Parties

(1) The public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA. (34 C.F.R. § 300.508(a).)

(a) A parent or a school district may file a written request for a due process hearing regarding a proposal or refusal to initiate or change that child's evaluation, individualized education program, or educational placement, or to provide a free appropriate public education.

(b) The parent shall include in the hearing request the name of the child, the address of the child's residence, the name of the school the child attends, a description of the child's problem 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 parents at the time.

(c) A parent or a school district may file a written request for a hearing under United States Code, title 20, section 1415, paragraph (k).

(d) A parent or school district filing a request for a hearing under this subdivision must provide the request to the other party and a copy of the request to the department. Upon receiving a request for a hearing, the department shall give to the child's parent a copy of the procedural safeguards notice available to a parent under federal regulations.

(e)(1) If the parent of a child with a disability files a written request for a hearing, and the school district has not previously sent a written notice to the parent under subdivision 3a, regarding the subject matter of the hearing request, the school district shall, within ten days of receiving the hearing request, send to the child's parent a written explanation of why the school district proposed or refused to take the action raised in the hearing request. The explanation must

include a description of other options that the individualized education program team considered and the reason why those options were rejected; a description of each evaluation procedure, assessment, record, or report that the school district used as the basis for the proposed or refused action; and a description of the factors that are relevant to the school district's proposal or refusal. A response by a school district under this subdivision does not preclude the school district from asserting that the parent's request for a hearing is insufficient under clause (2) of this paragraph; and

(2) a hearing may not occur until the party requesting the hearing files a request that meets the requirements of paragraph (b). The request under paragraph (b) is considered sufficient unless the party receiving the request notifies the hearing officer and the other party in writing within 15 days of receiving the request that the receiving party believes the request does not meet the requirements of paragraph (b). Within five days of receiving a notice under this subdivision, the hearing officer shall determine whether the request meets the requirements under paragraph (b) and notify the parties.

(f) Except as provided in paragraph (e), clause (1), the party receiving a request for a hearing shall send to the party requesting the hearing a written response that addresses the issues raised in the hearing request within ten days of receiving the request. (Minn. Stat. § 125A.091, Subd. 14.)

C. Other Party's Response to Complaint

Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint. (34 C.F.R. § 300.508(f).)

(1) If the LEA has not sent a prior written notice under section 300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes

(i) An explanation of why the agency proposed or refused to take the action raised in the due process complaint;

(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;

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

(iv) A description of the other factors that are relevant to the agency's proposed or refused action.

(2) A response by an LEA under paragraph (e)(1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate. (34 C.F.R. § 300.508(e).)

Sufficiency of Complaint

(1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.

(2) Within five days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.

(3) A party may amend its due process complaint only if

(i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to section 300.510; or

(ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(4) If a party files an amended due process complaint, the timelines for the resolution meeting in section 300.510(a) and the time period to resolve in section 300.510(b) begin again with the filing of the amended due process complaint. (34 C.F.R. § 300.508(d).)

Pre-Hearing Resolution Activities

(1) Within 15 days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under section 300.511, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that

(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and

(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.

(2) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.

(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if

(i) The parent and the LEA agree in writing to waive the meeting; or

(ii) The parent and the LEA agree to use the mediation process described in section 300.506.

(4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting. (34 C.F.R. § 300.510(a).)

(1) If the LEA has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the due process complaint, the due process hearing may occur.

(2) Except as provided in paragraph (c) of this section, the timeline for issuing a final decision under section 300.515 begins at the expiration of this 30-day period.

(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(4) If the LEA is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in section 300.322(d)), the LEA may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

(5) If the LEA fails to hold the resolution meeting specified in paragraph (a) of this section within 15 days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline. (34 C.F.R. § 300.510(b).)

(c) The 45-day timeline for the due process hearing in section 300.515(a) starts the day after one of the following events:

(1) Both parties agree in writing to waive the resolution meeting;

(2) After either the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible;

(3) If both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent or public agency withdraws from the mediation process. (34 C.F.R. § 300.510(c).)

(d) If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is

(1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and

(2) Enforceable in any State court of competent jurisdiction or in a district court of the United States, or, by the SEA, if the State has other mechanisms or procedures that permit parties to seek enforcement of resolution agreements, pursuant to section 300.537.

(e) If the parties execute an agreement pursuant to paragraph (d) of this section, a party may void the agreement within 3 business days of the agreement's execution. (34 C.F.R. § 300.510(d)-(e).)

Who is Responsible for Conducting a Hearing

The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA. (34 C.F.R. § 300.511(b).)

The resident district is responsible for resolving disagreements between the pupil's parents and district, including conciliation and due process hearings when the placement has been made by the resident district. If the providing district, agency, or academy receives a request for a conciliation conference, mediation, or due process hearing from the parent, the providing district, agency, or academy must notify the resident district of the parent's request within one school day. (Minn. R. 3525.0800, subp. 5.)

