

## Legal References

### ———— An Overview of Procedural Safeguards ————

#### **Section 1**

*“Opportunity to examine records.* The parents of a child with a disability must be afforded, in accordance with the procedures of § 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.” 300.501(a)

#### **Section 2**

“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.” 300.613(b)

#### **Section 3**

“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 § 300.619.” 300.618(a),(b),(c)

If after a hearing the school decides that the information is inaccurate, it must amend the information and so inform the parent in writing. “If as a result of the hearing, the agency (school) decides that the information is not inaccurate, misleading, ..., 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 ... and (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.” 300.620

“Each public agency must provide notice consistent with § 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.” 300.501(b)(2)

“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.” 300.322(a)

“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.” 300.501(c)(3)

## **Section 4**

*“Parent participation in meetings.* (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.” 300.501(b)(1)

“Upon completion of the administration of assessments and other evaluation measures—A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (b) of this section and the educational needs of the child;” 300.306 (a)(1)

“The public agency must ensure that the IEP Team for each child with a disability includes—(1) The parents of the child;” 300.321(a)

“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.” 300.501(c)(1)

## **Section 5**

“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.” 300.322(a)

“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 § 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 § 300.321(f) (relating to the 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).” 300.322(b)

*“Initial IEP Team meeting for child under Part C.* In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP Team meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.” 300.321(f)

## **Section 6**

“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.” 300.503(c)

## **Section 7**

“The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, § 300.151 through 300.153, § 300.300, § 300.502 through 300.503, § 300.505 through 300.518, § 300.520, § 300.530 through 300.536 and § 300.610 through 300.625 relating to—(1) Independent educational evaluations; (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 the 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.” 300.504 (c)

“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 also must be given to the parents—(1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under § 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year; (3) In accordance with the discipline procedures in § 300.530(h); and (4) Upon request by a parent.” 300.504(a)

“*Notice in understandable language.* The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c). (“Written in language understandable to the general public”) 300.504(d)

## **Section 8**

“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 also must be given to the parents—(1) Upon initial referral or parent request for evaluation; (2) Upon receipt of the first State complaint under § 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year; (3) In accordance with the discipline procedures in § 300.530(h); and (4) Upon request by a parent.” 300.504(a)

## **Section 9**

“The procedural safeguards notice must include a full explanation of all of the procedural safeguards

available under § 300.148, §§ 300.151 through 300.153, § 300.300, § 300.502 through 300.503, § 300.505 through 300.518, § 300.520, § 300.530 through 300.536 and § 300.610 through 300.625 relating to—(1) Independent educational evaluations; (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 the 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.” 300.504 (c)

## **Section 10**

“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.” 300.502(b)(1)

“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.” 300.502(a) (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 § 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.” 300.502(b)(2)

## **Section 11**

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.” 300.502(b)(3)

“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;” 300.502(c)(1)

## Section 12

“(a) Each public agency must ensure that the rights of a child are protected when—(1) No parent (as defined in § 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. 11434a(6)). (b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include 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.” 300.519(a)

“...LEAs must be aware that surrogate parents may be court appointed for children in temporary or permanent conservatorship of the Department of Family and Protective Services.” HB 2619

## Section 13

“A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (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 rights accorded to parents under Part B of the Act transfer to the child;”. 300.520(a)(1)

## Section 14

**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.” 300.506

**Resolution Meeting** - “Within 15 days of receiving notice of the parent’s due process complaint, and prior to the initiation of a due process hearing under § 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 § 300.506. (4) The parent and the LEA determine the relevant members of the IEP Team to attend the meeting.” 300.510(a)

**Due Process Hearing** - “A parent or a public agency may file a due process complaint on any of the matters described in § 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).” 300.507(a)(1)

“Whenever a due process complaint is received under § 300.507 or § 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 § 300.507, 300.508, and 300.510.” 300.511(a)

“Except as provided in 300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under 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.” 300.518

**Appeals of disciplinary placements** - “When an appeal under 300.532 has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in A300.530(c) or(g), whichever occurs first, unless the parent or SEA or LEA agree otherwise.” 300.533

**State Complaint** - “Each SEA must adopt written procedures for—(1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of § 300.153 by—(i) Providing for the filing of a complaint with the SEA”. 300.151(a)(1)

“An organization or individual may file a signed written complaint under the procedures described in § 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. (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 § 300.151. (d) 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.” 300.153

**IEP meeting facilitation** - “Section 29.019 requires that a district that chooses to use individualized education program facilitation shall provide information to parents regarding individualized education program facilitation. The information: (1) must be included with other information provided to the parent of a student with a disability, although it may be provided as a separate document; and (2) may be provided in a written or electronic format. Section 29.019 (c) requires that if a school district chooses to offer individualized education program facilitation as an alternative dispute resolution method: (1) the district may determine whether to use independent contractors, district employees, or other qualified individuals as facilitators; (2) the information provided by the district under this section must include a description of any applicable procedures for requesting the facilitation; and (3) the facilitation must be provided at no cost to a parent. Section 29.019 (d) clarifies that the use of any alternative dispute resolution method, including individualized education program facilitation, must be voluntary on the part of the participants, and the use or availability of any such method may not in any manner be used to deny or delay the right to pursue a special education complaint, mediation, or due process hearing in accordance with federal law. Section 29.019(e) clarifies that

nothing in this section prohibits a school district from using individualized education program facilitation as the district's preferred method of conducting initial and annual admission, review, and dismissal committee meetings.” 29.019

“Section 29.019 requires that TEA provide information to parents regarding individualized education program facilitation as an alternative dispute resolution method that may be used to avoid a potential dispute between a school district and a parent of a student with a disability. Information provided by the agency under this section must indicate that individualized education program facilitation is an alternative dispute resolution method that some districts may choose to provide. The commissioner shall adopt rules necessary to implement Section 29.019. Section 29.020 requires that TEA develop rules in accordance with this section applicable to the administration of a state individualized education program facilitation project. The program shall include the provision of an independent individualized education program facilitator to facilitate an admission, review, and dismissal committee meeting with parties who are in a dispute about decisions relating to the provision of a free appropriate public education to a student with a disability. Facilitation implemented under the project must comply with rules developed under this subsection. (b) The rules must include: (1) a definition of independent individualized education program facilitation; (2) forms and procedures for requesting, conducting, and evaluating independent individualized education program facilitation; (3) training, knowledge, experience, and performance requirements for independent facilitators; and (4) conditions required to be met in order for the agency to provide individualized education program facilitation at no cost to the parties. (c) If the commissioner determines that adequate funding is available, the commissioner may authorize the use of federal funds to implement the individualized education program facilitation project in accordance with this section. (d) The commissioner shall adopt rules necessary to implement this section.” 29.019

## Section 15

“For purposes of removals of a child with a disability from the child’s current educational placement under § 300.530 through 300.535, a change of placement occurs if—(1) The removal is for more than 10 consecutive school days; or (2) The child has been subjected to a series of removals that constitute a pattern—(i) Because the series of removals total more than 10 school days in a school year; (ii) Because the child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another. (b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. (2) This determination is subject to review through due process and judicial proceedings.” 300.536



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