NOTICE OF PROCEDURAL SAFEGUARDS FOR PARENTS/GUARDIANS OF STUDENTS WITH DISABILITIES (As of July 2017)

As the parent/guardian of a student or adult student with a disability who is receiving or may be eligible to receive special education and related service, you have rights which are safeguarded by state and federal law. The rights to which you are entitled are listed below. A full explanation of these rights is available from your child's school district. Please review this document carefully and contact the district if you have questions or need additional clarification regarding your child's services or the procedural safeguards available to you.

The notice of your procedural safeguards must be made available to you only one time a year, except that a copy also must be given upon an initial request for an evaluation, a receipt of the first written complaint or first due process complaint to the Illinois State Board of Education, upon a disciplinary removal that constitutes a change in placement, or upon request.

Additional information regarding your rights is available on the ISBE website: www.isbe.net/spec-ed/ in a document entitled, "Parent's Guide - Educational Rights and Responsibilities: Understanding Special Education in Illinois (06/09)

PRIOR WRITTEN NOTICE

The local district is required to provide you with prior written notice:

- When the district proposes to initiate or change the identification, evaluation, educational placement or the provision of a free, appropriate public education to your child; or
- When the district refuses to initiate or change the identification, evaluation, educational placement or the provision of a free, appropriate public education to your child; or
- One year prior to your child reaching the age of majority (18 years of age). All educational rights transfer from parent(s)/guardian(s) to the student unless determined otherwise.

The written notice must be provided at least 10 days prior to the proposed or refused action and must include:

- A description of the action proposed or refused by the district, an explanation of why the district proposes or refuses to take action, and a description of any other options the district considered and the reasons why those options were rejected;
- A description of each evaluation procedure, test, record or report the district used as a basis for the proposed or refused action;

- A description of any other factors which are relevant to the district's proposal or refusal;
- A statement that you have due process rights and, if the notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained; and
- Sources for you to contact to obtain assistance in understanding your due process rights.

The notice must be written in language understandable to the general public and provided in the native language or other mode of communication used by you, unless it is clearly not feasible. If your native language or other mode of communication is not a written language, the local district shall take steps to ensure that: (a) the notice is translated orally or by other means to you in your native language or other mode of communication, (b) that you understand the content of the notice, and (c) that there is written evidence that these requirements have been met.

PARENTAL CONSENT

Your informed consent indicates that you were given all the relevant information in your native language or other mode of communication. It also indicates that you understand and agree in writing to the activity. The local district must obtain your informed written consent (using state-mandated forms) in the following instances:

- Initial Evaluation - Conducting an initial evaluation to determine eligibility for special education services,
- Initial Services/Placement - Initially providing special education and related services to your child, or
- Reevaluation - Reevaluating your child.

Other consents which are not part of these mandated forms include consent to access insurance benefits, consent to use the IFSP in place of an IEP, and consent to release your child's records. Additionally, a local school district may not require your consent as a condition of any benefit to you or your child except for the services or activity for which consent is required.

If your child is a ward of the state and does not reside with you, the district shall make reasonable efforts to obtain your informed consent for an initial evaluation. However, the district shall not be required to obtain your informed consent, if despite reasonable efforts to do so, the agency cannot discover your whereabouts; your rights have been terminated in accordance with Illinois law; or, your rights to make education decisions have been removed by a judge in accordance with Illinois law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

Your consent is not required before your school district reviews existing data as part of an evaluation or reevaluation or before your school district administers a test or other evaluation that is administered to all children, unless before that test or evaluation, consent is required from the parents of all children.

ABSENCE OF PARENTAL CONSENT

Certain conditions are applicable if you refuse to provide consent for the following:

- Initial Evaluation - If you do not provide consent for an initial evaluation or fail to respond to a request to provide consent, the district may, but is not required to, pursue having an initial evaluation conducted using mediation and/or due process hearing procedures.

  If a due process hearing is held, a hearing officer may order the school district to proceed in conducting an initial evaluation without your consent. This is subject to your right to appeal the decision and to have your child remain in his/her present educational placement pending the outcome of any administrative or judicial proceeding.

- Initial Services/Placement – If you refuse to provide consent for the initial provision of special education and/or related services, the district will not provide these services. Furthermore, the district may not pursue mediation or due process procedures in order to obtain a ruling that services may be provided.

  In the event that you refuse to consent to the initial provision of special education and/or related services, the district will not be considered to be in violation of its requirement to make a free appropriate public education (FAPE) available to your child. Nor is the district required to convene a meeting to develop an IEP for your child.

- Reevaluation – If you refuse to provide consent for a reevaluation, the school district may, but is not required to, pursue override procedures through mediation or a due process hearing. However, the school district may pursue the reevaluation if it made reasonable efforts to obtain your consent and you failed to respond. If the school district chooses not to pursue such procedures, the school district is not in violation of providing a free appropriate public education to your child.

REVOCATION OF CONSENT

If your child is currently receiving special education and related services, you have the right to revoke your consent for such services at any time. You may revoke consent either orally or in writing. If you revoke your consent orally, the district must provide you with written confirmation within five (5) days of your oral revocation. When you revoke your consent, either orally or in writing, the district must provide you with prior written notice to acknowledge your revocation and the date upon which all special education and related services will cease.

Once services have ceased, your child will be considered a general education student. All rights and responsibilities previously held by your child (as described in this document), including special education disciplinary protections, will also cease.

