V. PROCEDURAL SAFEGUARDS/DISCIPLINE

The following statements reflect the policy which the Missouri Department of Elementary and Secondary Education (Department) has established to ensure procedural safeguards for all parties involved in the education of students with disabilities.

1. OPPORTUNITY TO EXAMINE EDUCATION RECORDS/PARENT PARTICIPATION IN MEETINGS (34 CFR 300.501)

Each responsible public agency shall provide the parent of a child with a disability the opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of a free appropriate public education to the child.

Each responsible public agency shall provide proper notice to ensure parents have the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the child.

A meeting does not include informal or unscheduled conversations involving staff and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

The IEP team determines the educational placement for each child with a disability.

2. INDEPENDENT EDUCATIONAL EVALUATION (IEE) (34 CFR 300.502)

The parents of a student with a disability have a right to obtain an Independent Educational Evaluation (IEE) of their child. That right is subject to the requirement that the independent evaluation must meet the educational evaluation criteria used by the responsible public agency when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent evaluation.

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question.

The right to an independent educational evaluation assures:

A. that upon requesting an IEE, information about where an independent evaluation may be obtained and the agency criteria applicable for independent educational evaluations will be given to parents.
B. that parents have the right to an independent evaluation at public expense for any agency evaluation, with which the parents disagree. If a parent requests an IEE at public expense, however, the responsible public agency must, without unnecessary delay, either file a due process hearing as described in Regulation V. to show that the agency

evaluation is appropriate or ensure that an IEE is provided at public expense, unless the agency demonstrates in a hearing that the evaluation obtained by the parent did not meet agency criteria. If the final decision is that the agency evaluation is appropriate, the parents still have the right to an independent educational evaluation, but not at public expense.

1) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

C. that parents cannot be required to notify the responsible public agency prior to obtaining an independent evaluation at public expense. However, it is reasonable for the responsible public agency to request notification before such an evaluation is conducted. Likewise, a parent cannot be required to explain why they object to the public evaluation, but it is reasonable for the responsible public agency to ask why.

D. that if the responsible public agency has a policy regarding reimbursement for independent evaluations, that policy will specify the factors to be considered in the determination of public funding for the evaluation. That determination should be based on:

1) the qualifications and locations of the evaluators, and
2) the cost of the evaluation.

The public agency may only impose limitations on the cost of an IEE if the agency uses those same limitations when conducting an evaluation. If a public agency uses such cost limitations, it must ensure that its procedures require payment for an IEE at a higher rate if an appropriate IEE cannot, in light of the child's unique needs and other unique circumstances, be obtained within those cost limitations. If the cost of an IEE at public expense exceeds the agency's cost limitations, the public agency must either:

1) initiate a due process hearing or
2) pay the full cost of the IEE.

E. that if the responsible public agency has a policy regarding reimbursement for independent evaluations and that policy establishes allowable maximum charges for specific tests or types of evaluations, the maximum set will still enable parents to choose from among qualified professionals in the area and will result only in the elimination of excessive fees. The policy shall specify that the responsible public agency will pay the fee for the independent evaluation up to the maximum established. Additionally, the policy will anticipate that a student's "unique circumstances" may justify an evaluation that exceeds the allowable cost criteria.

F. that if the responsible public agency has no policy which sets maximum allowable charges for specific tests or types of evaluation, then the parents will be reimbursed for services rendered by a qualified evaluator.

G. except for the location of the evaluation and the qualifications of the examiner, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. These criteria for IEEs at public expense must apply equally to the public agency's own evaluations and exceptions for unique circumstances must be considered.

H. that a parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.
I. that the results of an independent evaluation obtained by the parents at public expense (or private expense if shared with the agency by the parent):

   1) must be considered by the responsible public agency if it meets agency criteria in any decision made with respect to the provisions of a free appropriate public education to the student, and
   2) may be presented as evidence at a due process hearing under this subpart regarding that student.

J. that the cost of an independent evaluation will be at public expense if a hearing officer requests an independent educational evaluation as part of a due process hearing.

