

Procedural Safeguards

for Children with Disabilities
and Their Parents

Under the Individual's with Disabilities
Education Act

(Version 8/99)

Dear Parents,

This document provides you with the required notice of the procedural safeguards available under the Individual's with Disabilities Education Act (I.D.E.A.).

For your convenience, a brief summary of your procedural safeguards is followed by the full text of procedural s safeguards taken from the I.D.E.A. regulations. With the exception of, changing the term "public agency" to "school district" the full text is word for word from I.D.E.A. Unless indicated otherwise, "day" means calendar day.

Explanation of abbreviations used in this notice:

SEA	State Education Agency, i.e. the Utah State Office of Education
FAPE	Free Appropriate Public Education
IEP	Individual Education Program
LEA	Local Education Agency, i.e., the School District
CFR	Code of Federal Regulations
U.S.C.	United States Code

If you have any questions about these procedural safeguards, please feel free to contact your child's Special Education teacher or the Special Education Department at the District Office.

PROCEDURAL SAFEGUARDS (Brief summary)

Confidentiality of Information (see Sections §300.560-§300.577)

- Your child's educational **records are kept in a confidential** manner,
- Your child's educational records are **not disclosed without your consent** to anyone other than, staff of the district involved with your child's education and to staff of another school or school district in which your child is seeking to enroll.
- You have the right to **inspect** your child's educational records;
- You have the right to a **copy** of your child's educational records.
- You have the right to request that information in your child's educational records be **amended** if you believe it is inaccurate or misleading.

Discipline (see Sections §300.519-§300.529)

- School staff may order the **removal of your child from school for disciplinary reasons** to the extent the removal is applied to nondisabled children, and as long as the **removals do not constitute a change of placement**. A change in placement occurs if the child is removed from school for disciplinary reasons for more than 10 consecutive school days or if the child is subjected to a series of removals that constitute a pattern of removal.
- After your child has been **removed from their current placement for more than 10 days** during a school year, the **school staff will provide services** to your child to the extent necessary for your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in their IEP.
- School staff may order a **change of placement to an appropriate alternative setting** for not more than 45 days to the extent removal for disciplinary reasons is applied to nondisabled children if your child carries a weapon to school or to a school function or knowingly possesses or uses **illegal**

drugs or sells or solicits the sale of a controlled substance while at school or a school function. The interim alternative setting must enable your child to continue to progress in the general curriculum and to continue to receive those services and modifications that will enable your child to meet the goals set out in their IEP.

--End of page 2 of the paper version of *Procedural Safeguards*--

- If the school **staff are considering a disciplinary action that involves changing the child's placement**, you will be notified of that decision and a **review will be conducted** to determine the relationship between your child's disability and the behavior subject to the disciplinary action. If the result of this review is that the behavior was not a manifestation of your child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to your child in the same manner in which they would be applied to children without disabilities, however, the school district must provide services to the extent necessary to enable your child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in their IEP.
- After **changing your child's placement for disciplinary reasons**, school staff will conduct a **functional behavior assessment** and convene the IEP team to develop a **behavior intervention plan** or if a behavior plan was in place it must be reviewed and modified as necessary by the IEP team.
- After your child's placement has been changed for disciplinary reasons, if your **child continues to need to be removed** for disciplinary reasons, the IEP team shall **review your child's behavioral intervention plan and** modify it to the extent the team feels is necessary.

Due Process (see Sections §300.500-§300.517)

- As parents of a child with a disability you have the opportunity to **review your child's education records and be included in meetings** with respect' to your child's evaluation, classification, IEP, and placement.
- You may have an **independent evaluation** if you disagree with the results of an evaluation obtained by the school district.
- You will be **given written notice** before the school district proposes or refuses to evaluate your **child, identify** (classify) or change the identification (classification) of your child, implement or change the implementation of your child's free appropriate public education in accordance with the IEP, or provide or change the educational placement of your child.
- Your **consent will be obtained** before an evaluation or re evaluation is conducted and before special education services are provided.
- Should any disagreements arise regarding the evaluation, classification, IEP or placement of your child, we will seek to resolve them in a mutually satisfactory mariner. If we are unable to resolve a disagreement we will offer to use a **mediation** process. If mediation is unsuccessful, a **due process hearing** may be necessary to resolve our disagreement.