NOTE: The effect of your revocation will result in a complete termination of all special education and related services to your child. However, if you are in a disagreement with the type or amount of services your child is receiving, but believe that your child should continue to receive special education and related services, please review the sections, "Complaint Resolution", "Mediation", and "Due Process Hearing" for a discussion of your rights in the case of a disagreement over services.

PARENT PARTICIPATION IN MEETINGS

You must be afforded the opportunity to participate in meetings regarding the identification, evaluation, eligibility, reevaluation, and educational placement of your child. In order to ensure your participation, the school district must provide you with ten day written notice of the meeting. The notice must inform you of the purpose and a mutually agreeable place and time for the meeting and who will be in attendance. The notice for the IEP meeting must also include a statement that you have the right to invite individuals with special knowledge or expertise about your child to attend the IEP meeting with you.

As a parent, you are an important member of your child's IEP team and are encouraged to be involved in meetings where decisions are made regarding the educational placement of your child. However, if you cannot attend the meeting, the school district must use other methods to ensure your participation, including individual or conference telephone calls. Decisions about your child's services and placement can be made by the IEP team even if you do not attend the meeting, but the district must maintain a record of its attempts to arrange a mutually agreed upon time and place for the meeting that includes things such as detailed telephone calls made or attempted and the results of those calls, copies of correspondence sent to you and any responses received, or detailed records of visits made to your home or workplace and the results of those visits.

For a child beginning at age 14 ½, or younger if determined appropriate by the IEP team, the notice must indicate that one purpose of the meeting will be the development of a statement of the transition service needs of your child and that the school district will invite your child to the meeting and indicate any other agency that will be invited to send a representative to the meeting. The district must take whatever action is necessary to ensure that you and your child understand the proceedings at a meeting, which may include arranging for an interpreter if you or your child is deaf or your native language is not English.

The IEP team must meet at least once a year and must have an IEP for your child in effect by the beginning of each school year. After the annual meeting, you and the school may agree not to convene an IEP meeting for the purpose of amending your child's IEP, and instead may amend or modify the IEP through a written document. The IEP team members must be informed of the changes. At any time, you may request an IEP meeting to be held at a time convenient for both you and the school.

EVALUATION PROCEDURES

Your school district must use a variety of evaluation tools and strategies when conducting an evaluation of your child. The evaluation must assess your child in all areas related to the suspected disability. The school district must use technically sound instruments and procedures that are not biased against your child because of race, culture, language, or disability. The materials and procedures must be provided and administered in the language and form most likely to provide accurate information on what your child knows and can do.

Initial Evaluation

Either you or the school district may initiate a request for an initial evaluation of your child. If it is determined that an evaluation is necessary, the district must complete the evaluation no later than 60 school days following the date you signed the written consent to perform the needed assessments. If fewer than 60 school days remain in a school year after the date you have provided consent, the eligibility determination shall be made and the IEP meeting shall be completed prior to the first day of the following school year.
The evaluation must be conducted by a team of qualified individuals and include your input. Your child will not be determined to be a child with a disability if lack of appropriate instruction in reading, math, or limited English proficiency, are judged to be determinant factors.

If a district fails to conduct the evaluation, you may appeal this failure in an impartial due process hearing, request consideration of this failure using the State complaint procedures, or request mediation.

Reevaluation

At least every three years after the initial evaluation, the school must reevaluate your child, unless you and the school agree a reevaluation is unnecessary.

Independent Educational Evaluation

An *independent educational evaluation* means an evaluation conducted by a qualified person who is chosen by you and is not employed by your school district.

You have the right to obtain an independent educational evaluation at public expense if you disagree with an evaluation obtained by the local district. When you request the school district pay for an independent educational evaluation, the school must either pay for it or request a due process hearing without unnecessary delay to show that its evaluation is appropriate. The school district may ask you why you object to its evaluation, but cannot unreasonably delay or deny the evaluation by requiring you to explain your disagreement.

If the district agrees to pay for the independent educational evaluation, it must provide to you, upon your request, information about where an independent educational evaluation may be obtained. Whenever an independent 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 which the district uses when it initiates an evaluation.

If the district initiates a due process hearing and the hearing officer orders an evaluation, the cost of the evaluation must be at public expense. If the final decision of the hearing officer is that the district's evaluation is appropriate, you still have the right to an independent educational evaluation, but at your own expense.

If you obtain an independent educational evaluation at private expense, the results of the evaluation must be considered by the district in any decision made with respect to the provision of a free, appropriate public education for your child. You may also present the independent educational evaluation as evidence in a due process hearing.

Within 10 days after receiving a report of an independent evaluation conducted at either public or private expense, the district shall provide written notice stating the date upon which the IEP team will meet to consider the results.

PRIVATE SCHOOL PLACEMENTS

This section describes your child's rights when you voluntarily place him/her in a private school/facility.

Private School Placements When FAPE is Not an Issue

All children with disabilities residing in the State, who are in need of special education and related services, including children attending private schools, must be located, identified, and evaluated. This process, called *Child Find*, is the responsibility of the public school district where your child's private or home school is located. If your child is determined eligible for special education services, *Child Find* includes the right to a three-year reevaluation. The rights described in this document related to identification and evaluation apply even when you place your child in a private school/facility.