3. WRITTEN NOTICE (34 CFR 300.503)

Written notice must be given to parents a reasonable time before the responsible public agency initiates or changes the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student or refuses to initiate or change the identification, evaluation, educational placement, or the provision of a free appropriate public education of the student. The notice must be written in language understandable to the general public and provided in the native language of the parents or other mode of communication used by the parents, unless it is clearly not feasible to do so.

If the native language or other mode of communication of the parents is not a written language, the responsible public agency shall ensure the following:

A. that the notice is translated orally or by other means to the parents in their native language or other mode of communication;
B. that the parents understand the content of the notice; and,
C. that there is written evidence that those requirements have been met.

<u>Content of Notice</u>

The written notice sent to parents by the responsible public agency must contain the following:

A. a description of the action proposed or refused by the agency;
B. an explanation of why the agency proposes or refuses to take the action;
C. a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposal or refusal;
D. a statement that the parents of a child with a disability have procedural safeguards protection and the means by which a copy of the description of the procedural safeguards can be obtained;
E. sources for parents to contact to obtain assistance in understanding their procedural safeguards;
F. a description of other options that the IEP Team considered and the reasons why those options were rejected; and,
G. a description of other factors that are relevant to the agency's proposal or refusal.

4. PROCEDURAL SAFEGUARDS NOTICE (34 CFR 300.504)

A copy of the state approved procedural safeguards available to the parents of a child with a disability shall be given to parents only one (1) time a school year, except that a copy also shall be given to the parents:

A. upon initial referral or parental request for evaluation;
B. upon receipt of the first due process complaint and upon receipt of the first child complaint in a school year;
C. upon a disciplinary change of placement; and,
D. upon request by the parent.

The procedural safeguards notice must include a full explanation of all of the procedural safeguards relating to independent educational evaluation; prior written notice; parental consent; access to educational records; opportunity to present and resolve complaints through due process complaint and state complaint procedures including the time period in which to file; the opportunity for the agency to resolve the complaint and the difference between the complaint procedures; the child's placement during due process proceedings; procedures for students who are subject to placement in an interim alternative educational setting; requirements for unilateral placement by parents of children in private schools at public expense; mediation; due process hearings, including requirements for disclosure of evaluation results and recommendations; civil actions including the time period in which to file those actions; and, attorneys' fees.

5. PARENTAL CONSENT (34 CFR 300.300)

Parental Consent for Services

A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child. The public agency must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child. Procedures for reasonable efforts required are the same as parent participation in IEP meetings.

If the parent of a child fails to respond or refuses to consent to services, the public agency may not use the procedures under Procedural Safeguards (including mediation or due process) in order to obtain agreement or a ruling that the services may be provided to the child.

If the parent of a child refuses to consent to the initial provision of special education and related services or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public agency will not be considered to be in violation of providing FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent. The public agency is not required to convene an IEP Team meeting or develop an IEP for the child for the special education and related services for which the public agency requests such consent.

Parental Consent for Reevaluations

Each public agency must obtain informed parental consent, prior to conducting any reevaluation of a child with a disability. If the parent refuses to consent to the reevaluation, the public agency may, but is not required to, pursue the reevaluation by using the consent override procedures (mediation or due process). The public agency does not violate its obligation under child find or evaluations if it declines to pursue the evaluation or reevaluation.

Parental Consent to Access Public Insurance

Before accessing a child's or parent's public benefits or insurance for the first time, and annually thereafter, a public agency must provide written notification, to the child's parents. The notification must be written in language understandable to the general public and 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.

A public agency must obtain parental consent before the public agency accesses a child's or parent's public benefits or insurance for the first time. This is a one-time consent, i.e., the public agency is no longer required to obtain parental consent each time access to public benefits or insurance is sought.

