



NASET Q & A Corner

Issue #8

Questions and Answers About Eligibility for Special Education and Procedural Safeguards Under IDEA

What is an Eligibility Committee?

A recommendation is a statement developed by the Eligibility Committee that addresses the individual educational needs of the student. By law, the parent/guardians are invited to Eligibility Committee meetings and encouraged to participate in developing the recommendation with the Eligibility Committee. Based on the evaluations completed by the designees and the district evaluators, a decision will need to be made at the Eligibility Committee whether or not the student meets criteria for a disability and is entitled to special education services.

If the student does not require special education, the Eligibility Committee will forward copies of the recommendation to the parent/guardians, the building administrator and the Board of Education. It will state the Eligibility Committee's findings and should recommend that other educational services, such as speech and language improvement services, be considered. The Eligibility Committee should determine what, if any educationally related support services should be provided to the student.

If the student requires special education then an IEP is developed by another committee called the IEP Committee. In some districts this is the same committee as the Eligibility Committee, while in other districts it may be a separate committee. This IEP will include the specific type of disability; describe the student's strengths and areas of need; list goals that the student should reach in the year's time; include short-term instructional objectives which represent a series of specific skills to be mastered, the recommendation will lead toward reaching the annual goals, and identify the types of programs and services, including general education, that the student will receive. This information will be included on the student's IEP. A copy of the recommendation will be sent to the Board of Education for approval. The parent/guardian will also be sent a copy of the IEP for his or her records.

What are the responsibilities of the Eligibility Committee?

Some of the responsibilities of the districts Eligibility Committee are to:

- Review and evaluating all relevant information that may appear on each disabled student.
- Determine the least restrictive educational setting for any student having been classified as having a disability.
- Follow appropriate procedures and taking appropriate action on any student referred as having a suspected disability.
- Determine the suitable classification for a student with a suspected disability.
- Reviewing , at least annually, the status of each disabled student residing within the district.
- Evaluate the adequacy of programs, services and facilities for the disabled students in the district.
- Maintain ongoing communication in writing to parent/guardians in regards to planning, modifying, changing, reviewing, placing or evaluating the program, classification or educational plan for a disabled student.
- Advise the Board of Education as to the status and recommendations for all disabled students in the district.

Most Eligibility Committees try to remain as informal as possible to reduce the anxiety of the situation. This is a crucial issue since the parent/guardian may feel overwhelmed or intimidated.

Who are the Members of the Eligibility Committee?

Membership of the eligibility committee shall include school division personnel representing the disciplines providing assessments, the special education administrator, or designee and the parent/guardian or parent/guardians. At least one representative in the group must have either assessed or observed the student.

If determining whether a student suspected of having a specific learning disability is a student with a disability, the group shall include:

The student's regular teacher:

- (1) if the student does not have a regular teacher, a regular classroom teacher qualified to teach a student of that age
- (2) for a student less than school age, an individual qualified to teach a student of that age; and at least one person qualified to conduct diagnostic examinations of students such as a school psychologist, speech-language pathologist, teacher of specific learning disabilities, or teacher of remedial reading.

What is the Role of the Parent/guardian Member on the Eligibility Committee?

The parent/guardian member usually serves as a liaison and advocate for the parent/guardian, establishing contact prior to the meeting to reduce anxiety and alleviate any concerns that the parent/guardian may have. School personnel should also be in contact with the parent/guardian

prior to the meeting to go over the process, rights and what may take place at the meeting. At no time should anyone in contact with the parent/guardian prior to the meeting give the parent/guardian false hope, make promises or second guess the Eligibility Committee. What needs to be communicated are procedural issues and options, and the awareness that it is the Eligibility Committee that will make the recommendation, not one individual. Further, the parent/guardian must be made aware of their rights and understand the right to due process if he or she does not agree with the Eligibility Committee recommendation.

If the Eligibility Committee determines that the student is eligible for special education, the recommendations will describe the student's special and general educational program in detail. At this point, parent/guardians will be requested to give consent before the program begins. Again, parent/guardians have the right to agree or disagree with the recommendation. Any recommendation cannot be instituted without their approval (later described in the section on Due Process Rights)

What is a Recommendation to the Eligibility Committee?