Children with disabilities enrolled by their parents in private schools when free appropriate public education is at issue (see Section §300.403)

- The school district is **not required to pay for the cost of education of your child in a private school if the** district made a free appropriate public education available to your child and you elected to place your child in a private school.
- If you are considering rejecting the free appropriate public education offered by the school district and enrolling your child in a private school and you plan to seek reimbursement from the school district you need to **inform the school district of your concerns.**

State complaint procedures (see Sections §300.660-§300.662)

- The school district is committed to fully complying with all requirements of the Individuals with Disabilities Act (IDEA), however if you believe the school district has violated a requirement of the IDEA, you have the right to file a **written complaint** to the State Office of Education.
- The State Office will **investigate** the complaint and issue a written decision.

--End of page 3 of the paper version of *Procedural Safeguards*--

PROCEDURAL SAFEGUARDS (full text)

CONFIDENTIALITY OF INFORMATION

§300.560 Definitions.

As used in §§300.560-300.560 ---

- (a) Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (b) Education records means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974).
- (c) Participating agency means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.

§300.561 Notice to parents.

(a) The SEA shall give notice that is adequate to fully inform parents about the requirements of §300.127, including

- (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
- (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act of 1974 and implementing regulations in 34 CFR part 99.

(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.

§300.562 Access rights.

(a) Each participating agency shall 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 shall comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §§300.507 and 300.521-300.528, 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.

§300.563 Record of access.

Each participating agency shall 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.

§300.564 Records on more than one child.

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.

--End of page 4 of the paper version of *Procedural Safeguards*--

§300.565 List of types and locations of Information.

Each participating agency shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency.

§300.566 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.

§300.567 Amendment of records at parent's request.

(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 shall 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 shall inform the parent of the refusal and advise the parent of the right to a hearing under §300.568.

§300.568 Opportunity for a hearing.

The agency shall, 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.

§300.569 Result of hearing.

(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 shall 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 shall inform the parent of the right to place in the records it 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.

§300.570 Hearing procedures.

A hearing held under §300.568 must be conducted according to the procedures under 34 CFR 99.22.

§300.571 Consent.

(a) Except as to disclosures addressed in §300.529(b) for which parental consent is not required by Part 99, parental consent must be obtained before personally identifiable information is

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or

(2) Used for any purpose other than meeting a requirement of this part.

(b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under part 99.

Special Note added: *Please be informed that as authorized in 34 CFR 99.31, your child's records can and will be forwarded without your consent to officials of another school or school district in which your child seeks or intends to enroll.*

--End of page 5 of the paper version of *Procedural Safeguards*--

(c) The SEA shall provide policies and procedures that are used in the event that a parent refuses to provide consent under this section.

§300.572 Safeguards.

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

(b) One official at each participating agency shall 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 §300.127 and 34 CFR part 99.

(d) Each participating agency shall 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.

§300.573 Destruction of information.

(a) The school district shall inform parents when personally identifiable information collected, maintained, or used under this part is not longer needed to provide educational services to the child.

Special Note added: *Please be informed that your child's records will be considered "no longer needed to provide educational services and will be destroyed three years after your child graduates or three years after your child turns 22, whichever comes first.*

(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.

§300.574 Children's rights.

(a) The SEA shall provide policies and procedures regarding the extent to which, children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.

(b) Under the regulations for the Family Educational Rights and Privacy Act of 1974 (34 CFR 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 §300.517, the rights regarding educational records in §§300.562-300.573 must also be transferred to the student. However, the school district must provide any notice required under section 615 of the Act to the student and the parents.

§300.575 Enforcement

The SEA shall provide the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirements of the Act and the regulations in this part are met.