The annual notification must state:

A. The public agency may not require parents to sign up for or enroll in public benefits or insurance programs in order for their child to receive services in the IEP that it is required to provide at no cost to the parents.
B. The public agency may not require parents to incur an out-of-pocket expense such as the payment of a deductible or co-pay amount incurred in filing a claim for services.
C. The public agency may not use a child's benefits under a public benefits or insurance program if that use would:
    a. Decrease available lifetime coverage or any other insured benefit;
    b. Result in the family paying for services that would otherwise be covered by the public benefits or insurance program and that are required for the child outside of the time the child is in school;
    c. Increase premiums or lead to cancellation of benefits or insurance; or
    d. Risk loss of eligibility for home and community-based waiver, based on aggregate health-related expenditures.
D. Withdrawal of consent or refusal to provide consent for billing public insurance does not relieve the school district or other responsible public agency of its responsibility to ensure that all required services in the IEP are provided at no cost to the parents.
E. Parents have the right to consent or withdraw their consent for disclosure of their child's personally identifiable information (e.g. records or information about the services that may be provided under the IEP) to the agency responsible for the administration of the State's public benefits or insurance program at any time. Such disclosure will identify the purpose of the disclosure (e.g. billing for services), and the agency to which the disclosure may be made (e.g. MO HealthNet).

Other Consent Requirements

Parent consent is not required before reviewing existing data as part of an evaluation or a reevaluation or 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.

If a parent of a child who is home-schooled or placed in a private school by parents at their own expense does not provide consent for the initial evaluation or the reevaluation or the parent fails to respond to a request to provide consent, the public agency may not use the consent override procedures. The public agency is not required to consider the child as eligible for special education and related services.

Definition of "Efforts"

Consent is not necessary for any subsequent placements and consent for reevaluations need not be obtained if the responsible public agency can demonstrate that it made reasonable efforts to obtain consent and the parent failed to respond. "Reasonable efforts" include a minimum of two (2) attempts documented, such as: detailed records of telephone calls made and the results of those calls; copies of correspondence sent to the parent and responses received; or, detailed records of visits to the parent's home or work place and the results of those visits. Neither may lack of consent after the initial evaluation or the initial placement be a cause for denial of any other service, activity, or benefit of the responsible public agency.

Parent consent means that the:

A. 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;
B. 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) which will be released and to whom; and,
C. parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; however, if the parent revokes consent, that revocation is not retroactive.

Parental Revocation of Consent (34 CFR 300.9 and 300.300)

A parent may unilaterally withdraw a child from further receipt of special education and related services by revoking their consent for the continued provision of special education and related services to their children. A public agency may not, through mediation or a due process hearing, challenge the parent's decision or seek a ruling that special education and related services must continue to be provided to the child. Parental revocation of consent must be in writing.

Upon receipt of the parent's written revocation of consent, a public agency:

- must provide the parent with prior written notice before ceasing the provision of special education and related services
- will not be considered in violation of requirement to make FAPE available to the child because of the failure to provide the child with special education and related services
- is not required to convene an IEP team meeting or develop an IEP for the child
- is not required to amend the child's education records to remove any references to the child's receipt of special education and related services

6. ADMINISTRATIVE HEARING RIGHTS

Mediation (34 CFR 300.506)

The Department of Elementary and Secondary Education makes mediation available to allow parents or adult students and responsible public agencies to resolve disagreements involving any matter under Part B of IDEA, including matters arising prior to the filing of a due process complaint. Mediation will be provided at no cost to either party. Department funded mediation is not available to resolve disputes between parents or between districts and persons other than the parent (or adult student).

A. Process

The parties must agree to mediate and mutually agree on a mediator from the trained mediator list maintained by the Department of Elementary and Secondary Education, Office of Special Education.

1) The parties shall notify the Department of the mediator selected and the Department will send a letter empowering them to proceed. Mediators will not be paid if they have not been empowered by the Department.
2) Mediation must be scheduled within fifteen (15) days of the selection of a mediator.
3) Mediation must be conducted at a time and place that is convenient to both parties.
4) Mediation must be completed within thirty (30) days of the agreement to mediate.
5) Any agreement reached during mediation must be in writing and delivered to each party.
6) No more than three (3) persons can accompany each party unless the parties mutually agree on additional participants.
7) No attorney shall participate or attend on behalf of any party at the mediation session. However, parents may be accompanied by a lay advocate.
8) Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under Part B of IDEA.
9) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that states that all discussions that occurred during the mediation will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding and is signed by both the parent and a representative of the agency who has the authority to bind such agency.