However, when you choose to place your child with a disability in a private school, your child does not have a right to receive any of the special education or related services he or she would receive if enrolled in the public school. Some special education services may be available to your child while enrolled in the private school, but the type and amount will be limited by how the public school where your child's private school is located decides to serve private school students. The school's decision is made after consulting with representatives of private schools and a representative group of parents of private school children with disabilities. The school determines how to use the limited federal funds that are designated for private school services. If a public school elects to provide any type of service to your child, then a *services plan* must be developed. The services plan includes goals and those elements of a traditional IEP that are appropriate for your child and the services to be provided.

Private School Placements When FAPE Is an Issue

If you enroll your child in a nonpublic elementary or secondary school due to your belief that a free, appropriate public education was not being provided, the following may be applicable:

- A court or hearing officer may require the district to reimburse you for the cost of that enrollment if it is found that the district did not make a free, appropriate public education available in a timely manner prior to that enrollment.

The amount of reimbursement awarded by the hearing officer may be reduced or denied:

- If, at the most recent IEP meeting you attended prior to the removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the district, including stating your concerns and intent to enroll your child in a nonpublic school or facility;

- If 10 business days (including any holidays that occur on a business day) prior to the removal of the student from the public school, you did not give notice to the district of the information mentioned above;

- If prior to your removal of your child from the public school, the school district informed you of its intent to evaluate your child but you did not make him/her available for such evaluation; or

- Upon a judicial finding of unreasonableness with respect to actions taken by you.

The cost of reimbursement may **not** be reduced or denied for failure to provide such notice if:

- A parent/guardian cannot read and write in English;
- Compliance with the notice requirements would likely result in physical or serious emotional harm to your child;
- The school prevented you from providing such notice; or
- You were not made aware of the notice requirement mentioned above.

DISCIPLINE OF STUDENTS WITH DISABILITIES

If your child's behavior impedes his/her learning or the learning of others, strategies including positive behavioral interventions and supports, must be considered in the development of your child's IEP. If your child violates the student code of conduct, school personnel may remove him/her from the current placement.

Short Term Removals (Less than 10 School Days Over the Course of a School Year)

If your child violates the student code of conduct, school personnel may remove him/her from the current placement for ten (10) days or less in a school year. The school district

is not required to provide educational services during these removals unless services are provided to students without disabilities under similar circumstances.

Long Term Removals (For a Total of 10 Days or More Within a School Year)

Removals totaling ten (10) days or more in a school year may or may not constitute a change in placement, depending upon the pattern of those removals and based on factors such as the length of each removal, the total amount of time your child is removed in a school year and the length of time between each removal.

Once the disciplinary removals total more than 10 school days, the school district must continue to provide educational services. School personnel, in consultation with at least one of your child's teachers, must determine the extent to which services are needed so as to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the IEP during the removals.

Disciplinary removals beyond a total of ten school days during the school year may be considered a change in placement by school officials. If this occurs, the school district must notify you of its decision and provide you with a copy of the procedural safeguards on the same day that the decision to remove is made. School personnel, in consultation with at least one of your child's teachers, must determine the extent to which services are needed during the period of removal. Your child shall receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not recur. Additionally, an IEP meeting must be convened as soon as possible, but no later than ten (10) school days after the decision to remove in order to conduct a manifestation determination review.

Manifestation Determination Review (MDR)

When conducting a manifestation determination review, the IEP team shall consider all relevant information in your child's file, including your child's IEP, staff observations, and any relevant information supplied by you. The IEP team determines:

- If the behavior was caused by or had a direct and substantial relationship to your child's disability, or
- If the behavior was the direct result of the school district's failure to implement your child's IEP.

If the team determines that either of the above statements is applicable, then your child's behavior must be considered a manifestation of his/her disability.

A. Manifestation of the Disability

Upon determination that the behavior was a manifestation of your child's disability, the IEP team shall:

- Conduct a functional behavioral assessment and implement a behavioral intervention plan, provided that the school district had not already

conducted such an assessment prior to the determination of the behavior that resulted in change of placement,

- In the situation where a behavioral intervention plan is in place, review the behavioral intervention plan and/or modify the plan as necessary to address the behavior; and

- Return your child to the placement from which he/she was removed, unless you and the school district agree to a change of placement, except when the student has been removed to an interim alternative education setting for drugs, weapons and/or serious bodily injury (see below for more information on interim alternative educational setting).

B. Not a Manifestation of the Disability

If it is determined that the behavior of your child was not related to his/her disability, pertinent disciplinary procedures may be applied in the same manner they would be for students without disabilities—**except** that students with disabilities must continue to receive a free appropriate public education if removed for more than 10 school days in that school year.

If the local district initiates pertinent disciplinary procedures that apply to all students, the district must ensure that special education and disciplinary records of your child are transmitted for consideration by the person(s) making the final determination about the action.

Expedited Due Process Hearing

If you disagree with any decision regarding disciplinary placement or the manifestation determination review, you have the right to request an expedited due process hearing. The local district or ISBE must arrange for an expedited hearing when you make a request in writing.

Additionally, if the school district believes that maintaining your child in his or her current placement is substantially likely to result in injury to your child or to others, the school may request an expedited due process hearing to change your child's placement to an interim alternative educational setting. The hearing officer may order the placement even if your child's behaviors are a manifestation of his or her disability.

The expedited hearing must occur within 20 school days of the date the hearing is request and must result in a determination within 10 school days after the hearing.