No resident of a district who is eligible for special instruction and services under this section may be denied instruction and service on a shared time basis consistent with Minnesota Statutes, section 126C.19, subdivision 4, because of attending a nonpublic school defined in Minnesota Statutes, section 123A.41, subdivision 9. If a resident pupil with a disability attends a nonpublic school located within the district of residence, the district must provide necessary transportation for that pupil within the district between the nonpublic school and the educational facility where special instruction and services are provided on a shared time basis. If a resident pupil with a disability attends a nonpublic school located in another district and if no agreement exists under Minnesota Statutes, section 126C.19, subdivision 1 or 2, for providing special instruction and services on a shared time basis to that pupil by the district of attendance and where the special instruction and services are provided within the district of residence, the district of residence must provide necessary transportation for that pupil between the boundary of the district of residence and the educational facility. The district of residence may provide necessary transportation for that pupil between its boundary and the nonpublic school attended, but the nonpublic school must pay the cost of transportation provided outside the district boundary.

Parties serving students on a shared time basis have access to the due process hearing system described under United States Code, title 20, and the complaint system under the Code of Federal Regulations, title 34, section 300.660-662. In the event it is determined under these systems that the nonpublic school or staff impede the public school district's provision of a free appropriate education, the commissioner may withhold public funds available to the nonpublic school proportionally applicable to that student under Minnesota Statutes, section 123B.42. (Minn. Stat. § 125A.18.)

Additional Rights and Obligations

A. Applicable to both Parents and Agencies

(1) Counsel, Evidence, and Witnesses

Any party to a hearing conducted pursuant to sections 300.507 through 300.513 or §§ 300.530 through 300.534, or an appeal conducted pursuant to section 300.514, 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 five business days before the hearing. (34 C.F.R. § 300.512(a)(1)-(3).)

At least five business days prior to a hearing conducted pursuant to section 300.511(a), each party must 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. (34 C.F.R. § 300.512(b)(1).)

A parent must have an opportunity to meet with appropriate district staff in at least one conciliation conference if the parent objects to any proposal of which the parent receives notice under subdivision 3a. A district must hold a conciliation conference within ten calendar days from the date the district receives a parent's objection to a proposal or refusal in the prior written notice. Except as provided in this section, all discussions held during a conciliation conference are confidential and are not admissible in a due process hearing. Within five school days after the final conciliation conference, the district must prepare and provide to the parent a conciliation conference memorandum that describes the district's final proposed offer of service. This memorandum is admissible in evidence in any subsequent proceeding. (Minn. Stat. § 125A.091, Subd. 7.)

In addition to offering at least one conciliation conference, a district must inform a parent of other dispute resolution processes, including at least mediation and facilitated team meetings. The fact that an alternative dispute resolution process was used is admissible in evidence at any subsequent proceeding. State-provided mediators and team meeting facilitators shall not be subpoenaed to testify at a due process hearing or civil action under federal special education law nor are any records of mediators or state-provided team meeting facilitators accessible to the parties. (Minn. Stat. § 125A.091, Subd. 8.)

If the parties resolve all or a portion of the dispute, or agree to use another procedure to resolve the dispute, the mediator shall ensure that the resolution or agreement is in writing and signed by the parties and each party is given a copy of the document. The written resolution or agreement shall state that all discussions that occurred during mediation are confidential and may not be used as evidence in any hearing or civil proceeding. The resolution or agreement is legally binding upon the parties and is enforceable in the state or federal district court. A party may request another mediation to resolve a dispute over implementing the mediated agreement. (Minn. Stat. § 125A.091, Subd. 10.)

The hearing officer may admit all evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in conducting their serious affairs. The hearing officer must give effect to the rules of privilege recognized by law and exclude evidence that is incompetent, irrelevant, immaterial, or unduly repetitious. (Minn. Stat. § 125A.091, Subd. 17.)

(2) Hearing Records and Decisions

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under section 300.508(b), unless the other party agrees otherwise. (34 C.F.R. § 300.511(d).)

Any party to a hearing conducted pursuant to sections 300.507 through §§ 300.513 or 300.530 through 300.534, or appeal conducted pursuant to section 300.514, has the right to

(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. (34 C.F.R. § 300.512(a)(4)(5).)

The public agency must ensure that not later than 45 days after the expiration of the 30-day period under section 300.510(b), or the adjusted time periods described in section 300.510(c)

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties. (34 C.F.R. § 300.515(a).)

The SEA, after deleting any personally identifiable information, must

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under section 300.167; and

(2) Make those findings and decisions available to the public. (34 C.F.R. § 300.514(c).)

(3) Burdens of Proof

The burden of proof at a due process hearing is on the party seeking relief. Minn. Stat. § 125A.091, Subd. 16.

B. Parents Specific Rights

Parents involved in hearings must be given the right to

(1) Have the child who is the subject of the hearing present;

(2) Open the hearing to the public; and

(3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to the parents. (34 C.F.R. § 300.512(c).)

Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved. (34 C.F.R. § 300.515(d).)

Nothing in sections 300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed. (34 C.F.R. § 300.513(c).)

(a) Each lead agency must ensure that the parents of a child referred to part C are afforded the rights in paragraph (b) of this section in the due process hearing carried out under section 303.430(d).

(b) Any parent involved in a due process hearing has the right to

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;

- (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;
- (4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent, and
- (5) Receive a written copy of the findings of fact and decisions at no cost to the parent. (34 C.F.R. § 303.36.)

C. Stay Put

- (a) Except as provided in section 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under section 300.507, 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 complaint involves an application for initial services under this part from a child who is transitioning from Part C of the Act to Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part c services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under section 300.300(b), then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.
- (d) If the hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section. (34 C.F.R. § 300.518.)