10) The written signed agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court.
11) If the parties are not able to reach an agreement through the mediation process, the mediator will notify the department.

B. Mediator Qualifications

1) Mediators must be impartial and free of any conflict of interest.
2) Mediators shall not be employees of an LEA or a public agency which is involved in the education or care of the student or of the State Board of Education. A person who otherwise qualifies as a mediator is not an employee of the State Board of Education or LEA solely because he or she is paid by the agency to serve as a mediator.
3) Mediators must have a minimum of sixteen (16) hours of training as a mediator.
4) Mediators, to be placed on the Department's mediator list, must meet all regulations, requirements, and must agree to be compensated at a rate set by the Department and provide the Department with a resume or biographical statement reflecting their qualifications.
5) Mediators must be knowledgeable in laws and regulations relating to the provision of special education and related services.

Filing a Due Process Complaint (34 CFR 300.507)

Parents or a public agency may file a due process complaint with the Department of Elementary and Secondary Education, Office of Special Education concerning the proposed action of the agency to initiate or refuse to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

The due process complaint must allege a violation that happened not more than two years before the date the parent or the public agency knew or should have known about the alleged action that forms the basis of the due process complaint. The above timeline does not apply if the complainant could not file a due process complaint within the timeline because:

A. the public agency specifically misrepresented that it had resolved the issues identified in the complaint, or
B. the public agency withheld information that it was required to provide under Part B of IDEA.

The Department shall inform parents of any free or low-cost legal and other relevant services available in the area upon their request or if a parent or the responsible public agency files a due process complaint.

Due Process Complaint (34 CFR 300.508)

In order to request a due process hearing, a parent or the public agency (or the attorney representing either party) must provide the other party with a copy of the due process

complaint. That complaint must contain all of the content listed below and must be kept confidential. The party filing a due process complaint must forward a copy of the complaint to the Department of Elementary and Secondary Education.

The content of the complaint must include:

A. the name of the child;
B. the address of the child's residence;
C. the name of the child's school;
D. if the child is a homeless child or youth, the child's contact information and the name of the child's school;
E. a description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; and,
F. a proposed resolution of the problem to the extent known and available at the time.

A complaint is filed on the date it is received by the Department if received during business hours of the Office of Special Education as posted on the website. Complaints received after business hours will be filed the following business day.

Administrative Hearing Commission to Process and Hear the Complaints

Within two (2) business days of the filing of the complaint, the Office of Special Education will forward the complaint to the Administrative Hearing Commission for a hearing. All further documentation must be filed with the Administrative Hearing Commission by fax or mail or as otherwise provided by the Administrative Hearing Commission Rules.

Sufficiency of Complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (parent or the responsible public agency) notifies the Administrative Hearing Commission and the other party, in writing, within fifteen (15) calendar days of receiving the complaint, that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within five (5) calendar days of receiving the notification, **that** the receiving party (parent or the responsible public agency) considers a due process complaint insufficient, the Administrative Hearing Commission must decide if the due process complaint meets the requirements listed above and notify the parent and the responsible public agency, in writing, immediately.

Complaint Amendment

The party who files the complaint may amend the complaint only if:

A. the other party approves of the changes, in writing, and is given the chance to resolve the due process complaint through a resolution meeting, described below, or

B. by no later than five (5) days before the due process hearing begins, the Administrative Hearing Commissioner grants permission for the changes.

If the complaining party makes changes to the due process complaint, the timelines for the resolution meeting (within fifteen (15) calendar days of receiving the complaint) and the time period for resolution (within thirty (30) calendar days of receiving the complaint) start again on the date the amended complaint is filed.