Interim Alternative Educational Setting (IAES)

An interim alternative educational setting is a different location where educational services are provided for a specific time period for disciplinary reasons. This setting will be determined by the IEP team and must be selected so as to enable your 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 current IEP that will enable him or her to meet IEP goals. The alternative setting must

also include services and accommodations to address the behavior which resulted in the removal.

School personnel may remove your child from his/her current education placement to an interim alternative educational setting without your consent if he/she:

- Carries a weapon to school or to a school function,
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school or at a school function, and/or
- Has inflicted serious bodily injury upon another person while at school or at a school function.

Removal to an interim alternative educational setting shall not be more than 45 school days without regard to whether the behavior is determined to be a manifestation of his/her disability.

If you disagree with the decision and request an expedited due process hearing to challenge the decision, your child will remain in the interim alternative educational setting during the pendency of the hearing unless you and the school district agree otherwise or until the 45 school day time period expires. A school district may seek subsequent expedited hearings and alternative placements if after the first 45 school day term has expired the school district believes your child is still dangerous.

Protections for Students Not Yet Eligible for Special Education and Related Service

If your child has not been found eligible for special education but the district has knowledge that your child is disabled before a behavior occurred for which disciplinary action is being taken, you may assert the same protections in discipline afforded to a student with a disability.
The school district is considered to have knowledge of a disability if:

- you have expressed concerns in writing (or orally if a parent/guardian can not read or write) that your child needs special education and related services,
- your child's behavior or school performance shows the need for special education,
- you have requested an evaluation to determine if your child needs special education, or
- one of your child's teachers or other district staff has made a request for special education services to the special education director or other appropriate district personnel.

The school district is not considered to have knowledge of a disability if:

- you have not allowed an evaluation of your child,
- you have refused services,
- an evaluation was conducted and it was determined that your child does not have a disability, or
- it was determined that an evaluation was not needed and you were informed in writing of the determination.

If, prior to taking disciplinary action against a student, the local district had no knowledge that the student was a student with a disability, the student may be subjected to the same disciplinary procedures as those applied to students without disabilities who engaged in comparable behaviors.

An evaluation requested during the time period in which the student is subjected to disciplinary procedures must be conducted in an expedited manner. However, the student must remain in the educational placement determined by school authorities pending results of the evaluation. If the student is determined to be a student with a disability based on the evaluation, the local district must provide appropriate special education and related services.

Referral to and Action by Law Enforcement and Judicial Authorities

Local districts or other agencies are not prohibited from reporting a crime committed by a student with a disability to appropriate authorities. In addition, state law enforcement and judicial authorities are not prevented from exercising their responsibilities regarding the application of federal and state law to crimes committed by a student with a disability.

Local districts or other agencies reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted to the appropriate authorities for their consideration.

COMPLAINT RESOLUTION

Concerns with respect to any matter relating to the identification, evaluation or educational placement of a student or the provision of a free, appropriate public education to a student should be directed to the local school district.

You may file a signed, written complaint with ISBE, alleging that the rights of your child or several children with disabilities have been violated. The following information must be included in a formal complaint:

- A statement alleging that a responsible public entity has committed a violation of a special education requirement;
- The facts on which the statement is based;
- The names and addresses of the involved students and schools of attendance;
- The signature and contact information for the complainant;
- A description of the nature of the problem, including the facts relating to the problem; and
- A proposed resolution for the problem, to the extent known.

The complaint must allege that the violation occurred not more than one year prior to the date on which the complaint is received. Within 60 days after receiving a complaint that meets the requirements listed above, ISBE shall:

- Carry out an independent on-site investigation, if deemed necessary by ISBE;
- Give you an opportunity to submit additional information regarding the allegations;

- Require that the public entity that is the subject of the complaint submit a written response to the complaint. The public entity shall submit its response and all other documentation to ISBE and you, or the individual, or organization filing the complaint no later than 45 days from the date our agency receives the complaint;
- Provide the public entity, during the complaint process, with the opportunity to offer a proposal to resolve the complaint and/or offer to engage you in mediation or alternative means of dispute resolution.
- Review all relevant information and make a determination as to whether the public entity violated a special education requirement.
- Issue a written decision which addresses each allegation and includes findings of fact and conclusions, the reasons for ISBE's decisions and orders for any correction actions.

These actions will be conducted within a 60-day timeline, unless that time limit is extended under exceptional circumstances or if you and the district engage in another method of dispute resolution, such as mediation.

If a complaint is filed involving one or more issues that are also the subject of a due process hearing, those portions of the complaint will be held in abeyance pending the completion of the hearing. In addition, if an issue has been previously decided in a due process hearing involving the same parties, the decision from the hearing will be binding and that issue will not be investigated through the complaint process.

MEDIATION

Illinois' mediation service is designed as a means of resolving disagreements regarding the appropriateness of special education and related services to children. You may request mediation whether or not there is a pending due process hearing, but mediation cannot be used to delay or deny a due process hearing. Both you and the school district must *voluntarily* agree to participate in the mediation process. This service is administered and supervised by the ISBE and is provided at no cost to either you or the school district.

The mediation will be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and is knowledgeable in laws and regulations relating to the provision of special education and related services. The mediator is an impartial third party and has no authority to force any action by either party.