(a) During the pendency of any proceeding involving a complaint under this subpart, unless the public agency and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.

(b) If the complaint involves an application for initial services under this part, the child must receive those services that are not in dispute. (34 C.F.R. § 303.425.)

Hearing Officers

(c) *Impartial hearing officer.* (1) At a minimum, a hearing officer

(i) Must not be

(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or

(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) 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.

(3) Each public agency must 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.(34 C.F.R. § 300.511(c).)

Whenever a due process complaint is received under section 303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must

(1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

(2) Perform the following duties:

(i)(A) Listen to the presentation of relevant viewpoints about the due process complaint.

(B) Examine all information relevant to the issues.

(C) Seek to reach a timely resolution of the due process complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) Definition of impartial. (1) Impartial means that the due process hearing officer appointed to implement the due process hearing under this part

(i) Is not an employee of the lead agency or an EIS provider involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2)A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part. (34 C.F.R. § 303.435.)

The commissioner shall maintain a list of qualified hearing officers. The list shall include a statement of the qualifications of each person listed. Upon receipt of a written request for a hearing, the commissioner shall appoint a hearing officer from the list. The hearing officer must:

- (1) be knowledgeable and impartial;
 - (2) have no personal interest in or specific involvement with the student who is a party to the hearing;
 - (3) not have been employed as an administrator by the district that is a party to the hearing;
 - (4) not have been involved in selecting the district administrator who is a party to the hearing;
 - (5) have no personal, economic, or professional interest in the outcome of the hearing other than properly administering federal and state laws, rules, and policies;
 - (6) have no substantial involvement in developing state or local policies or procedures challenged in the hearing;
 - (7) not be a current employee or board member of a Minnesota public school district, education district, intermediate unit or regional education agency, or the department if the department is the service provider; and
 - (8) not be a current employee or board member of a disability advocacy organization or group.
 - (9) not otherwise be under contract with the department or the school district;
 - (10) know and understand state and federal special education laws, rules, and regulations, and legal interpretations by federal and state courts; and
 - (11) have the knowledge and ability to conduct hearings and render and write decisions according to appropriate, standard legal practice. (Minn. Stat. § 125A.091, Subd. 13.)
- (a) A parent or a school district may file a written request for a due process hearing regarding a proposal or refusal to initiate or change that child's evaluation, individualized education program, or educational placement, or to provide a free appropriate public education.
 - (b) The parent shall include in the hearing request the name of the child, the address of the child's residence, the name of the school the child attends, a description of the child's problem 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 parents at the time.
 - (c) A parent or a school district may file a written request for a hearing under United States Code, title 20, section 1415, paragraph (k).
 - (d) A parent or school district filing a request for a hearing under this subdivision must provide the request to the other party and a copy of the request to the department. Upon receiving a request for a hearing, the department shall give to the child's parent a copy of the procedural safeguards notice available to a parent under federal regulations.

(e)(1) If the parent of a child with a disability files a written request for a hearing, and the school district has not previously sent a written notice to the parent under subdivision 3a, regarding the subject matter of the hearing request, the school district shall, within ten days of receiving the hearing request, send to the child's parent a written explanation of why the school district proposed or refused to take the action raised in the hearing request. The explanation must include a description of other options that the individualized education program team considered and the reason why those options were rejected; a description of each evaluation procedure, assessment, record, or report that the school district used as the basis for the proposed or refused action; and a description of the factors that are relevant to the school district's proposal or refusal. A response by a school district under this subdivision does not preclude the school district from asserting that the parent's request for a hearing is insufficient under clause (2) of this paragraph; and

(2) a hearing may not occur until the party requesting the hearing files a request that meets the requirements of paragraph (b). The request under paragraph (b) is considered sufficient unless the party receiving the request notifies the hearing officer and the other party in writing within 15 days of receiving the request that the receiving party believes the request does not meet the requirements of paragraph (b). Within five days of receiving a notice under this subdivision, the hearing officer shall determine whether the request meets the requirements under paragraph (b) and notify the parties.

(f) Except as provided in paragraph (e), clause (1), the party receiving a request for a hearing shall send to the party requesting the hearing a written response that addresses the issues raised in the hearing request within ten days of receiving the request. (Minn. Stat. § 125A.091, Subd. 14.)

(a) Whenever a due process complaint is received under section 303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must

(1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and

(2) Perform the following duties:

(i)(A) Listen to the presentation of relevant viewpoints about the due process complaint.

(B) Examine all information relevant to the issues.

(C) Seek to reach a timely resolution of the due process complaint.

(ii) Provide a record of the proceedings, including a written decision.

(b) Definition of impartial. (1) Impartial means that the due process hearing officer appointed to implement the due process hearing under this part—

(i) Is not an employee of the lead agency or an EIS provider involved in the provision of early intervention services or care of the child; and

(ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.

(2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures under this part. (34 C.F.R. § 303.435.)

B. Prehearing Conference Duties

A prehearing conference must be held within five business days of the date the commissioner appoints the hearing officer. The hearing officer must initiate the prehearing conference which may be conducted in person, at a location within the district, or by telephone. The hearing officer must create a written verbatim record of the prehearing conference which is available to either party upon request. At the prehearing conference, the hearing officer must:

(1) identify the questions that must be answered to resolve the dispute and eliminate claims and complaints that are without merit;

(2) set a scheduling order for the hearing and additional prehearing activities;

(3) determine if the hearing can be disposed of without an evidentiary hearing and, if so, establish the schedule and procedure for doing so; and

(4) establish the management, control, and location of the hearing to ensure its fair, efficient, and effective disposition. (Minn. Stat. § 125A.091, Subd. 15.)