§300.576 Disciplinary information.

(a) The State may require that a school district include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information included in, and transmitted with, the student records of nondisabled children.

(b) The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. (c) If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any statement of current or previous disciplinary action that has been taken against the child.

--End of page 6 of the paper version of *Procedural Safeguards*--

§300.577 Department use of personally identifiable information.

If the Department or its authorized representatives collect any personally identifiable information regarding children with disabilities that is not subject to 5 U.S.C. 552a (the Privacy Act of 1974), the Secretary applies the requirements of 5 U.S.C. 552a (b)(1) -- (2) (4)(11); (c); (d); (e)(1), (2), (3)(A), (B), and (D), (5) - (10); (h); (m); and (n); and the regulations implementing those provisions in 34 CFR part 5b.

DISCIPLINE PROCEDURES

§300.519 Change of placement for disciplinary removals.

For purposes of removals of a child with a disability from the child's current educational placement under §§300.520-300.529, a change of placement occurs if

(a) The removal is for more than 10 consecutive school days; or

(b) The child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another.

§300.520 Authority of school personnel.

(a) School personnel may order

(1)

(i) To the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.519(b));

(ii) After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under §300.121(d); and

(2)

A change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if

(i) The child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or

(ii) The child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

(b)

(1) Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement under §300.519, including the action described in paragraph (a)(2) of this section --

(i) If the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described in paragraph (a) of this section, the agency shall convene an IEP meeting to develop an assessment plan.

(ii) If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior.

(2) As soon as practicable after developing the plan described in paragraph (b)(1)(i) of this section, and completing the assessments required by the plan, the LEA shall convene an IEP meeting to develop appropriate behavioral interventions to address that behavior and shall implement those interventions.

(c)

(1) If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement under §300.519,

the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary.

(2) If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

(d) For purposes of this section, the following definitions apply:

(1) Controlled substance means a drug or other substance identified under schedules 1, 11, 111, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).

(2) Illegal drug

(i) Means a controlled substance; but

--End of page 7 of the paper version of *Procedural Safeguards*--

(ii) Does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law

(3) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the **first subsection** (g) of section 930 of title 18, United States Code.

§300.521 Authority of hearing officer.

A hearing officer under section 615 of the Act may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing

(a) Determines that the school district has demonstrated by substantial evidence that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;

(b) Considers the appropriateness of the child's current placement;

(c) Considers whether the school district has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and

(d) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the child's special education teacher, meets the requirements of §300.522(b).

(e) As used in this section, the term substantial evidence means beyond a preponderance of the evidence.

§300.522 Determination of setting.

(a) General. The interim alternative educational setting referred to in §300.520(a)(2) must be determined by the IEP team.

(b) Additional requirements. Any interim alternative educational setting in which a child is placed under §§300.520(a)(2) or 300.521 must

(1) Be selected so as to enable the child to continue to progress in the general curriculum, although in 'another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that "I enable the child to meet the goals set out in that IEP; and

(2) Include services and modifications to address the behavior described in §§300.520(a)(2) or 300.521, that are designed to prevent the behavior from recurring.

§300.523 Manifestation determination review.

(a) General. If an action is contemplated regarding behavior described in §§300.520(a)(2) or 300.521, or involving a removal that constitutes a change of placement under §300.519 for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children

(1) Not later than the date on which the decision to take that action is made, the parents must be notified of that decision and provided the procedural safeguards notice described in §300.504; and

(2) Immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review must be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

(b) Individuals to carry out review. A review described in paragraph (a) of this section must be conducted by the IEP team and other qualified personnel in a meeting.

(c) Conduct of review. In carrying out a review described in paragraph (a) of this section, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel

(1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including

(i) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child;

(ii) Observations of the child; and

(iii) The child's IEP and placement; and

(2) Then determine that

(i) In relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(ii) The child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and

(iii) The child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

(d) Decision. If the IEP team and other qualified personnel determine that any of the standards in paragraph (c)(2) of this section were not met, the behavior must be considered a manifestation of the child's disability.