The number of participants shall generally be limited to three persons per party. You may bring an attorney, advocate, interpreter, and other relevant parties. All discussions that occur during the mediation process shall be confidential and may not be used as evidence in *any subsequent due process hearing or civil proceeding.*

You will not be asked to abandon basic beliefs about your child's ability during mediation; rather you will be asked to: (a) consider alternatives which could be included in your child's program, (b) listen to the concerns expressed by the other party, and (c) be realistic about your child's capabilities and the local district's obligations and resources.

If you resolve a dispute through the mediation process, an agreement will be written and signed by both you and a representative of the school district who has the authority to bind such agreement. Mediation agreements are legally binding and enforceable in any state court of competent jurisdiction or in a district court of the United States.

The agreement of the parties to enter mediation shall allow the child to remain, or "stay put", in his or her current placement during the pendency of the mediation. The placement shall be the last placement to which the parties agreed. If mediation fails to resolve the dispute between the parties, the parent (or student if 18 years of age or older or emancipated) shall have 10 days after the mediation concludes to file a request for a due process hearing in order to continue to invoke the "stay-put" provisions.

Efforts to mediate the disagreement will not be admissible as evidence at any subsequent administrative or civil proceeding except for the purpose of noting the mediation which did occur and the terms of any written agreement(s) which were reached as a result of mediation. The mediator may not be called as a witness at *any subsequent administrative or civil proceeding.*

If you wish to request mediation services or to learn more about the mediation system, you may contact the Division of Special Education Services, Illinois State Board of Education, at 217/782-5589 or toll-free for parents at 866/262-6663.

DUE PROCESS HEARING

Requesting a Due Process Hearing

In addition to the use of mediation and the state complaint procedures, you also have the right to request an impartial due process hearing. A due process hearing is a legal process in which a hearing officer gathers evidence and hears testimony from both you and the school district in order to make a legally binding decision. You may initiate a due process hearing regarding the district's proposal or refusal to initiate or change the identification, evaluation, or educational placement of a student or the district's provision of a free, appropriate public education. Your request for a due process hearing must discuss matters that have occurred within the past two years or within two years of the date you reasonably should have known about the district's actions concerning your child's placement of services.

A request for a hearing must be made in writing to the superintendent of the district in which you and your child reside and must include the following information:

- The name and address of the student;
- The name of the school attended;
- A description of the nature of the problem about which you are complaining that relates to the proposed initiation or change, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available to the parent at the time.

Within 5 school days of receipt of the request for a hearing, the district will contact ISBE by certified mail to request the appointment of an impartial due process hearing officer.

A model form for requesting a due process hearing shall be made available upon request.

Within 5 calendar days of filing your hearing request with the district, you are permitted the right to file an amended hearing request that may cover issues that were not raised in your initial hearing request. After 5 calendar days, you will only be allowed to file an amended hearing request with the agreement of the district, or with the authorization of the hearing officer. If you file an amended hearing request that raises issues other than issues in your initial hearing request, you will be required to restart all hearing timelines and potentially complete new resolution sessions and prehearing conferences (see below).

Resolution Meetings

Prior to the impartial due process hearing, the district will convene a meeting with you and relevant members of the IEP Team who have specific knowledge of the facts identified in the request for a due process hearing. The purpose of the resolution meeting is for you to discuss your request for the hearing and the facts that form the basis of the request so that the school district has the opportunity to resolve the dispute.

The resolution meeting shall:

- Be conducted within 15 days of receiving the district's notice of the request for a due process hearing;
- Include a representative of the district who has decision-making authority;
- Not include district attorney unless you are also accompanied by an attorney;
- Allow you to discuss your request for a due process hearing.

You and the district may mutually agree in writing to waive the resolution meeting or agree in writing to use the mediation process as described above. Please note that you may use mediation at a later date if the resolution session proves unsuccessful.

If a resolution is reached, the parties must execute a legally binging agreement that is signed by both you and a representative of the district who has the authority to bind the district. The signed agreement is normally enforceable in any State court of competent jurisdiction or in a district court of the United States. However, either party may void such agreement within three (3) business days of signing the agreement by providing notice of the intent to void the agreement in writing to the other party.

If the school district has not resolved the request for due process hearing to your satisfaction within thirty (30) days of the receipt of the request, the due process hearing will continue. The due process hearing timelines will begin at the expiration of the 30 day period.

Except where you and the school district have jointly agreed to waive the resolution meeting or to use mediation and where you have filed the request for due process hearing, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held. In rare instances, a hearing officer could dismiss your hearing request if it is determined that you have intentionally hindered the district's ability to conduct the resolution session.

Appointment of an Impartial Due Process Hearing Officer

An impartial hearing officer will be appointed by ISBE to conduct the hearing. The hearing officer cannot be an employee of any agency involved in the education or care of your child and cannot have any personal or professional interest that would conflict with objectivity in the hearing.

A party to a due process hearing will be permitted one substitution of a hearing officer as a matter of right. A request for a substitute hearing officer must be made in writing to ISBE within 5 days after you receive notification of the hearing officer's appointment. In the event that you and the district submit written requests on the same day and these are received simultaneously, ISBE will consider the substitution to have been at the request of the party initially requesting the hearing. The right of the other party to a substitution will be absolutely protected. When a party to the hearing submits a proper request for substitution, ISBE will select and appoint another hearing officer at random within 3 days.

When the appointed hearing officer is unavailable or removes himself/herself before the parties are notified of his/her appointment, ISBE will appoint a new hearing officer.