C. Hearing Officer Authority

(a) A hearing officer must limit an impartial due process hearing to the time sufficient for each party to present its case.

(b) A hearing officer must establish and maintain control and manage the hearing. This authority includes, but is not limited to:

(1) requiring attorneys representing parties at the hearing, after notice and an opportunity to be heard, to pay court reporting and hearing officer costs, or fines payable to the state, for failing to: (i) obey scheduling or prehearing orders, (ii) appear, (iii) be prepared, or (iv) participate in the hearing process in good faith;

(2) administering oaths and affirmations;

(3) issuing subpoenas;

(4) determining the responsible and providing districts and joining those districts, if not already notified, in the proceedings;

(5) making decisions involving identification, evaluation, educational placement, manifestation determination, interim alternative educational placement, or the provision of a free appropriate public education to a child with a disability; (6) ordering an independent educational evaluation of a child at district expense; and

(7) extending the hearing decision timeline if the hearing officer determines that good cause exists.

(c) Good cause includes, but is not limited to, the time required for mediation or other settlement discussions, independent educational evaluation, complexity and volume of issues, or finding or changing counsel. (Minn. Stat. § 125A.091, Subd. 18.)

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. (34 C.F.R. § 300.512(b)(2).)

If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense. (34 C.F.R. § 300.502(d).)

D. Decisions of Hearing Officer

A decision made in a hearing conducted pursuant to sections 300.507 through 300.513 or §§ 300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and section 300.516. (34 C.F.R. § 300.514(a).)

(1) Subject to paragraph (a)(2) of this section, a hearing officer's determination of whether the child received a FAPE must be based on substantive grounds.

(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies

(i) Impeded the child's right to a FAPE;

(ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or

(iii) Caused a deprivation of educational benefit.

(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under sections 300.500 through 300.536. (34 C.F.R. § 300.513(a).)

(a) The hearing officer must ensure that not later than 45 days after the 30-day period or the adjusted time periods under federal regulations expire, the hearing officer reaches a final decision in the due process hearing and transmits a copy of the decision to each party. A hearing officer, at the request of either party, may grant specific extensions of time beyond the 45-day period under subdivision 18. The hearing officer must conduct the oral arguments in a hearing at a time and place that is reasonably convenient to the parents and child involved. A hearing officer is encouraged to accelerate the time line to 30 days for a child under the age of three whose needs change rapidly and who requires quick resolution of a dispute.

(b) Once the hearing officer has issued a final decision, the hearing officer lacks authority to amend the decision except for clerical or mathematical errors.

(c) Nothing in this subdivision precludes a hearing officer from ordering a school district to comply with federal procedural safeguards under the federal Individuals with Disabilities Education Act. (Minn. Stat. § 125A.091, Subd. 20.)

A district is not liable for harmless technical violations of federal or state laws, rules, or regulations governing special education if the school district can demonstrate that the violations did not harm a student's educational progress or the parent's right to notice, participation, or due process. This subdivision is applicable to due process hearings and special education complaints filed with the department. (Minn. Stat. § 125A.091, Subd. 28.)

The commissioner must monitor final hearing officer decisions and ensure enforcement of hearing officer orders. (Minn. Stat. § 125A.091, Subd. 25.)

The hearing officer may require the resident school district to provide compensatory educational services to the child if the hearing officer finds that the school district has not offered or made available to the child a free appropriate public education in the child's educational program and that the child has suffered a loss of educational benefit. Such services shall take the form of direct and indirect special education and related services designed to address any loss of educational benefit that may have occurred. The hearing officer's finding must be based on a present determination of whether the child has suffered a loss of educational benefit. (Minn. Stat. § 125A.091, Subd. 21.)

E. Decision Timelines

(a) The public agency must ensure that not later than 45 days after the expiration of the 30-day period under section 300.510(b), or the adjusted time periods described in section 300.510(c)—

(1) A final decision is reached in the hearing; and

(2) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party. (34 C.F.R. § 300.515(a) & (c).)

(a) The hearing officer must ensure that not later than 45 days after the 30-day period or the adjusted time periods under federal regulations expire, the hearing officer reaches a final decision in the due process hearing and transmits a copy of the decision to each party. A hearing officer, at the request of either party, may grant specific extensions of time beyond the 45-day period under subdivision 18. The hearing officer must conduct the oral arguments in a hearing at a time and place that is reasonably convenient to the parents and child involved. A hearing officer is encouraged to accelerate the time line to 30 days for a child under the age of three whose needs change rapidly and who requires quick resolution of a dispute. (Minn. Stat. § 125A.091, Subd. 20.)

Appeals

(a) Any party aggrieved by the findings and decision made under sections 300.507 through 300.513 or §§ 300.530 through 300.534 who does not have the right to an appeal under section 300.514(b), and any party aggrieved by the findings and decision under section 300.514(b), has

the right to bring a civil action with respect to the request to the due process complaint notice requesting a due process hearing under section 300.507 or §§ 300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(b) The party bringing the action shall have 90 days from the date of the decision of the hearing officer or, if applicable, the decision of the State review official, to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.