Withdrawal of Complaint

Unless a motion for decision without hearing has been filed or the hearing has started, a complaining party can withdraw a complaint by sending a written notice of withdrawal or making a verbal request to the Administrative Hearing Commission. If a motion for decision has been filed or the hearing has started, the complaining party shall make a request for withdrawal in writing to the Administrative Hearing Commission ~~who~~ **which** will rule on the request.

Responsible Public Agency Response to a Due Process Complaint

If the public agency has not sent a prior written notice to a parent regarding the subject matter contained in their due process complaint, the public agency must, within ten (10) calendar days of receiving the due process complaint, send a response to the parent and the Administrative Hearing Commission that includes:

A. an explanation of why the public agency proposed or refused to take the action raised in the due process complaint;
B. a description of other options that the child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
C. a description of each evaluation procedure, assessment, record, or report the public agency used as the basis for the proposed or refused action; and,
D. a description of the other factors that are relevant to the public agency's proposed or refused action.

Providing the information in items A-D above does not prevent the public agency from asserting that the due process complaint was insufficient.

Answer to a Due Process Complaint

Except as stated under the sub-heading immediately above, the party receiving a due process complaint must, within ten (10) calendar days of receiving the complaint, send the other party and the Administrative Hearing Commission an answer that specifically addresses the issues in the complaint.

Model Forms (34 CFR 300.509)

The Department of Elementary and Secondary Education has developed model forms to help parties to file a due process complaint and a child complaint. However, parties are not required to use these model forms. Parties can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint.

Resolution Process (34 CFR 300.510)

Resolution Meeting

Within fifteen (15) calendar days of receiving notice of a parent's due process complaint or amended complaint, and before the due process hearing begins, the responsible public agency must convene a meeting with the parent and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in the due process complaint. The meeting:

A. must include a representative of the responsible public agency who has decision-making authority on behalf of the public agency, and
B. may not include an attorney of the responsible public agency unless the parent is accompanied by an attorney.

Parents and the responsible public agency determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for the parent to discuss their due process complaint and the facts that form the basis of the complaint so that the public agency has the opportunity to resolve the dispute. The resolution meeting is not necessary if the parent and the responsible public agency agree, in writing, to waive the meeting or if the parent and the responsible public agency agree to use the mediation process.

The responsible public agency shall notify the Department of Elementary and Secondary Education and the Administrative Hearing Commission of the date of the resolution meeting and the result or that a decision was made not to hold a resolution meeting.

Resolution Period

If the public agency has not resolved the due process complaint to the satisfaction of the parent within thirty (30) calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The forty-five (45) calendar day timeline for issuing a final decision begins at the expiration of the thirty (30) calendar day resolution period, with certain exceptions for adjustments made to the thirty (30) calendar day resolution period, as described below.

Except where the parties have both agreed to waive the resolution process or to use mediation, the failure of the parent to participate in the resolution meeting will delay the

timelines for the resolution process and due process hearing until the parent agrees to participate in a meeting.

If after making reasonable efforts and documenting such efforts, the public agency is not able to obtain the parent's participation in the resolution meeting, the public agency may, at the end of the thirty (30) calendar day resolution period, request that the Administrative Hearing Commission dismiss the due process complaint.

If the public agency fails to hold the resolution meeting within fifteen (15) calendar days of receiving notice of the parent's due process complaint or fails to participate in the resolution meeting, the parent may ask the Administrative Hearing Commission to order that the forty-five (45) calendar day due process hearing timeline begin.

Adjustments to the Thirty (30) Calendar Day Resolution Period

The forty-five (45) day timeline for the due process hearing starts the day after one of the following events:

A. both parties agree, in writing, to waive the resolution meeting;
B. after either the mediation or the resolution meeting starts but before the end of the thirty (30) calendar day resolution period, the parties agree, in writing, that no agreement is possible; or,
C. both parties agree, in writing, to continue the mediation process at the end of the thirty (30) calendar day resolution period but later, either party withdraws from the mediation process.

Written Settlement Agreement

If a resolution to the dispute is reached at the resolution meeting, the parties must enter into a legally binding agreement that is:

A. signed by the parent and a representative of the public agency who has the authority to bind the agency, and
B. enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States.