Once the evaluation process is completed, the Eligibility Committee will arrange to meet with the parent/guardians to discuss the results of the evaluations. Normally, the results of the evaluations are discussed by the individuals who have completed each evaluation. However, this is an informal process and will depend on district policy. Formally, the parent/guardians will receive a notice indicating the time and date of a Eligibility Committee meeting. Those attending will normally be:

- a parent/guardian of a student with a disability in the district
- a physician (may only be required under prior parent/guardian request)
- a school psychologist
- a district representative who may provide, supervise or administrate special education
- normally mandated will be the student's teacher

Depending on the state requirements, the required members may include an administrator of special education, psychologist, parent/guardian of a special education student residing within the district, physician when requested and any other professionals deemed necessary by the Board of Education. Other professionals might include a guidance counselor, social worker, and a special education teacher.

The parent/guardian has the right to bring persons of his or her choice, i.e. lawyer, advocate, friends, clergy, therapist and other individuals who the parent/guardians feel would be helpful in the process.

What are the Procedures for Determining Eligibility?

The Eligibility Committee members making the decision regarding the student's eligibility shall work toward consensus. The school district would have to obtain parent/guardian consent for the initial eligibility determination. Thereafter, parent/guardian consent shall be secured for any change of identification.

The eligibility committee/Eligibility Committee shall have a written summary that consists of the basis for making its determination as to the eligibility of the student for special education and related services. This summary shall be signed by each eligibility committee member present. The written summary shall be maintained in the student's scholastic record.

The district should provide a copy of the documentation of the determination of eligibility to the parent/guardian or parent/guardians. The summary statement of the eligibility committee's essential deliberations shall be forwarded by the committee to the Eligibility Committee upon determination of eligibility. The summary statement may include other recommendations.

Each member of the EC shall certify in writing whether the report reflects his conclusions. If the group does not reach a consensus and the report does not reflect a particular member's conclusion, then the group member must submit a separate statement presenting that member's conclusions.

No changes shall be made to a student's eligibility for special education and related services without parent/guardian consent.

What are Procedural Safeguards?

Parent/guardians have rights that apply to every aspect of the special education process. These are known as procedural safeguards. The State Education Agency (SEA) is required to provide notice of these procedural safeguards. There are laws and regulations that spell out those rights and the procedures that must be followed to ensure that students with disabilities receive a free appropriate public education (FAPE).

The regulations implementing IDEA include an entire section entitled "Procedural Safeguards." These safeguards are designed to protect the rights of parent/guardians and their student with a disability, as well as to give families and public agencies a mechanism for resolving disputes. Some Procedural Safeguards under IDEA 2004 include:

- the right of parent/guardians to inspect and review their student's educational records
- the right of parent/guardians to obtain an independent educational evaluation (IEE)
- the right of parent/guardians to be given written prior notice on matters regarding the identification, evaluation, or educational placement of their student, or the provision of FAPE to their student
- the right of parent/guardians or public agencies to request mediation and an impartial due process hearing on these matters (at a minimum, mediation must be available whenever an impartial due process hearing is requested)
- the right of parent/guardians to be given a full explanation of all of the procedural safeguards available under IDEA and the State complaint procedures
- the right of parent/guardians or public agencies to appeal the initial hearing decision to the State Education Agency (SEA) if the SEA did not conduct the hearing
- the right of the student to remain in his or her present educational placement, unless the parent/guardian and the public agency agree otherwise, while administrative or judicial proceedings are pending
- the right of parent/guardians or public agencies to bring a civil action in an appropriate State or Federal court to appeal a final hearing decision

- the right of parent/guardians to request reasonable attorney's fees from a court for actions or proceedings brought under the IDEA under the circumstances described in (*Section 300.513*)
- the right of parent/guardians to give or refuse consent before their student is evaluated or reevaluated
- the right of parent/guardians to give or refuse consent before their student is provided with special education and related services for the first time
- discipline procedures for students with disabilities

What are Parent/Guardians' Rights Regarding Notice?

Parent/guardians' participation in their student's education is essential. They have a right to be involved in meetings about identification, evaluation, and educational placement of their student, as well as other matters relating to their student's Free Appropriate Public Education (FAPE). This also means that they have the right to prior written notice from the LEA each time important decisions are made that affect their student's special education services and before those decisions are implemented, including the right to prior written notice from the LEA when they propose or refuse to initiate or change the identification, evaluation or educational placement of their student or the provisions of FAPE for their student.