(c) In any action brought under paragraph (a) of this section, the court

(1) Receives the records of the administrative proceedings;

(2) Hears additional evidence at the request of a party; and

(3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

(d) The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

(e) 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 sections 300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act. (34 C.F.R. § 300.516.)

The parent or district may seek review of the hearing officer's decision in the Minnesota Court of Appeals or in the federal district court.. A party must appeal to the Minnesota Court of Appeals within 60 days of receiving the hearing officer's decision or must appeal to federal district court within 90 days of receiving the hearing officer's decision. (Minn. Stat. § 125A.091, Subd. 24.)

Expedited Due Process Hearings

General Hearing Provisions Related to Manifestation Determinations and Interim Alternative Placement Decisions

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of the Code of Federal Regulations, title 34, sections 300.507 and 300.508(a) through (c) and sections 300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a decision within 10 school days after the hearing.

(3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in section 300.506

(i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the due process complaint.

(4) A State may establish different State-imposed procedural rules for expedited due processing hearings conducted under this section than it has established for other due processing hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in sections 300.510 through 300.514 are met.

(5) The decisions on expedited due process hearings are appealable consistent with section 300.514. (34 C.F.R § 300.532(c).)

A parent has the right to an expedited due process hearing when there is a dispute over a manifestation determination or a proposed or actual placement in an interim alternative educational setting. A district has the right to an expedited due process hearing when proposing or seeking to maintain placement in an interim alternative educational setting. A hearing officer must hold an expedited due process hearing and must issue a decision within ten calendar days of the request for a hearing. A hearing officer may extend by up to five additional calendar days the time for issuing a decision in an expedited due process hearing. All policies in this section apply to expedited due process hearings to the extent they do not conflict with federal law. (Minn. Stat. § 125A.091, Subd. 19.)

Manifestation Determination Review

(a) The parent of a child with a disability who disagrees with any decision regarding placement under sections 300.530 and 300.531, or the manifestation determination under section 300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to sections 300.507 and 300.508(a) and (b).

(b)(1) A hearing officer under section 300.511 hears, and makes a determination regarding, and appeal requested under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of section 300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that

maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others. (34 C.F.R. § 300.532(a)-(b).)

Attorneys' Fees

Awarding of Fees

A. When Attorneys' Fees Are Awarded

In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorney's fees as part of the costs to

(i) The prevailing party who is the parent of a child with a disability;

(ii) To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint 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 became frivolous, unreasonable, or without foundation; or

(iii) To a prevailing SEA or LEA against the attorney or a parent, or against the parent, if the parent's request for a due process hearing 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. (34 C.F.R. § 300.517(a)(1).)

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

(3) 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. (34 C.F.R. § 300.517(c)(3).)

B. When Attorney Fees Are Not Awarded

Attorney 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. (34 C.F.R. § 300.517(c)(2)(i).)

Attorney 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 described in section 300.506. (34 C.F.R. § 300.517(c)(2)(ii).)

1. Exception

A meeting conducted pursuant to section 300.510 shall not be considered

(A) A meeting convened as a result of an administrative hearing or judicial action; or

(B) An administrative hearing or judicial action for purposes of this section. (34 C.F.R. § 300.517(c)(2)(iii).)

Reduction of Fees

A. When Attorneys' Fees Are Reduced

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, or the parent's attorney, 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 LEA the appropriate information in the due process request notice in accordance with section 300.508. (34 C.F.R. § 300.517(c)(4).)

B. When Attorneys' Fees Are Not Reduced

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. (34 C.F.R. § 300.517(c)(5).)

Measure of Fee Award

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

(1) 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 paragraph. (34 C.F.R. § 300.517(c)(1).)

Prohibition on Use of Part B Funds

(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 and subpart E of this part.

(2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act. (34 C.F.R. § 300.517(b).)

Interagency Dispute Procedures (Early Childhood)

A dispute between a school board and a county board that is responsible for implementing the provisions of Minnesota Statutes, section 125A.29, regarding early identification, child and family assessment, service coordination, and IFSP development and implementation must be resolved according to this subdivision when the dispute involves services provided to children and families eligible under the Individuals with Disabilities Education Act, United States code, title 20, section 1471 et seq. (Part C, Public Law 108-446). (Minn. Stat. § 125A.45(a).)

A dispute occurs when the school board and county board are unable to agree as to who is responsible to coordinate, provide, pay for, or facilitate payment for services from public and private sources. (Minn. Stat. § 125A.45(b).)

Written and signed disputes must be filed with the local primary agency. (Minn. Stat. § 125A.45(c).)

The local primary agency must attempt to resolve the matter with the involved school board and county board and may request mediation from the commissioner of state lead agency for this purpose. (Minn. Stat. § 125A.45(d).)

When interagency disputes have not been resolved within 30 calendar days, the local primary agency must request the commissioner of the state lead agency to review the matter with the commissioners of health and human services and make a decision. The commissioner must provide a consistent process for reviewing those procedures. The commissioner's decision is binding subject to the right of an aggrieved party to appeal to the state Court of Appeals. (Minn. Stat. § 125A.45(e).)