(e) Meeting. The review described in paragraph (a) of this section may be conducted at the same IEP meeting that is convened under §300.520(b).

(f) Deficiencies in IEP or placement. If, in the review in paragraphs (b) and (c) of this section, a school district identifies deficiencies in the child's IEP or placement or in their implementation, it must take immediate steps to remedy those deficiencies.

§300.524 Determination that behavior was not manifestation of disability.

(a) General. If the result of the review described in §300.523 is a determination consistent with §300.523(d), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in §300.121 (d).

(b) Additional requirement. If the school district initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

(c) Child's status during due process proceedings. Except as provided in §300.526, §300.514 applies if a parent requests a hearing to challenge a determination, made through the review described in §300.523, that the behavior of the child was not a manifestation of the child's disability.

§300.525 Parent appeal.

(a) General.

(1) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under §§300.520-300.528, the parent may request a hearing.

(2) The State or local educational agency shall arrange for an expedited hearing in any case described in paragraph (a)(1) of this section if a hearing is requested by a parent.

(b) Review of decision.

(1) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the school district has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of §300.523(d).

(2) In reviewing a decision under §300.520(a)(2) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards in §300.521.

§300.526 Placement during appeals.

(a) General. If a parent requests a hearing or an appeal regarding a disciplinary action described in §300.520(a)(2) or 300.521 to challenge the interim alternative educational setting or the manifestation determination, 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 provided for in §300.520(a)(2) or 300.521, whichever occurs first, unless the parent and the State agency or local educational agency agree otherwise.

(b) Current placement. If a child is placed in an interim alternative educational setting pursuant to §300.520(a)(2) or 300.521 and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in paragraph (c) of this section.

(c) Expedited hearing.

(1) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing.

(2) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards in §300.521.

(3) A placement ordered pursuant to paragraph (c)(2) of this section may not be longer than 45 days.

(4) The procedure in paragraph (c) of this section may be repeated, as necessary.

§300.527 Protections for children not yet eligible for special education and related services.

--End of page 9 of the paper version of *Procedural Safeguards*--

(a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §§300.520 or 300.521, may assert any of the protections provided for in this part if the LEA had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

(b) Basis of knowledge. An LEA must be deemed to have knowledge that a child is a child with a disability if

(1) The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

(2) The behavior or performance of the child demonstrates the need for these services, in accordance with §300.7; (3) The parent of the child has requested an evaluation of the child pursuant to §§300.530-300.536; or

(4) The teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of the agency or to other personnel in accordance with the agency's established child find or special education referral system.

(c) Exception. A school district would not be deemed to have knowledge under paragraph (b) of this section if, as a result of receiving the information specified in that paragraph, the agency

(1) Either

(i) Conducted an evaluation under §§300.530-300.536, and determined that the child was not a child with a disability under this part; or

(ii) Determined that an evaluation was not necessary; and

(2) Provided notice to the child's parents of its determination under paragraph (c)(1) of this section, consistent with §300.503.

(d) Conditions that apply if no basis of knowledge.

(1) General. If an LEA does not have knowledge that a child is a child with a disability (in accordance with paragraphs (b) and (c) of this section) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph (d)(2) of this section.

(2) Limitations.

(i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under §300.520 or 300.521, the evaluation must be conducted in an expedited manner.

(ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

(iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, including the requirements of §§300.520-300.529 and section 612(a)(1)(A) of the Act.

§300.528 Expedited due process hearings.

(a) Expedited due process hearings under §§300.521-300.526 must

(1) Meet the requirements of §300.509, except that a State may provide that the time periods identified in §§300.509(a)(3) and §300.509(b) for purposes of expedited due process hearings under §§300.521-300.526 are not less than two business days; and

(2) Be conducted by a due process hearing officer who satisfies the requirements of §300.508.

(b)

(1) Each State shall establish a timeline for expedited due process hearings that results in a written decision being mailed to the parties within 45 days of the school district's receipt of the request for the hearing, without exceptions or extensions.