The parties' agreement does not need to be filed with, or adopted or approved by, the Administrative Hearing Commission to be legally binding.

Agreement Review Period

If the parties execute an agreement as a result of a resolution meeting, either party may void the agreement within three (3) business days of the agreement's execution.

State-level Due Process Hearings

A. Process: The Administrative Hearing Commission processes all due process complaints handling all issues after the filing of the complaint to the final decision. A

complaint shall be assigned to a Commissioner who meets the training requirements of state law in regard to special education matters. The provisions of chapters 536 and 621, RSMo and the procedural rules adopted by the Administrative Hearing Commission shall be followed unless they conflict with the federal regulations or state statutes implementing the Individuals with Disabilities Education Act.

B. Hearing Rights: Any party to a hearing 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 students with disabilities;
2) represent themselves or be represented by a licensed Missouri attorney;
3) present evidence and confront, cross-examine, and compel the attendance of witnesses;
4) prohibit the introduction of any evidence, including all evaluations and recommendations based on the offering party's evaluation at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
5) obtain a written or, at the option of the parents, electronic verbatim record of the hearing at no cost; and,
6) obtain written or, at the option of the parents, electronic findings of fact and decisions at no cost.

In addition, the parents or the student if they are the educational decision maker, have the right to open the hearing to the public; otherwise, it is closed. The parents may also elect to have the student present at the hearing. Any student over age 18 has the right to attend the hearing, unless their legal guardian, if any, objects.

C. Subject Matter: The party that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Hearing Decisions (34 CFR 300.513)

A decision on whether a child received a free appropriate public education (FAPE) must be based on substantive grounds.

In matters alleging a procedural violation, the Administrative Hearing Commission may find that a child did not receive FAPE only if the procedural inadequacies:

A. impeded the child's right to a free appropriate public education (FAPE);
B. significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to their child; or,
C. caused a deprivation of an educational benefit.

None of the provisions described above shall be interpreted to prevent the Administrative Hearing Commission from ordering a public agency to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR 300.500-300.536).

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA (34 CFR 300.500-300.536) shall be interpreted to prevent a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Finality of Decision

Once the Administrative Hearing Commission has issued a final decision, no motion for reconsideration is permitted. However, if a final decision contains technical or typographical errors, a party may request correction of the errors if the correction does not change the outcome of the hearing or substance of the final hearing decision. Requests for a change of a technical or typographical error do not toll the time for an appeal. The Commission~~er~~ **shall** ~~hearing the case~~ make~~s~~ the determination ~~if~~ whether such a change is necessary.

Findings and Decision to Advisory Panel and General Public

The Administrative Hearing Commission shall mail a copy of the written findings and decision to each party and to the State Department of Elementary and Secondary Education (Department). The Department shall provide a copy of the findings and decision (with all personal identifiers removed) to the Missouri Special Education Advisory Panel and shall make the findings and decision available to the public (with all personally identifiable information removed).

Timelines and Convenience (34 CFR 300.515)

Except in the case of an expedited hearing provided for below, the hearing must be held and a written decision rendered and mailed within forty-five (45) days of the expiration of the thirty (30) day resolution period or the adjusted time period specified. The decision timeline may be extended upon request of a party and agreement by the Administrative Hearing Commissioner. The Administrative Hearing Commissioner cannot grant an extension without a request from one or both parties.

Site of the Hearing

Each hearing must be held at a time and place which is reasonably convenient to the parents and student involved.

Civil Proceedings (34 CFR 300.516)

Any party aggrieved by the findings and decisions made in a hearing may appeal the decision within forty-five (45) days to the State courts as provided in Chapter 536, RSMo., or in Federal court without regard to the amount in controversy. To the extent that Chapter 536, RSMo. provisions conflict with the IDEA judicial review requirements at 34 CFR 300.516 the IDEA judicial review provisions are controlling. The court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and shall base its decision on the preponderance of the evidence, granting the relief the court deems appropriate.