The local primary agency must ensure that eligible children and their families receive early intervention services during resolution of a dispute. While a local dispute is pending, the local primary agency must either assign financial responsibility to an agency or pay for the service from the early intervention account under section 125A.35. If in resolving the dispute, it is determined that the assignment of financial responsibility was inappropriate, the responsibility for payment must be reassigned to the appropriate agency and the responsible agency must make arrangements for reimbursing any expenditures incurred by the agency originally assigned financial responsibility. (Minn. Stat. § 125A.45(f).)

Complaints to the Minnesota Department of Education

Requirements

(a) An organization or individual may file a signed written complaint under the procedures described in the Code of Federal Regulations, title 34, sections 300.151 through 300.152.

(b) The complaint must include

(1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child

(i) The name and address of the residence of the child;

(ii) The name of the school the child is attending;

(iii) In the case of a homeless child or youth (within the meaning of section 725(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;

(iv) A description of the nature of the problem of the child, including facts relating to the problem; and

(v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed. (34 C.F.R. § 300.153(a)-(b).)

The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with section 300.151. (34 C.F.R. § 300.153(c).)

The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA. (34 C.F.R. § 300.153(d).)

(1) A parent, EIS provider, or a lead agency may file a due process complaint on any of the matters described in section 303.421(a), relating to the identification, evaluation, or placement of a child, or the provision of early intervention services to the infant or toddler with a disability and his or her family under part C of the Act.

(2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or EIS provider knew, or should have known, about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation

for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in section 303.443(f) apply to the timeline in this section. (34 C.F.R. § 303.440 (a).)

Procedures

Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under section 300.153 to

- (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
- (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum
 - (i) At the discretion of the public agency, a proposal to resolve the complaint; and
 - (ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with section 300.506;
- (4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and
- (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the SEA's final decision. (34 C.F.R. § 300.152(a).)

The SEA's procedures described in paragraph (a) of this section also must

- (1) Permit an extension of the time limit under paragraph (a) of this section only if
 - (i) Exceptional circumstances exist with respect to a particular complaint; or
 - (ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State.
- (2) Include procedures for effective implementation of the SEA's final decision, if needed, including
 - (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance. (34 C.F.R. § 300.152(b).)

The commissioner of the state lead agency shall receive and coordinate with other state agencies the review and resolution of a complaint within 60 calendar days according to the state interagency agreement required under section 125A.48. The development and disposition of

corrective action orders for non-school agencies shall be determined by the State Agency Committee (SAC). Failure to comply with corrective orders may result in fiscal actions or other measures. (Minn. Stat. § 125A.44(b).)

Resolution and Implementation

In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address

- (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- (2) Appropriate future provision of services for all children with disabilities. (34 C.F.R. § 300.151(b).)

State Complaints Associated with Due Process Hearings

If a written complaint is received that is also the subject of a due process hearing under section 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and b) of this section. (34 C.F.R. § 300.152(c)(1).)

If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties

- (i) The due process hearing decision is binding on that issue; and
- (ii) The SEA must inform the complainant to that effect. (34 C.F.R. § 300.152(c)(2).)

A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA. (34 C.F.R. § 300.152(c)(3).)

(a) General. Each lead agency shall adopt written procedures for

- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements in section 303.434 by providing for the filing of a complaint with the lead agency; and
 - (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, the State procedures under sections 303.432 through 303.434.
- (b) Remedies for denial of appropriate services. In resolving a complaint in which the lead agency has found a failure to provide appropriate services, the lead agency, pursuant to its general supervisory authority under part C of the Act, must address

- (1) The failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint

and the infant's or toddler's family (such as compensatory services or monetary reimbursement); and

(2) Appropriate future provision of services for all infants and toddlers with disabilities and their families. (34 C.F.R. § 303.432.)

(a) An organization or individual may file a signed written complaint under the procedures described in sections 303.432 and 303.433.

(b) The complaint must include

(1) A statement that the lead agency, public agency, or EIS provider has violated a requirement of part C of the Act;

(2) The facts on which the statement is based;

(3) The signature and contact information for the complainant; and

(4) If alleging violations with respect to a specific child

(i) The name and address of the residence of the child;

(ii) The name of the EIS provider serving the child;

(iii) A description of the nature of the problem of the child, including facts relating to the problem; and

(iv) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with section 303.432.

(d) The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the lead agency. (34 C.F.R. § 303.434.)

(a) Time limit, minimum procedures. Each lead agency shall include in its complaint procedures a time limit of 60 days after a complaint is filed under section 303.434 to

(1) Carry out an independent on-site investigation, if the lead agency determines that such an investigation is necessary;

(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(3) Provide the lead agency, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum

(i) At the discretion of the lead agency, a proposal to resolve the complaint; and

(ii) An opportunity for a parent who has filed a complaint and the lead agency, public agency, or EIS provider to voluntarily engage in mediation, consistent with sections 303.430(b) and 303.431;

(4) Review all relevant information and make an independent determination as to whether the lead agency, public agency, or EIS provider is violating a requirement of part C of the Act or of this part; and

(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains

(i) Findings of fact and conclusions; and

(ii) The reasons for the lead agency's final decision.

(b) Time extension; final decision; implementation. The lead agency's procedures described in paragraph (a) of this section also must

(1) Permit an extension of the time limit under paragraph (a) of this section only if

(i) Exceptional circumstances exist with respect to a particular complaint; or

(ii) The parent (or individual or organization, if mediation is available to the individual or organization under State procedures) and the lead agency, public agency or EIS provider involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section; and

(2) Include procedures for effective implementation of the lead agency's final decision, if needed, including

(i) Technical assistance activities;

(ii) Negotiations; and

(iii) Corrective actions to achieve compliance.