(2) The timeline established under paragraph (b)(1) of this section must be the same for hearings requested by parents or public agencies.

(c) A State may establish different procedural rules for expedited hearings under §§300.521-300.526 than it has established for due process **hearings** under §300.507.

(d) The decisions on expedited due process hearings are appealable consistent with §300.510.

§300.529 Referral to and action by law enforcement and judicial authorities.

--End of page 10 of the paper version of *Procedural Safeguards*--

(a) Nothing in this part prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b)

(1) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime.

(2) An agency reporting a crime under this section may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

§300.500 General responsibility of public agencies; definitions.

(a) Responsibility of SEA and other public agencies. Each SEA shall ensure that each school district establishes, maintains, and implements procedural safeguards that meet the requirements of §§300.500-300.529.

(b) Definitions of "consent," "evaluation," and "personally identifiable." As used in this part--

(1) Consent means that

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

(ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought and the consent describes that activity and lists the records (if any) that will be released and to whom; and

(iii)

(A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(B) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

(2) Evaluation means procedures used in accordance with §§300.530-300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs; and

(3) Personally identifiable means that information includes --

(i) The name of the child, the child's parent, or other family member;

(ii) The address of the child;

(iii) A personal identifier, such as the child's social security number or student number; or

(iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

§300.501 Opportunity to examine records; parent participation in meetings.

(a) General. The parents of a child with a disability, must be afforded, in accordance with the procedures of §§300.562- 300.569, an opportunity to

(1) Inspect and review all education records with respect to-

(i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child; and

(2) 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.

(b) Parent participation in meetings.

(1) Each school district shall provide notice consistent with §300.345(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of this section.

(2) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(c) Parent involvement in placement decisions.

(1) Each school district shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

(2) In implementing the requirements of paragraph (c)(1) of this section, the school district shall use procedures consistent with the procedures described in §300.345(a) through (b)(1).

--End of page 11 of the paper version of *Procedural Safeguards*--

(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 school district shall 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 the parents, if the school district is unable to obtain the parents' participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of §300.345(d).

(5) The school district shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

§300.502 Independent educational evaluation.

(a) General.

(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 school district shall 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.

(3) For the purposes of this part

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

(ii) Public expense means that the school district 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 §300.301.

(b) Parent right to 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 school, district.

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

(i) Initiate a hearing under §300.507 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 under §300.507 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the school district initiates 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 school district may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation

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

(2) May be presented as evidence at a hearing under this subpart regarding that child.

(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

(e) 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 school district 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 school district may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

§300.503 Prior notice by the school district; content of notice.

(a) Notice.

(1) 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 school district

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

--End of page 12 of the paper version of *Procedural Safeguards*--

(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the school district that also requires parental consent under §300.505, the agency may give notice at the same time it requests parent consent.

(b) Content of notice. The notice required under paragraph (a) of this section must include

- (1) A description of the action proposed or refused by the agency;
- (2) An explanation of why the agency proposes or refuses to take the action;
- (3) A description of any other options that the agency considered and the reasons why those options were rejected;
- (4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;
- (5) A description of any other factors that are relevant to the agency's proposal or refusal;
- (6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and
- (7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

Special note added: *Sources for assistance in understanding the provisions of this part include: your child's Special Education teacher, your school district office, the Utah State Office of Education the Utah Parent Center, or the Utah Learning Center.*

(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 school district shall 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.

§300.504 Procedural safeguards notice.

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum

- (1) Upon initial referral for evaluation;

- (2) Upon each notification of an IEP meeting;
- (3) Upon reevaluation of the child', and
- (4) Upon receipt of a request for due process under §300.507.