Prior written notice must also be provided in a language understandable to the general public and shall be provided to the parent/guardians of a student with a disability in their native language or other mode of communication unless it is not feasible to do so. Also, if the parent/guardians are deaf, blind or have no written language, the notice must be translated orally or by other means in which the parent/guardian normally communicates (e.g. Braille, sign language or spoken language). The LEA shall document in writing that all notice requirements have been met and that the parent/guardian (s) understands the content.

What are Parent/Guardians' Rights Regarding Consent?

Informed Consent

Informed consent is the parent/guardians' written approval with signature of a proposed action. Complete information about the action must be given to the parent/guardians in their native language or other mode of communication. It is important that parent/guardians understand that their approval is voluntary and may be taken back at any time.

Initial (First) Evaluation

The Local Education Agency (LEA) must have the parent/guardians' informed written consent and signature before it can conduct an initial evaluation to determine if their student is eligible for special education and related services.

Reevaluation

The LEA must have the parent/guardians' informed written consent and signature before reevaluating their student. However, the LEA may reevaluate the student without the parent/guardians' written consent if the LEA can demonstrate that it has taken reasonable steps to get their consent and show that the parent/guardians have not responded.

Initial Placement

The LEA must have the parent/guardians' informed written consent and signature before the

school district can initially place their student in a special education program or provide special education and related services to the student.

Refusal

Parent/guardians have the right to refuse consent for an evaluation, a reevaluation or the initial placement of their student in special education and related services. Parent/guardians also have the right to revoke (take back) their consent at any time before an activity begins even though they have previously agreed to that action. If parent/guardians revoke an action, it must be done in writing, dated and signed. Nonetheless, the LEA may seek to evaluate the student for special education services through mediation or a due process hearing if it believes it is necessary to provide FAPE for the student. For information on both the mediation and due process procedures, refer to Step V of this book.

However, upon completion of the evaluation process, if parent/guardians refuse to give consent for special education and related services for their student, then the school/LEA can not provide these services for the student. If parent/guardians refuse or fail to respond to the request for consent for special education and related services for their student, then the school/LEA will not be considered to be in violation of the requirement to make available FAPE for their student, nor will the school/LEA be required to convene an IEP meeting and/or develop an IEP for the student.

In other words... Parent/guardians' written permission is required before their student is first evaluated or placed in special education and related services. Remember that the LEA may reevaluate the student without the parent/guardians' written consent if the school district can demonstrate that it has taken reasonable steps to get the parent/guardians' consent and they have not responded.

What are Parent/Guardians' Rights for Evaluation, Reevaluation and Independent Educational Evaluation?

Evaluation Procedures

A full and individual evaluation of a student must be completed to determine if he or she is eligible for special education services, before any special education services begin or before the student is dismissed from services. However, an evaluation is not required if the student is graduating with a high school diploma or has exceeded the age eligibility for FAPE. In these instances a LEA shall provide the student with a summary of his/her academic achievement and functional performance instead of an evaluation. Parent/guardians have the right to participate in meetings regarding the identification, evaluation and educational placement to ensure the provision of FAPE to the student. The LEA uses a multidisciplinary team (MDT) evaluation process to decide whether the student is a student with a disability and to determine his/her educational needs.

A student in special education must be reevaluated at least once every three years unless the parent/guardians and the school/LEA agree that a reevaluation is unnecessary. The MDT team may decide that no additional data are needed to determine whether the student continues to be eligible for special education and his/her educational needs. In this case, the LEA must notify the parent/guardians in writing of that decision and the reasons for it. Parent/guardians still have the right to request an assessment to determine if their student continues to be eligible for IDEA

services. But remember, the LEA is not required to conduct another assessment of a student unless the parent/guardians request it.

Independent Educational Evaluation (IEE)

An independent educational evaluation is an evaluation that meets the same criteria as that of the LEA's evaluation, by a qualified examiner who is not an employee of the LEA responsible for educating the student. If parent/guardians disagree with the evaluation completed by the LEA, they may ask for an independent educational evaluation. The LEA may ask for a reason as to why you are requesting an IEE. This evaluation shall be completed at public expense, consistent with the LEA's cost guidelines, unless the LEA believes the school system's evaluation is appropriate and initiates a due process hearing. If the hearing officer finds that the LEA's evaluation is appropriate, parent/guardians still have the right to an IEE at their own expense. This IEE must be considered in making any educational decision regarding the provision of a free appropriate public education (FAPE) to the student and may be used as evidence in a due process hearing. However, when a hearing officer requests an IEE for the student, it will be paid for at public expense.