(c) Complaints filed under this section and due process hearings under section 303.430(d). (1) If a written complaint is received that is also the subject of a due process hearing under section 303.430(d), or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.

(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties—

(i) The due process hearing decision is binding on that issue; and

(ii) The lead agency must inform the complainant to that effect.

(3) A complaint alleging a lead agency, public agency, or EIS provider's failure to implement a due process hearing decision must be resolved by the lead agency. (34 C.F.R. § 303.433.)

Data Privacy

Safeguards and District Procedures

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under section 300.123 and 34 C.F.R. part 99.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (34 C.F.R. § 300.623.)

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. (34 C.F.R. § 300.614.)

By December 1, 2000, each responsible authority or other appropriate authority in every government entity shall appoint or designate an employee of the government entity to act as the entity's data practices official. The data practices compliance official is the designated employee of the government entity to whom persons may direct questions or concerns regarding problems in obtaining access to data or other data practices problems. The responsible authority may be the data practices compliance official. (Minn. Stat. § 13.05, Subd. 13.)

For school districts, the school board shall appoint an individual who is an employee of the school district. (Minn. Rule 1205.0200, subp.14(C).)

Privacy of Records

If any education record includes 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. (34 C.F.R. § 300.615.)

Except as provided in subdivision 5, educational data is private data on individuals and shall not be disclosed except [according to certain exceptions; refer to statute for list of exceptions]. (Minn. Stat. § 13.32, Subd. 3.)

"Educational data" means data on individuals maintained by a public educational agency or institution or by a person acting for the agency or institution which relates to a student. Records of instructional personnel which are in the sole possession of the maker thereof and are not

accessible or revealed to any other individual except a substitute teacher, and are destroyed at the end of the school year, shall not be deemed to be government data.

Records of a law enforcement unit of a public educational agency or institution which are maintained apart from education data and are maintained solely for law enforcement purposes, and are not disclosed to individuals other than law enforcement officials of the jurisdiction are not educational data; provided, that education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit. The University of Minnesota police department is a law enforcement agency for purposes of section 13.82 and other sections of Minnesota Statutes dealing with law enforcement records. Records of organizations providing security services to a public educational agency or institution must be administered consistent with section 13.861.

Records relating to a student who is employed by a public educational agency or institution which are made and maintained in the normal course of business, relate exclusively to the individual in that individual's capacity as an employee, and are not available for use for any other purpose are classified pursuant to section 13.43. (Minn. Stat. § 13.32, Subd. 1(a).)

"Private data on individuals" means data which is made by statute or federal law applicable to the data: (a) not public; and (b) accessible to the individual subject of that data. (Minn. Stat. § 13.02, Subd. 12.)

A. Consent Required for Disclosure

(a) Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 C.F.R. part 99.

(b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.

(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with 300.321(b)(3).

(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence. (34 C.F.R. § 300.622.)

The parent or eligible student shall provide a signed and dated written consent before an educational agency or institution discloses personally identifiable information from the student's education records, except as provided in section 99.31. (34 C.F.R. § 99.30.)

Refer to Minn. Stat. § 13.32, Subd. 3, and 34. C.F.R. § 99.31 for a complete list of exceptions to the consent requirement.

Parents' Right of Access to Records

(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to section 300.507 or §§ 300.530 through 300.532, or resolution session pursuant to section 300.510, and in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under this section includes

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

(2) The right to request that the agency 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; and

(3) The right to have a representative of the parent inspect and review the records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce. (34 C.F.R. § 300.613.)

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency. (34 C.F.R. § 300.616.)

Upon request to a responsible authority, or designee, an individual shall be informed whether the individual is the subject of stored data on individuals, and whether it is classified as public, private or confidential. Upon further request, an individual who is the subject of stored private or public data on individuals shall be shown the data without any charge and, if desired, shall be informed of the content and meaning of that data. After an individual has been shown the private data and informed of its meaning, the data need not be disclosed to that individual for six months thereafter unless a dispute or action pursuant to this section is pending or additional data on the individual has been collected or created. The responsible authority shall provide copies of the private or public data upon request by the individual subject of the data. The responsible authority or designee may require the requesting person to pay the actual costs of making, and certifying, the copies.

The responsible authority or designee shall comply immediately, if possible, with any request made pursuant to this subdivision, or within ten days of the date of the request, excluding Saturdays, Sundays and legal holidays, if immediate compliance is not possible. (Minn. Stat. § 13.04, Subd. 3.)

The responsible authority shall prepare a public document setting forth in writing the rights of the data subject pursuant to section 13.04 and the specific procedures in effect in the government entity, for access by the data subject to public or private data on individuals. (Minn. Stat. § 13.05, Subd. 8.)

34. C.F.R. §§ 99.10 and 12 also address the subject of consent, and provide substantially similar rights to those listed here.

A. Notice of Destruction of Records

(a) The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. (b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation. (34 C.F.R. § 300.624.)

Right to Challenge the Accuracy of Records and Request Changes

(a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.

(b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under section 300.619. (34 C.F.R. § 300.618.)