(b) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §§300.403, 300.500-300.529, and 300.560-300.577, and the State complaint procedures available under §§300.660-300.662 relating to

- (1) Independent educational evaluation;
- (2) Prior written notice;
- (3) Parental consent;
- (4) Access to educational records;
- (5) Opportunity to present complaints to initiate due process hearings;
- (6) The child's placement during pendency of due process proceedings;
- (7) Procedures for students who are subject to placement in an interim alternative educational setting;
- (8) Requirements for unilateral placement by parents of children in private schools at public expense;
- (9) Mediation;
- (10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (11) State-level appeals (if applicable in that State);
- (12) Civil actions;
- (13) Attorneys' fees; and
- (14) The State complaint procedures under §§300.660- 300.662, including a description of how to file a complaint and the timelines under those procedures.

--End of page 13 of the paper version of *Procedural Safeguards*--

(c) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).

§300.505 Parental consent.

(a) General.

(1) Subject to paragraphs (a)(3), (b) and (c) of this section, informed parent consent must be obtained before -

(i) Conducting an initial evaluation or reevaluation; and

(ii) Initial provision of special education and related services to a child with a disability.

(2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.

(3) 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.

(b) Refusal. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under §§300.507-300.509, or the mediation procedures under §300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent.

(c) Failure to respond to request for reevaluation.

(1) Informed parental consent need not be obtained for reevaluation if the school district can demonstrate that it has taken reasonable measures to obtain that consent and the child's parent has failed to respond.

(2) To meet the reasonable measures requirement in paragraph (c)(1) of this section, the school district must use procedures consistent with those in §300.345(d).

(d) Additional State consent requirements. In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each school district 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.

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

§300-506 Mediation.

(a) General. Each school district shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in §300.503(a)(1) to resolve the disputes through a mediation process that, at a minimum, must be available whenever a hearing is requested under §§300.507 or 300.520-300.528.

(b) Requirements. The procedures must meet the following requirements:

(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 due process hearing under §300.507, 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.

(2)

(i) The State shall 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) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.

(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.

(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.

(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.

(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(c) Impartiality of mediator.

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

--End of page 14 of the paper version of *Procedural Safeguards*--

(i) May not be an employee of

(A) Any LEA or any State agency described under §300.194; or

(B) An SEA that is providing direct services to a child who is the subject of the mediation process; and (ii) Must not have a personal or professional conflict of interest.

(2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.194 solely because he or she is paid by the agency to serve as a mediator.

(d) Meeting to encourage mediation.

(1) A school district may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party

(i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and

(ii) Who would explain the benefits of the mediation process, and encourage the parents to use the process.

(2) A school district may not deny or delay a parent's right to a due process hearing under §300.507 if the parent fails to participate in the meeting described in paragraph (d)(I) of this section.

§300.507 Impartial due process hearing; parent notice.

(a) General.

(1) A parent or a school district may initiate a hearing 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).

(2) When a hearing is initiated under paragraph (a)(1) of this section, the school district shall inform the parents of the availability of mediation described in §300.506.

(3) The school district shall inform the parent of any free or low-cost legal and other relevant services available in the area if -The parent requests the information; or

(ii) The parent or the agency initiates a hearing under this section.

(b) Agency responsible for conducting hearing. The bearing described in paragraph (a) of this section must be conducted by the SEA or the school district directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.

(c) Parent notice to the school district.

(1) General. The school district must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the school district in a request for a healing under paragraph (a)(1) of this section.

(2) Content of parent notice. The notice required in paragraph (c)(1) of this section must include --

(i) The name of the child;

(ii) The address of the residence of the child;

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

(iv) 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

(v) A proposed resolution of the problem to the extent known and available to the parents at the time.

(3) Model form to assist parents. Each SEA shall develop a model form to assist parents in filing a request for due process that includes the information required in paragraphs (c)(1) and (2) of this section.

(4) Right to due process hearing. A school district may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraphs (c)(1) and (2) of this section.

§300.508 Impartial hearing officer.

(a) A hearing may not be conducted

(1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or

(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) 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.

(c) Each school district shall 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.

§300.509 Hearing rights.

--End of page 15 of the paper version of *Procedural Safeguards*--

(a) General. Any party to a hearing conducted pursuant to §§300.507 or 300.520-300.528, or an appeal conducted pursuant to §300.510, 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 5 business days before the hearing;

(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.