Pre-hearing Conference

If you and the district are unable to reach an agreement through the resolution process, the due process hearing requirements shall proceed. Unless a permissible extension of time is granted by the hearing officer, a hearing decision must be rendered within 45 days after the close of the resolution session process described above. Prior to conducting the hearing, the hearing officer must conduct a prehearing conference with the parties.

Within 5 days after receiving written notification by ISBE, the appointed hearing officer must contact the parties to determine a time and place to convene the pre-hearing conference. The prehearing conference may be conducted by telephone or in-person at the discretion of the hearing officer in consultation with the both you and the district. At the prehearing conference, you, as well as the district, will be expected to disclose the following:

1) The issues believed to be in dispute at the hearing;
2) The witnesses that may be called at hearing;
3) The list of documents that may be submitted to present the case at hearing.

Please note that if you raise issues at the prehearing conference that were not included in your hearing request, you may be required to submit an amended hearing request and to complete a new resolution session and prehearing conference at a later date. An amended hearing request may also result in a delay of the hearing. (See above, "Requesting a Due Process Hearing".)

At the conclusion of the prehearing conference, the hearing officer must prepare a report of the conference and enter it into the hearing record. The report must include, but need not be limited to:

- The issues, the order of presentation, and any scheduling accommodations that have been made for the parties or witnesses;
- A determination of the relevance and materiality of documents or witnesses, if raised by a party or the hearing officer; and
- A listing of the stipulated (or agreed) facts as discussed during the pre-hearing conference.

Rights Prior to the Hearing

You have the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge with respect to the problems of students with disabilities;
- Inspect and review all school records pertaining to the student and obtain copies of any such records;
- Have access to the district's list of independent evaluators and obtain an independent evaluation of the student at your own expense;
- Be advised at least 5 days prior to the hearing of any evidence to be introduced;
- Compel the attendance of any local school district employee at the hearing, or any other person who may have information relevant to the needs, abilities, proposed program, or the status of the student;
- Request that an interpreter be available during the hearing;
- Maintain the placement and eligibility status of the student until the completion of all administrative and judicial proceedings; and
- Request an expedited hearing to change the placement of your child or if you disagree with the district's manifestation determination or the district's removal of the student to an interim alternative educational setting.

Rights During the Hearing

You have the right to:

- Have a fair, impartial, and orderly hearing;
- Have the opportunity to present evidence, testimony, and arguments necessary to support and/or clarify the issue in dispute;
- Close the hearing to the public;
- Have your child present at the hearing;
- Confront and cross-examine witnesses; and
- Prohibit the introduction of evidence not disclosed at least 5 days prior to the hearing.

The Hearing

ISBE and the hearing officer must ensure that a hearing is held within 45 days after receipt of a request for a hearing, unless the hearing officer grants a specific time extension at the request of either party. Within 10 days after the conclusion of the hearing, the hearing officer must issue a written decision which sets forth the issues in dispute, findings of fact based upon the evidence and testimony presented, and the hearing officer's conclusions of law and orders. The hearing officer must make a determination about all issues raised in the hearing request (unless settled by the parties

prior to hearing) as well as the overall determination of whether the district has provided the student a free appropriate public education based on the facts of the case.

Expedited Hearings

As described above (see "Discipline of Students with Disabilities") an expedited hearing may be requested when you have a disagreement about the district's decision to remove your child from the current educational placement due to disciplinary issues. Expedited hearings have a number of similarities with, but several major differences from, regular due process hearings. The principal differences with regular due hearings are the following:

- The resolution session must be convened within seven (7) calendar days of the filing of the expedited hearing request;
- The hearing must be conducted within 20 school days of the filing of the hearing request;
- The hearing decision must be rendered within 10 school days of the close of the hearing;
- No substitution of the appointed hearing officer may be requested.

Request for Clarification

After a decision is issued, the hearing officer will retain jurisdiction over the case for the sole purpose of considering a request by either party for clarification of the final decision. You may request clarification of the final decision, by submitting the request in writing to the hearing officer within 5 days after receipt of the decision. The request for clarification must specify the portions of the decision for which you seek clarification. A copy must be mailed to all parties involved in the hearing and to ISBE. The hearing officer must issue a clarification of the specified portion of the decision or issue a denial of the request in writing within 10 days of receipt of the request.

Appealing the Decision

Following a due process hearing, a party dissatisfied with the hearing officer's final order has the right to initiate a civil action. Civil action can be brought in any State court of competent jurisdiction, or a United States District Court within 120 days after a copy of the decision is mailed to the parties. Procedures for filing such actions are available from the office of the clerk for the court in which the filing is to be made.

Stay of Placement

During a pending due process hearing or any judicial proceeding, your child must remain in his/her present educational placement with the eligibility status and special education and related services that were provided at the time of the filing of the hearing request. However, if the district changed the student's placement in response to a disciplinary incident and this placement is subject to an expedited hearing, the district's new placement will be maintained pending the final decision in the expedited hearing. (Please see above, "Discipline of Students with Disabilities")

Award of Attorneys' Fees

In any action or proceeding brought under the Individuals with Disabilities Education Act, a court of competent jurisdiction may award reasonable attorneys' fees. Attorneys fees are fees incurred by your attorney (this does not include an unlicensed advocate or other non-attorney representative) in connection with his or her representation of your interests in the due process hearing proceedings. A court may award such fees:

- To the parent or guardian of a student with disabilities who is the prevailing party;
- To the prevailing party who is a State educational agency or district against the attorney of a parent who files a complaint or subsequent case of action that is frivolous, unreasonable, or without foundation;
- To a prevailing State educational agency or district against the attorney of a parent, or against the parent, if the parent's complaint or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

Fees awarded shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. Attorney fees may be reduced by the court based on a number of factors including unreasonable rates charged, unnecessarily protracted proceedings, or the existence of a settlement agreement between the parties. You are urged to discuss these matters with your attorney.