In other words... Parent/guardians have the right to an IEE of their student. Parent/guardians may request a list of public and private agencies qualified to conduct an Independent Educational Evaluation from the LEA. Any IEE will have the same status as an evaluation completed by the school district unless the LEA determines that its standards for conducting an evaluation have not been met.

This evaluation shall be done at public expense, consistent with the LEA's cost guidelines, unless the LEA refuses believing the school districts evaluation is appropriate and initiates a due process hearing that substantiates the LEA's position.

Do Parent/Guardians Need to Inform the School District if They Intend to Seek an Independent Educational Evaluation?

Although it is often helpful to consult with the school district when seeking an independent educational evaluation, parent/guardians are not required to inform the school district in advance. Their decision to consult or not to consult with the school district will have no bearing on their rights to seek reimbursement for the cost of the independent educational evaluation.

Is the School Required to Accept the Results of an Independent Education Evaluation?

The school district must consider the results of any independent educational evaluation, including ones paid for by the parent/guardians, when making decisions regarding a student's educational program. However, the school district is not required to agree with or implement all or any of the results or recommendations of the independent educational evaluation. Parent/guardians may also submit the results of an independent educational evaluation as evidence at a due process hearing.

How Do Parent/Guardians Find a Professional or Clinic to Conduct an Independent Educational Evaluation?

The school district must provide with a list of qualified independent evaluators when they ask for an independent evaluation.

Are a Student's Records Confidential?

There are provisions under the IDEA (and other Federal laws as well) that protect the confidentiality of a student's education records. These safeguards address three issues: (a) the use of personally identifiable information; (b) who may have access to a student's records; and (c) the parent/guardians' right to request that their student's records be amended.

Personally identifiable information

Personally identifiable information means information that includes: (a) the name of the student, parent/guardian, or other family member; (b) the address of the student; (c) a personal identifier number (such as the student's social security number or student number); or (d) a list of personal characteristics or other information that would make it possible to identify the student with reasonable certainty. With a number of exceptions, the parent/guardians must give their consent before any personally identifiable information can be disclosed by the school system. These exceptions are specified by each State. Parent/guardians can obtain this information through their district's special education director or through the State's Office of Special Education.

Access to a student's education records is frequently a concern of parent/guardians.

IDEA guarantees parent/guardians the right to inspect and review all education records relating to their student that the public agency collects, maintains, or uses regarding the identification, evaluation, and educational placement of their student and the provision of FAPE to their student. Should parent/guardians ask to review their student's records, the public agency must respond to the request without unnecessary delay and before any meeting regarding an IEP or a due process hearing involving the student, and in no case later than 45 days after the request has been made.

Parent/guardians also have the right to receive a response to their reasonable requests for explanations and interpretations of the records. They may ask the agency to provide them with a copy of their student's records, and the school may charge them a reasonable fee for making the copies, as long as this fee does not effectively prevent them from exercising their right to inspect and review the records. Schools may not charge them for searching for or retrieving the records.

Parent/guardians have the right to have a representative inspect and review the records. Furthermore, they have the right to obtain from the school district or other participating agency a list of the types of education records that are collected, maintained, or used by the agency, and where these records are kept.

In keeping with the requirements of the federal law, only certain individuals besides parent/guardians may have access to their student's records. These individuals may include, for example, teachers or officials of the school or State who have a legitimate educational interest in the records. The school or other participating agency is required by law to maintain a record of all parties who obtain access to a student's educational records collected, maintained, or used

under IDEA (with the exception of parent/guardians and authorized employees of the agency). This record should include the name of the person who accessed the records, the date, and the purpose for which the person was authorized to use the records.

The right to request that records be amended

The right to request that records be amended is also given to parent/guardians under the law. If parent/guardians believe the information in their student's records is inaccurate or misleading or that information in the records violates their student's right to privacy or other rights, they may request that the agency that maintains this information amend it. The agency must then decide, within a reasonable period of time, whether to amend the information in accordance with their request. If the agency decides to refuse to amend the information as requested, it must inform them of this decision, as well as advise them of their right to a hearing.