An individual subject of the data may contest the accuracy or completeness of public or private data. To exercise this right, an individual shall notify in writing the responsible authority describing the nature of the disagreement. The responsible authority shall within 30 days either:

(1) correct the data found to be inaccurate or incomplete and attempt to notify past recipients of inaccurate or incomplete data, including recipients named by the individual; or

(2) notify the individual that the authority believes the data to be correct. Data in dispute shall be disclosed only if the individual's statement of disagreement is included with the disclosed data. (Minn. Stat. § 13.04, Subd. 4(a).)

A. Hearings

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (34 C.F.R. § 300.619.)

(a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must —

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party. (34 C.F.R. § 300.620.)

A hearing held under section 300.619 must be conducted according to the procedures in 34 CFR 99.22. (34 C.F.R. § 300.621.)

The hearing required by § 99.21 [and section 300.619] must meet, at a minimum, the following requirements:

(a) The educational agency or institution shall hold the hearing within a reasonable time after it has received the request for the hearing from the parent or eligible student.

(b) The educational agency or institution shall give the parent or the eligible student notice of the date, time, and place, reasonably in advance of the hearing.

(c) The hearing may be conducted by any individual, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

(d) The educational agency or institution shall give the parent or the eligible student a full and fair opportunity to present evidence relevant to the issues raised under

§ 99.21. The parent or eligible student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.

(e) The educational agency or institution shall make its decision in writing within a reasonable period of time after the hearing.

(f) The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision. (34 C.F.R. § 99.22.)

The determination of the responsible authority may be appealed pursuant to the provisions of the Administrative Procedure Act relating to contested cases. Upon receipt of an appeal by an individual, the commissioner shall, before issuing the order and notice of a contested case hearing required by chapter 14, try to resolve the dispute through education, conference, conciliation, or persuasion. If the parties consent, the commissioner may refer the matter to mediation. Following these efforts, the commissioner shall dismiss the appeal or issue the order and notice of hearing. (Minn. Stat. § 13.04, Subd. 4(a).)

Pursuant to Minnesota Statutes, section 13.04, subdivision 4 an individual may appeal an adverse determination of a responsible authority to the commissioner of administration. The appeal shall follow the procedures established in Minnesota Statutes, chapter 14, as amended, and the rules of the Office of Administrative Hearings relating to contested case proceedings.

Notice of an appeal must be submitted to the commissioner within a reasonable time of the determination made by the responsible authority pursuant to Minnesota Statutes, section 13.04, subdivision 4. For purposes of this subpart, "reasonable time" shall mean 180 days unless the responsible authority has provided the individual with a written statement which informs the individual of the right to appeal the determination to the commissioner. In the event this statement is provided, "reasonable time" for purposes of this subpart shall mean 60 days.

The notice shall be in writing addressed to: Commissioner of Administration, State of Minnesota, 50 Sherburne Avenue, Saint Paul, Minnesota 55155.

The notice shall contain the following information:

- A. the name, address, and phone number, if any, of the appealing party;
- B. the name of the responsible authority and entity which he or she represents;
- C. a description of the nature of the dispute; including a description of the data; and
- D. a description of the desired result of the appeal; upon written request of the data subject stating reasons, the appeal may be processed under the name of a pseudonym.

The administrative law judge, at any stage of the proceedings, after all parties have had an opportunity to present their views, may recommend dismissal of any sham, capricious, or frivolous case, or any case not within the jurisdiction of the Department of Administration.

The Department of Administration shall be reimbursed for a 11 costs associated with the contested case proceeding by the entity whose responsible authority has been the impetus for the individual's appeal to the commissioner. The commissioner shall establish appropriate accounting procedures to provide to the entity an itemized invoice. (Minn. Rule 1205.1600.)

34. C.F.R. §§ 99.20 and 21 also address the subject of a hearing to contest the accuracy of records, and provide substantially similar rights to those listed here.

Fees

(a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part. (34 C.F.R. § 300.617.)

The responsible authority shall not charge the data subject any fee in those instances where the data subject only desires to view private data. The responsible authority may charge the data subject a reasonable fee for providing copies of private data.

In determining the amount of the reasonable fee, the responsible authority shall be guided by the criteria set out in part 1205.0300 concerning access to public data. (Minn. Rule 1205.0400, subp. 5.)

(a) Unless the imposition of a fee effectively prevents a parent or eligible student from exercising the right to inspect and review the student's education records, an educational agency or institution may charge a fee for a copy of an education record which is made for the parent or eligible student.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student. (34 C.F.R. § 99.11.)

Transfer of Parent Rights

(b) Under the regulations for FERPA in 34 C.F.R. 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.

(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with section 300.520, the rights regarding educational records in sections 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents. (34 C.F.R. § 300.625(b)-(c).)

(a) Each participating agency must permit parents to inspect and review any early intervention records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP, or any hearing pursuant to sections 303.430(d) and 303.435 through 303.439, and in no case more than 10 days after the request has been made.

(b) The right to inspect and review early intervention records under this section includes—

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the early intervention records;

(2) The right to request that the participating agency provide copies of the early intervention 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; and

(3) The right to have a representative of the parent inspect and review the early intervention records.

(c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been provided documentation that the parent does not have the authority under applicable State laws governing such matters as custody, foster care, guardianship, separation, and divorce. (34 C.F.R. § 303.405.)