EDUCATIONAL SURROGATE PARENTS

Upon enrollment of a student, the resident school district must make reasonable attempts to contact the parent of a child who has been referred for, or is in need of, special education and related services. If the parent cannot be identified or located or the child is a ward of the state residing in a residential facility and the residential facility has not done so already, a representative of that facility shall submit to ISBE a request for an appointment of an educational surrogate parent to ensure the educational rights of the child are protected. If the child is a ward of the state, a surrogate parent may alternatively be appointed by the judge overseeing the child's care. In the case of an unaccompanied homeless student, the district will appoint a surrogate parent. A child residing in a foster home or relative caretaker setting no longer requires the appointment of an educational surrogate parent. The foster parent or relative caretaker will represent the educational needs of each child placed in his/her home.

If your school appointed you to be a surrogate parent, all of the rights explained in this document belong to you. You may not be an employee of a public agency which is involved in the education or care of the child, may have no conflict of interest with the child, and must have the knowledge and skills necessary to ensure adequate representation of the child. If you are an employee of a residential facility, you may be selected as an educational surrogate parent for a child residing in that facility if that facility only provides non-educational care for the child.

As an educational surrogate parent, you may represent the child in all matters relating to the identification, evaluation, educational placement and the provision of a free, appropriate public education.

EDUCATIONAL RECORDS

A local district is responsible for protecting the confidentiality of your child's educational records. As a parent, you have a right to inspect and review any educational records relating to your child which are collected, maintained or used by the district. The district shall comply with a request to review the educational record without unnecessary delay and before any meeting relating to the identification, evaluation, or placement of the student and, in no case, more than 15 school days after the request has been made. The right to inspect and review educational records includes:

- The right to a response from the school district to reasonable requests for explanations and interpretations of the records;
- The right to have your representative inspect and review the records; and
- The right to request that the school district provide copies of education records, if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records at a location where they are normally maintained.

A local school district may presume that you have authority to inspect and review records relating to your child unless the school district has been advised that you do not have the authority under applicable state law governing such matters as guardianship, separation and divorce.

If any education record includes information on more than one student, you will be allowed to review only the information relating to your child or to be informed of that specific information.

A local school district must provide you, upon request, a list of the types and locations of the educational records collected, maintained or used by the district.

Fees for Searching, Retrieving, and Copying Records

A local school district may not charge a fee to search for or retrieve information. However, a local school district may charge a fee of not more than $.35 per page of the record which is copied if the fee does not effectively prevent you from exercising your right to inspect and review those records.

Record of Access

A district may only release information with your consent unless otherwise allowed by state or federal law. A local school district must keep a record of parties obtaining access to educational records collected, maintained or used (except for parents and authorized employees of the local district), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Amendment of Records at Parent's Request

If you believe that information in your child's records are inaccurate or misleading or violates your child's rights, you may ask the school district to amend the record. The local school district must decide whether to amend the information within 15 school days from the date of receipt of your request. If the district refuses to amend the information in accordance with the request, it must inform you of the refusal and advise you of your right to a records hearing as set forth below.

The school district must, upon request, provide you with an opportunity for a records hearing to challenge information in your child's records. This is not a due process hearing and is not held before a hearing officer appointed by ISBE; rather it is a hearing held at the local level.

If, as the result of a records hearing, it is decided that the information is inaccurate, misleading or violates your child's rights, the school district must amend the information and inform you in writing that it has done so.

If, as a result of the records hearing, it is decided that the information is not inaccurate, misleading or violates your child's rights, the school district must inform you of your right to place a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district. Any explanation placed in the records of your child must be maintained by the school district as part of your child's records for as long as the record or contested portion is maintained by the school district. If the records are disclosed by the district to any party, the explanation must also be disclosed.

TRANSFER OF PARENTAL RIGHTS

At the age of 18, your child becomes an adult student. All of the parental rights discussed in this document will transfer to him/her at that time, unless the school district is notified otherwise. You will share the right to receive all of the required prior written notices and the school will provide these notices to both you and your child.

On or before your child's 17th birthday, the IEP must include a statement that you and your child were informed that these rights will transfer at the 18th birthday. Additionally, at this meeting you will receive a *Delegation of Rights to Make Educational Decisions* form.

Your child may decide to use this form to delegate you or another individual to represent his/her educational interests upon his or her reaching the age of majority. This form must then be presented to the local school district.

The Delegation of Rights form must identify the individual designated to represent your child's educational rights and include both the individual's signature as well as your child's signature (or by other means, such as audio or video format compatible with his/her disability). Your child may terminate the Delegation of Rights at any time and begin making his/her own educational decisions. The Delegation of Rights will remain in effect for one year after signing it and may be renewed annually.