If the parent/guardians decide to challenge the school district's or other participating agency's refusal through a hearing, they have the right to present evidence showing why they feel the information in their student's records should be amended. Parent/guardians may also, at their own expense, be assisted or represented by one or more individuals of their choice, including an attorney. The hearing must be conducted by an individual who does not have a direct interest in its outcome, and the educational agency or institution must make its decision in writing within a reasonable amount of time after the hearing. 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.

Should the result of the hearing be in the parent/guardians' favor, the district or other participating agency must amend the information in their student's records accordingly and inform them in writing that it has done so. If, however, the result of the hearing is that the information about their student is not inaccurate, misleading, or otherwise in violation of his or her privacy or other rights, then the agency must inform the parent/guardians that they have the right to place in their student's records a statement commenting on the information or setting forth any reasons they have for disagreeing with the decision. The district must then place their statement in the records and keep it there as long as the record or contested portion is maintained by the agency. If the record of their student (or the contested portion) is disclosed by the agency to any party, the explanation must also be disclosed to that party.

IDEA '2004 has an additional provision regarding educational records and the inclusion of disciplinary information in those records. A State may now require that a public agency include in the records of a student with a disability a statement of any current or previous disciplinary action taken against the student. This statement would be transmitted to the same extent that the disciplinary information is included in, and transmitted with, the student records of nondisabled students. This statement may include:

- a description of any behavior engaged in by the student that required disciplinary action
- a description of the disciplinary action taken
- any other information that is relevant to the safety of the student and other individuals involved with the student

If the State adopts such a policy and the student transfers from one school to another, the transmission of any of the student's records must include both the student's current IEP and any statement of current or previous disciplinary action taken against the student.

What are Parent/guardian's Rights Regarding Their Student's Records?

Both the Family Educational Rights and Privacy Act (FERPA) and IDEA require that parent/guardians may have access to their student's educational records. Requests to look at their student's records should typically be made to the building principal. If access is denied and parent/guardians are prevented from reviewing and inspecting the records, they have the right to request copies of their student's education records. Parent/guardians may ask for a list of the types and locations of education records collected, maintained or used for providing educational services to their student. The LEA shall provide their student's education records within a reasonable time after the parent/guardians' request, in no case more than 45 days after the date of the request, or before any hearing requested by the parent/guardians or the LEA.

Can Parent/Guardians See Their Student's Educational Records?

If a student is under 18 years of age, parent/guardians have the right to inspect and review his/her school records unless their rights have been terminated under state law.

Can Anyone Else See a Student's School Records Without Parent/guardian Consent?

School district employees can access a student's education records when they need to do so in order to perform their job responsibilities. If a student transfers to a different school district, the employees of the new district also have access to the student's school records. In addition, school districts are required by law to share information with certain government agencies and to organizations conducting studies for, or on behalf of, educational agencies or institutions.

Can Parent/Guardians Review Their Student's School Records?

The school district must provide parent/guardians with the opportunity to review their student's school records within ten school days of the request, or within three school days of their request if they need the information to prepare for an IEP meeting or to prepare for a due process proceeding.

How Can Parent/Guardians Obtain a Copy of Their Student's School Records?

Parent/guardians have the right to receive one free copy of their student's records. Their request for a copy of their student's school records must be submitted to the school district in writing. The school district may take up to five school days to provide them with a copy of their student's records. The school district may charge a fee for any additional copies of their student's school records that parent/guardians request.

Do Parent/Guardians Have a Right to Review Their Student's Record When He or She Becomes an Adult Student?

Until a student reaches age 18, his or her parent/guardians have access to all educational records maintained by the school. After the transfer of rights to the student upon reaching the age of majority, parent/guardians have the right of access to their student's educational records only if they have their student's written consent for access unless they maintain their student as a dependent for tax purposes.

What Can Parent/Guardians Do When They Disagree with their School District's Decisions?