(b) Additional disclosure of information.

(1) At least 5 business days prior to a hearing conducted pursuant to §300.507(a), each party shall 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.

(2) 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.

(c) Parental rights at hearings.

(1) Parents involved in hearings must be given the right to

(i) Have the child who is the subject of the bearing present; and

(ii) Open the hearing to the public.

(2) The record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section must be provided at no cost to parents.

(d) Findings and decision to advisory panel and general public. The school district, after deleting any personally identifiable information, shall

(1) Transmit the findings and decisions referred to in paragraph (a)(5) of this section to the State advisory panel established under §300.650; and

(2) Make those findings and decisions available to the public.

§300.510 Finality of decision; appeal; impartial review.

(a) Finality of decision. A decision made in a hearing conducted pursuant to §§300.507 or 300.520-300.528 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section And §300.512.

(b) Appeal of decisions; impartial review.

(1) General. If the hearing required by §300.507 is conducted by a school district other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.

(2) SEA responsibility for review. If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall

(i) Examine the entire hearing record;

(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.509 apply;

(iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(v) Make an independent decision on completion of the review; and

(vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, shall

(1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.650; and

(2) Make those findings and decisions available to the public.

(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.512.

§300.511 Timelines and convenience of hearings and reviews.

(a) The school district shall ensure that not later than 45 days after the receipt of a request for a hearing

- (1) A final decision is reached in the hearing; and
- (2) A copy of the decision is mailed to each of the parties.

(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review

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

--End of page 16 of the paper version of *Procedural Safeguards*--

- (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.

(d) 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.

§300.512 Civil action.

(a) General. Any party aggrieved by the findings and decision made under §§300.507 or 300.520-300.528 who does not have the right to an appeal under §300.510 (b), and any party aggrieved by the findings and decision under §300.510 (b), has the right to bring a civil action with respect to the complaint presented pursuant to §300.507. 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) Additional requirements. In any action brought under paragraph (a) of this section, the court

- (1) Shall receive the records of the administrative proceedings;
- (2) Shall hear additional evidence at the request of a party; and
- (3) Basing its decision on the preponderance of the evidence, shall grant the relief that the court determines to be appropriate.

(c) Jurisdiction of district courts. 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.

(d) Rule of construction. 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 §§300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.

§300.513 Attorneys' fees.

(a) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.

(b)

(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 school district from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.

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

(1) Determination of amount of attorneys' fees. 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 subsection.

(2) Prohibition of attorneys' fees and related costs for certain services.

(i) Attorneys' 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.

(ii) Attorneys' 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 §300.506 that is conducted prior to the filing of a request for due process under §§300.507 or 300.520-300.528.

(3) Exception to prohibition on attorneys' fees and related costs. 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.

(4) Reduction of amount of attorneys' fees. 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, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

--End of page 17 of the paper version of *Procedural Safeguards*--

(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;

I

(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 school district the appropriate information in the due process complaint in accordance with §300.507(c).

(5) Exception to reduction in amount of attorneys' fees. 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.

§300.514 Child's status during proceedings.

(a) Except as provided in §300.526, during the pendency of any administrative or judicial proceeding regarding a complaint 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.

(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 decision of a 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 or local agency and the parents for purposes of paragraph (a) of this section.

§300.515 Surrogate parents.

(a) General. Each school district shall ensure that the rights of a child are protected if (1) No parent (as defined in §300.20) can be identified;

(2) The school district, after reasonable efforts, cannot discover the whereabouts of a parent; or (3) The child is a ward of the State under the laws of that State.

(b) Duty of school district. The duty of a school district 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.

(c) Criteria for selection of surrogates.

(1) The school district may select a surrogate parent in any way permitted under State law.

(2) Except as provided in paragraph (c)(3) of this section, public agencies shall ensure that a person selected as a surrogate

(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 interest that conflicts with the interest of the child he or she represents; and

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

(3) A school district may select as a surrogate a person who is an employee of a nonschool district that only provides noneducational care for the child and who meets the standards in paragraphs (c)(2)(ii) and (iii) of this section.