This statement of parent rights was developed by the United State Department of Education, Office of Special Education Programs, and modified by the Illinois State Board of Education (ISBE) to comply with Illinois rules.

The reauthorized Individuals with Disabilities Education Act of 2004 (IDEA 2004) was signed into law on December 3, 2004. The provisions of the act became effective on July 1, 2005. Illinois State Board of Education (ISBE) has provided this Notice of Procedural Safeguards to inform you of your rights under the changes to the federal law.

POLICY STATEMENT
LEAST RESTRICTIVE ENVIRONMENT
ILLINOIS STATE BOARD OF EDUCATION

FEBRUARY 2000

State Board of Education Commitment

The Illinois State Board of Education ("ISBE") approves and adopts this policy on Least Restrictive Environment ("LRE") to ensure that it meets the requirements of the Individuals with Disabilities Education Act of 1997 ("IDEA" 97) and its associated regulations, 34 C.F.R. §300.550-330.556. The ISBE will ensure, as required by federal laws, rules and regulations that the State of Illinois has in effect an appropriate LRE policy and relevant rules and regulations. The ISBE will provide active and visible leadership to ensure that all public or private institutions and care facilities under State Board control and jurisdiction are aware of and practice the tenets of LRE.

Placement in the Least Restrictive Environment

LRE requires that, to the maximum extent appropriate, students with disabilities aged 3 through 21, in public or private institutions or other care facilities, are educated with children who are not disabled [34 C.F.R. §300.550 (b)(1)]. The ISBE will monitor programs and institutions that serve students with disabilities to ensure that the first placement option considered is a regular education environment, with the use of supplemental aids and services as needed. Special classes, separate schooling, or other placements by which students with disabilities are removed from the regular education environment should occur only if the student's Individual Educational Program ("IEP") team determines that the nature or severity of the disability is such that education in a regular classroom setting, even with the use of supplemental aids and services, cannot be achieved satisfactorily.

Continuum of Alternative Placements

Each responsible public or private agency must provide assurances to the ISBE that a continuum of alternative placements is available to address the needs of students with disabilities and ensure that those students receive special education and related services appropriate to their needs. The continuum of alternative placements must include instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions and must provide for supplementary services. The IEP team must base its placement decision on the identified needs of each student with a disability. The team must first determine how or whether the individual needs of the student can be met in the regular education classroom with individual supports and aids. It must be able to justify a more restrictive option in terms of the LRE provisions and the needs of the student.

Placements

Each public or appropriate private agency that determines educational placements for students with disabilities must assure the ISBE that:

1. Placements are based on the identified needs of individual students with disabilities as documented in their respective IEPs and considered only after the goals and objectives/benchmarks have been determined.

2. Decisions about the placement of students with disabilities are made by a group of persons, including the parents and other persons knowledgeable about the child, who will review and evaluate relevant data and consider placement options appropriate to each student's specific identified needs.

3. Placement decisions conform to the LRE provisions referenced in state and federal laws, rules and associated regulations.

4. Placements of students with disabilities are determined at least annually.

5. Placements are located as close to the student's home as possible. First consideration is given to the school the student would attend if not disabled and other placements are considered only if the IEP team determines that the student's needs require a different location to ensure a free appropriate public education in the least restrictive environment.

6. Full-time placement of a student with a disability in the general education setting is not appropriate where the student, despite the provisions of supplemental aids and services, is so disruptive in all or part of a general education setting that he/she significantly impairs the education of other students.

7. Students with disabilities should not be removed from placement in an age appropriate regular classroom solely because modifications or supports or services may be required in the general education curriculum or for administrative convenience.

8. To the maximum extent appropriate, students with disabilities are involved in the regular education curriculum. The IEP must include a statement regarding the effect of the child's disability on his or her progress and involvement in the general education curriculum.

9. Each student's IEP states whether the student will participate in state and/or local district assessments, and if so, whether fully or in part, and whether any modifications or accommodations are appropriate and necessary. If the student with a disability is excluded from these assessments, the IEP team describes what alternate assessment techniques will be used and how scores will be integrated and reported (34 C.F.R. §300.138-300.139).

Nonacademic Settings

The LRE mandate also applies to nonacademic services and extracurricular activities. School districts and other agencies serving students with disabilities must ensure that these students have an equal opportunity to participate in such activities (34 C.F.R. §300.553). When a district or appropriate private agency provides or arranges nonacademic and extracurricular services/activities appropriate for a student with disabilities, the IEP team must determine the required supplementary aids and services necessary for participation. Nonacademic and extracurricular services/activities may include, but not be limited to, meals, recess periods, counseling services, athletics, transportation, health services, recreational activities, special interest groups, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available [34 C.F.R. §300.306(b)].

Children in Public, Nonpublic or Private Facilities

To ensure that students with disabilities are educated in the LRE and receive a free appropriate public education, the ISBE will enter into agreements with appropriate public and private institutions and associated state agencies, as necessary.

Technical Assistance and Training

The ISBE will ensure that teachers and administrators in public agencies that deal with students with disabilities are fully informed about their responsibilities for implementing the LRE requirements. The ISBE will provide technical assistance and training necessary to assist in this effort.

Monitoring Activities

The ISBE will monitor public agencies to ensure that the LRE requirements are being implemented. If the ISBE

discovers evidence that placements inconsistent with the LRE mandate are being made, staff will review the public agency's justification and documentation and then help the agency plan and implement any necessary corrective action.