Parent/guardians have the right to disagree with the school/district's decisions concerning their student's evaluation, IEP, or educational placements. Some situations where the parent/guardians and school personnel should meet to resolve disagreements are when the parent/guardians are:

- refuse consent for an evaluation or you don't agree with the school/district's evaluation of their student
- disagree with the IEP or portions of it and have said so in writing
- believes their student is not receiving appropriate special education and related services and is not making reasonable progress
- thinks additional services are needed
- does not think the educational placement is appropriate for the student

What Options are Available to Parent/Guardians When They Disagree with the School District's Decisions?

(1) Discussion or conference with school staff. Staff may include teachers, counselors, the principal, the director of special education, and even the superintendent. Talking openly and honestly with these involved professionals may be an effective means of addressing and resolving a disagreement.

(2) An IEP review. Parent/guardians may request an IEP review at any time you feel that the services their student is already receiving are inappropriate or insufficient, or if he or she is not making progress. If their student has received an independent educational evaluation, the IEP review conference would be an appropriate time to consider the results of that evaluation. The IEP process will be discussed in Step VI.

(3) Mediation. IDEA '2004 establishes mediation as a voluntary process that may be used in resolving disputes between public agencies and the parent/guardians of a student with a disability. Mediation is a dispute settlement process in which a qualified and impartial third person (called a mediator) tries to negotiate a solution or compromise to the dispute. The mediator will listen to the parties and encourage them to make concessions or compromises. See the section on mediation (below) for more information.

(4) Due process hearing. Parent/guardians may request a due process hearing if they do not agree with their student's identification, evaluation, or educational placement, or any aspect

related to the provision of FAPE to their student. An impartial third party, called a hearing officer, will listen to the evidence that you and the public agency present and will issue a decision that contains the relevant facts and the legal basis for the decision. See the section on due process in the next section for more information.

(5) Complaint resolution procedures. Any individual or organization may file a complaint alleging that the State or other participating agency has violated a requirement of IDEA. Complaints must be written and signed and must contain a statement that a public agency has violated a requirement of IDEA and the facts upon which the statement is based. See the section on complaint resolution procedures (below) for more information.

What is Mediation?

When a district and a parent/guardian have a dispute they are unable to resolve, they may seek to address their differences through mediation. Mediation is a no-cost, voluntary process through which an impartial third party helps parties experiencing a conflict reach a suitable agreement. IDEA encourages (but does not mandate) the use of mediation whenever a dispute arises in the identification, evaluation, placement, or provision of an appropriate program of a student with a disability.

The ultimate goal of mediation is to seek a written agreement that is mutually acceptable to both parties. However, even if a formal agreement is not reached, mediation may be helpful in clarifying issues. The district should refrain from using the term “mediation” to refer to any district-level process for resolving disputes. When an impasse is reached with a parent/guardian, the district should suggest use of the state mediation system.

Both parties must agree to mediation, and it cannot be used in place of a due process hearing. A neutral trained mediator will facilitate the meeting to help both parties resolve their disagreements. The mediator is not a decision-maker; rather, he or she works to help parties find a solution agreeable to both sides.

The law requires that the mediation process meet certain, specific conditions, as follows:

- Mediation must be voluntary on the part of both parties.
- Mediation may not be used to deny or delay a parent/guardian's right to a due process hearing or to deny any other right under Part B of IDEA.
- Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- 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.
- If a mediator is not selected on a random (e.g., a rotation) basis from the list of mediators, then both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.
- The State must bear the cost of the mediation process.
- Each session in the mediation process must be scheduled in a timely manner and held in a location convenient to the parties in the dispute.
- An agreement reached by the parties must be set forth in a written mediation agreement.
- Discussions that occur during the mediation process must be confidential.

They may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be required to sign a confidentiality pledge prior to the beginning of the mediation.

What is Due Process?

Due process is a way of ensuring fairness in the decision making process regarding a student with a disability. If parent/guardians disagree with a proposed or refused action regarding their student's education, and if they cannot work out the problem with the school district, they may initiate due process in order to resolve the disagreement.

What is a Due Process Hearing?

A due process hearing involves an impartial third party--called a hearing officer--who hears the evidence and issues a decision based upon that evidence and the requirements of the IDEA. Parent/guardians have the right to initiate a due process hearing on any matter related to their student's identification, evaluation, or educational placement, or any aspect related to the provision of FAPE to their student. This person may not be an employee of the State agency or LEA involved in the education or care of the student, nor can this person have a personal or professional interest that would conflict with his or her objectivity in the hearing. It is important to note that just because the public agency pays this person to serve as a hearing officer, he or she is not considered to be an employee of the agency.