(d) Non-employee requirement; compensation.' A person who otherwise qualifies to be a surrogate parent under paragraph (c) 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.

(e) Responsibilities. 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.

§300.516 [Reserved]

§300.517 Transfer of parental rights at age of majority.

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

(1) (i) The school district shall provide any notice required by this part to both the individual and the parents; and (ii) All other rights accorded to parents under Part B of the Act transfer to the student; and

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

(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency shall notify the individual and the parents of the transfer of rights.

--End of page 18 of the paper version of *Procedural Safeguards*--

(b) Special rule. If, under State law, a State has a mechanism to determine that a student with a disability, who has reached the age of majority under State law that applies to all children and has not been determined incompetent under State law, does not have the ability to provide informed consent with respect to his or her educational program, the State shall establish procedures for appointing the parent or, if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the Act.

CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FREE APPROPRIATE PUBLIC EDUCATION IS AT ISSUE

§300.403 Placement of children by parents if FAPE is at issue.

(a) General. This part does not require an LEA to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the school district shall include that child in the population whose needs are addressed consistent with §§300.450-300.462.

(b) Disagreements about FAPE. Disagreements between a parent and a school district regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures of §§300.500-300.517.

(c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a school district, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

(d) Limitation on reimbursement. The cost of reimbursement described in paragraph (c) of this section may be reduced or denied

(1) If -

(i) At the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the school district to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the school district of the information described in paragraph (d)(1)(i) of this section;

(2) If, prior to the parents' removal of the child from the public school, the school district informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

(e) Exception. Notwithstanding the notice requirement in paragraph (d)(1) of this section, the cost of reimbursement may not be reduced or denied for failure to provide the notice if

(1) The parent is illiterate and cannot write in English;

(2) Compliance with paragraph (d)(1) of this section would likely result in physical or serious emotional harm to the child,

(3) The school prevented the parent from providing the notice; or

(4) The parents had not received notice, pursuant to section 615 of the Act, of the notice requirement in paragraph (d)(1) of this section.

STATE COMPLAINT PROCEDURES

§300.660 Adoption of State complaint procedures.

(a) General. Each SEA 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 of §300.662 by

(i) Providing for the filing of a complaint with the SEA; and

(ii) At the SEA's discretion, providing for the filing of a complaint with a school district and the right to have the SEA review the school district's decision on the complaint; and

--End of page 19 of the paper version of *Procedural Safeguards*--

(2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State's procedures under §§300.660-300.662.

Special Note added: *If you have questions regarding the State's complaint procedures, please contact the Utah State Office of Education for assistance.*

(b) Remedies for denial of appropriate services. In resolving a complaint in which it 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) How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and

(2) Appropriate future provision *of* services for all children with disabilities.

§300.661 Minimum State complaint procedures.

(a) Time limit; minimum procedures. Each SEA shall include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.660(a) 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) Review all relevant information and make an independent determination as to whether the school district is violating a requirement of Part B of the Act or of this part; and

(4) 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.

(b) Time extension; final decision; implementation. 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 exceptional circumstances exist with respect to a particular complaint; and

(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.

(c) Complaints filed under this section, and due process hearings under §§300.507 and 300.520-300.528.

(1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.520-300.528, 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.

(2) 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 hearing decision is binding; and
- (ii) The SEA must inform the complainant to that effect.

(3) A complaint alleging a school district's failure to implement a due process decision must be resolved by the SEA.

§300.662 Filing a complaint.

(a) An organization or individual may file a signed written complaint under the procedures described in §§300.660-300.661. (b) The complaint must include

- (1) A statement that a school district has violated a requirement of Part B of the Act or of this part; and
- (2) The facts on which the statement is based.

(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 §300.660(a) unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received under §300.660(a).

--End of page 20 of the paper version of *Procedural Safeguards*--