Commissioner Qualifications to Hear Due Process Complaints

Hearing Commissioners:

A. shall not have a personal or professional interest in the matters that are before them which would conflict with their objectivity in the hearing;
B. shall have an affirmative obligation to seek out any conflict of interest and withdraw from any matter in which a conflict is identified;
C. shall not have been employed within the last five years by a school district or organization engaged in special education parent or student advocacy;
D. shall not have performed work for a school district or for a parent or student as a special education advocate within the last five years as an independent contractor or consultant;
E. shall not have been employed within the last five years by the State Board of Education or Department of Elementary and Secondary Education;
F. shall not have performed work for the State Board of Education or Department of Elementary and Secondary Education within the last five years as an independent contractor or consultant;
G. shall not have been a party to a special education proceeding as an attorney, parent, or child; and,
H. must be knowledgeable and understand the provisions of IDEA, and Federal and State regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and State courts and have had at least 10 hours of initial training in special education matters and shall annually complete a minimum of five hours of training.

Hearing Commissioners must have the knowledge and ability to conduct hearings, and to make and write decisions consistent with appropriate, standard legal practice.

Specific allegations of conflict of interest may be filed with the Administrative Hearing Commission.

A person who otherwise qualifies to conduct a hearing is not an employee of the agency because he or she is paid by the agency to serve as a hearing officer.

Pre-Hearing Conference

The Administrative Hearing Commission has the option to conduct a prehearing conference.

Administrative Hearing Commission Orders

The Commission~~er~~ has the authority to take any actions necessary to ensure the compliance with all requirements of the law. If the Commission~~er~~ orders a party to do an act or not to do an act, the party must comply with the order. Objections to orders must be made as part of the record as promptly as possible. The Commission~~er~~ has the authority to dismiss an action with, or without, prejudice if the party filing the request fails to comply with an order. The Commission~~er~~ has the authority to preclude the other party from presenting defenses and may impose sanctions as allowed by the regulations of the Administrative Hearing Commission.

Subpoenas

Parties may request subpoenas for witnesses from the Administrative Hearing Commission in accordance with section 536.077.

Hearing Procedures

The Commissioner shall hold the hearing and shall rule on procedural and evidentiary matters. The Commissioner must ensure that issues for the hearing are appropriately identified and that evidence is relevant and not cumulative. The Commissioner shall limit the hearing to the amount of time necessary for each party to present its case. The Commissioner has authority to question witnesses and request information.

A. Length of Presentations

The Commissioner may limit the length of any presentation in order to proceed with the hearing in an expeditious manner. In general, a hearing should last no longer than two (2) days. Any hearing exceeding two (2) days requires good cause to be shown and must be documented on the record.

B. Exclusions

1) The parties shall exchange lists of exhibits and lists of their witnesses at least five (5) business days before the hearing or two (2) days before an expedited hearing. Any party has the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party in accordance with this rule.

2) Evidence or testimony may also be excluded at the hearing if:

   a) it is cumulative, irrelevant, or unnecessary;
   b) it represents the legal conclusion of a witness; or,
   c) it is speculation on the part of the witness.

   This is not an exhaustive list of all bases for excluding evidence or testimony.

3) Admissibility of evidence shall be determined by the Administrative Hearing Commission in accordance with Missouri law, including but not limited to § 536.070, RSMo and the Individuals with Disabilities Education Act and supporting regulations.

C. Communication with Hearing Commissioners

No party or attorney may communicate with the Commissioner on the merits of the case unless all parties have the opportunity to participate. Communiction with the

Commission should be directed to the Commission's primary telephone number, 573-751-2422.

All pleadings must be filed by fax or mail or as otherwise provided by **the** Administrative Hearing Commission ~~rules~~.

D. Witnesses

At the request of a party or upon the Commissioner's own motion, the Commissioner may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses. The Commissioner has authority to question witnesses and request information.

E. Limitations

The Commissio~~ner~~ may, at ~~his or her~~ **its** discretion, limit the number of witnesses, the length of direct and cross examination, and the number and type of documents used as evidence in the hearing.