Under IDEA 2004, when parent/guardians request a due process hearing, they (or their attorney) are also required to provide the public agency with notice (which is to remain confidential) that they are requesting such a hearing. The notice must include:

- the name of the student
- the address of the student's residence
- the name of the school the student is attending
- a description of the nature of the problem of the student, including facts relating to the problem
- a proposed resolution of the problem to the extent known and available to the parent/guardians, at the time.

However, a public agency may not deny or delay the parent/guardians' right to a due process hearing for failure to provide the notice described above.

When a due process hearing is initiated, the public agency must inform the parent/guardians of the availability of mediation as a means to resolve the dispute in question. The agency must also tell the parent/guardians of any free or low-cost legal (and other relevant) services available in the area, if they request such information.

The right to request a due process hearing, however, is not reserved solely for parent/guardians. The public agency also has the right to initiate a mediation process or a due process hearing if parent/guardians refuse to give consent to the initial evaluation or reevaluation or the initial provision of special education and related services to their student, unless doing so would be inconsistent with State law regarding parent/guardian consent.

Any party involved in the due process hearing--including the parent/guardians--has the right to:

- be accompanied and advised by counsel (i.e., an attorney) or by individuals with special knowledge or training with respect to the problems of students with disabilities
- present evidence and confront, cross-examine, and compel the attendance of witnesses
- prohibit evidence from being introduced at the hearing that has not been disclosed to that party at least five business days before the hearing
- obtain a written or, at the option of you as parent/guardians, an electronic verbatim record of the hearing
- obtain written or, at the option of you as parent/guardians, electronic findings of fact and decisions.

At least five business days prior to the hearing, each party must disclose to all other parties all evaluations of the student completed by that date and recommendations based on the offering party's evaluations (i.e., the party that has requested the due process hearing) that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parent/guardians have certain additional rights at a due process hearing, as follows:

- Parent/guardians have the right to have their student present at the hearing.
- If the hearing will involve oral arguments, the hearing must be conducted at a time and place that is reasonably convenient to the parent/guardians and their student.
- Parent/guardians have the right to open the hearing to the public.
- The record of the hearing and the findings of fact and decisions must be provided at no cost to the parent/guardians.

At the hearing, the arguments and evidence of both the parent/guardians and the public agency are presented before the impartial hearing officer, who will make a decision on the matters at issue. The due process hearing must be completed and a copy of the decision mailed to the parent/guardians and the public agency within 45 days of their request for the hearing; however, the hearing officer may grant a specific extension of time at the request of either party involved in the due process procedure. The decision is considered final, unless one of the parties involved in the hearing appeals the decision to the State Education Agency (SEA). Appeal to the SEA is available only if the SEA did not conduct the hearing.

If the hearing decision is appealed, the SEA must conduct an impartial review of the hearing, which involves examining the entire hearing record, ensuring that the procedures at the hearing were consistent with the requirements of due process, and seeking additional information, if necessary. If the reviewing official wishes to, he or she can afford both parties the opportunity for oral or written arguments, or both. The hearing officer must then make an independent decision and give a copy of the written or, at the option, electronic findings of fact and decisions to the parties. The SEA must ensure that this entire process from the initial receipt of the request for an impartial review to the rendering of a final decision and the mailing of that decision to each party is completed in not longer than 30 days. The reviewing officer may grant specific extensions of time beyond the 30 days at the request of either party.

A parent/guardian or a public agency who disagrees with an initial hearing decision for which no SEA-level appeal is available, or any party aggrieved by the findings and decisions under the impartial review described above, has the right to bring a civil suit with respect to the complaint

presented as part of the due process hearing. It is important to realize, however, that civil actions can become quite costly and are certainly frustrating and time-consuming.

What Options are Available to Parents/Guardians if They Want to Put Their Student in a Private School?

Parent/guardians always may remove their student from the public school and enroll him or her in a private school at their own expense. The law does not require an Local Education Agency (LEA) to pay for the cost of education, including special education and related services, of a student at a private school or facility if that agency made FAPE available to the student and the parent/guardians chose to place the student in the private school or facility. However, disagreements between a parent/guardian and a public agency regarding the availability of a program appropriate for the student may arise. As was discussed above, parent/guardians and public agencies have many means of resolving such disputes, including meetings and conferences and more formal proceedings such as mediation or due process.

If parent/guardians decide to place their student in a private school and they want the public agency to pay for the cost of the private school education, certain provisions of law come into play. One relates to the question of whether or not the public agency made FAPE available to the student, which will be a deciding factor in whether or not the agency must reimburse the parent/guardians for the cost of the private school education. If the parent/guardians enroll their student in a private preschool, elementary, or secondary school without the consent of or referral by the agency, a court or hearing officer may require the agency to reimburse them for the cost of that enrollment if the court or hearing officer finds (a) that the public agency had not made FAPE available to their student in a timely manner prior to the private school enrollment, and (b) that the private placement is appropriate. Another important provision is that the cost of this reimbursement may be reduced or denied for a number of reasons, including if:

- at the most recent IEP meeting that the parent/guardians attended prior to removing their student from the public school, the parent/guardians did not inform the IEP team that they were rejecting the placement proposed by the public agency, including stating their concerns and their intent to enroll their student in a private school at public expense
- at least ten business days (including any holidays that occur on a business day) prior to removing their student from the public school, the parent/guardians did not give written notice to the public agency of the information described above
- the cost of reimbursement may also be reduced or denied
- if, prior to the removal of the student from the public school, the agency informed the parent/guardians of its intent to evaluate their student (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parent/guardians did not make their son or daughter available for the evaluation
- upon a judicial finding of unreasonableness with respect to actions taken by the parent/guardians

There are exceptions to these provisions, of course. The cost of reimbursement may not be reduced or denied for failure to provide the notice above if:

- the parent/guardians are illiterate and cannot write in English
- providing the notice as required by law would likely result in physical or serious emotional harm to their student

- the school prevented the parent/guardians from providing the notice
- the parent/guardians had not received notice that they were required to provide the public agency with notification of their intentions, as described above.

Thus, the parent/guardians may be able to secure reimbursement for the cost of their student's private school enrollment, given the above conditions (i.e., a court or hearing officer finds that the public agency did not make FAPE available to their student and that the private school placement is appropriate; parent/guardians notified the IEP team or the public agency of their intentions to remove their son or daughter from the public school and place him or her in a private school at public expense). In any event, parent/guardians always have the option of placing the student in a private school and paying for this placement themselves.

What Can the Public Agency Do if Parent/Guardians Don't Consent to Their Student's Initial Evaluation, Reevaluation, or Initial Provision of Special Education and Related Services?

When parent/guardians refuse consent for an initial evaluation or reevaluation of their student or the initial provision of special education and related services, the agency may continue to pursue the evaluation or the provision of services through the mediation or due process procedures specified within the law, except to the extent that doing so would be inconsistent with State law relating to parent/guardian consent. Some States have policies that would prohibit the agency from overriding a parent/guardian refusal to consent. If so, the agency must follow the requirements of State law and, thus, may have no recourse but to not evaluate the student under IDEA or to not provide services to the student.

If no such State law applies with respect to parent/guardian consent, the public agency may follow Federal law and utilize either the due process or mediation procedures of IDEA to secure the initial evaluation or the initial provision of special education and related services. In this case, the public agency must notify the parent/guardians of its intended actions (i.e., to pursue mediation or a due process hearing). Parent/guardians may choose to participate in the mediation process, which is voluntary, and they have rights with respect to due process hearings (both mediation and due process are discussed further below).

The only exception to the above requirements for consent is a specific provision in the case of parent/guardians who fail to respond to a request for a reevaluation of their student. In this instance, informed parent/guardian consent does not need to be obtained if the agency can demonstrate that it has taken reasonable measures to obtain that consent and the student's parent/guardian has failed to respond (Note that this provision applies only in the case of reevaluation and only when parent/guardians fail to respond, as opposed to expressly refusing consent.). The regulations describe "reasonable measures", which means that the public agency must have a record of its attempts to secure parent/guardians' consent to the reevaluation of their student, such as:

- detailed records of telephone calls made or attempted and the results of those calls
- copies of correspondence sent to the parent/guardians and any responses received
- detailed records of visits made to the parent/guardian's home or place of employment and the results of those visits