Consolidation of Cases

A. Standards for Consolidation

The Commission may consolidate two (2) or more separate cases for hearing if the cases involve the same student, present substantially the same issues of fact and law, if the consolidation would save time and costs, and if consolidation would not prejudice any party.

B. Request for Consolidation

A party requesting consolidation must serve a written request for consolidation on all parties to the cases to be consolidated and the Commissio~~ners assigned to the cases~~. Any party objecting to the request must serve and file their objections within five (5) calendar days following service of the request for consolidation.

C. Determination

The Administrative Hearing Commission will rule on the request for consolidation.

Hearing Officer List

The Department shall keep a list of Commissioners who may hear due process complaints. The list must include a statement of the qualification of each of the Commissioners.

Attorneys' Fees (34 CFR 300.517)

Only a court of law can award attorneys fees.

In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs:

A. to a prevailing party who is a parent of a child with a disability;
B. to a prevailing party who is a state educational agency or local educational agency against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or,
C. to a prevailing state educational agency or local educational agency 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.

Funds under Part B of IDEA may not be used to pay attorney fees or costs of a party related to an action or proceeding under this section. A public agency may use Part B funds for conducting an action or proceeding under this section.

A court award for reasonable attorney fees is subject to the following:

A. the award must be based on prevailing rates in the community in which the action arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fee award;
B. attorney fees and related costs may not be reimbursed for services performed subsequent to the time of a written offer of settlement to a parent if: 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 ten (10) days before the proceeding begins; the offer is not accepted within ten (10) days; and the court or hearing officer finds that the relief finally obtained is not more favorable to the parents than the offer of settlement. However, if the parent prevails and was substantially justified in rejecting the settlement offer, an award of attorney fees and related costs may be made;
C. attorney fees may not be awarded related to any meeting of the IEP team unless the meeting is convened as a result of an administrative proceeding or judicial action;
D. attorney fees may not be awarded related to a resolution meeting; and,
E. the court may reduce the amount of attorney fees awarded if: the parent or the parent's attorney unreasonably protracted the final resolution of the controversy, the amount unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; the time spent and legal services furnished were excessive considering the nature of the action/proceeding; or, the attorney representing the parent did not provide to the responsible public agency the appropriate information in the due process request notice required by regulation.

   NOTE: Attorney fees may not be reduced if the court finds the state or local agency unreasonably protracted the final resolution or there was a violation of the Procedural Safeguards.

Maintenance of Placement (34 CFR 300.518)

During the pendency of any administrative or judicial proceeding regarding a due process complaint requesting a due process hearing, the child shall remain in his or her current placement, unless such change has been made with the agreement of the parent or guardian. Students who are endangering themselves or others can have their status changed, without the agreement of the parent or guardian. The Administrative Hearing Commission cannot order a change of placement during a dispute; but the parent or guardian and the district can agree to a change.

When a responsible public agency contacts a State Board of Education operated program for consideration of a student's eligibility for acceptance and enrollment, the responsible public agency shall assure that the student will be enrolled or will maintain enrollment in the responsible public agency pending final action by the state.

If the decision in a due process hearing agrees with the student's parents that a change of placement is appropriate, that placement must be treated as an agreement between the local school district or responsible public agency and the parents for purposes of "stay-put" pending and during judicial appeal.

7. EDUCATIONAL SURROGATES (34 CFR 300.519)

The Missouri Department of Elementary and Secondary Education has established the following for the appointment of educational surrogates:

Identifying the Need for Appointment

Any person may advise a responsible public agency that a student with a disability within its jurisdiction may be in need of a person to act as an educational surrogate. Notice can be given to the public agency responsible for providing education to students with disabilities or directly to the Office of Special Education.

Process of Appointment

When the public agency responsible for providing education to students with disabilities is informed of a student with disabilities living within its jurisdiction, it shall, within thirty (30) days, determine whether an educational surrogate should be appointed. A request for the appointment of a surrogate shall be made within ten (10) days to the Office of Special Education. The Office, on behalf of the State Board of Education, shall, within thirty (30) days, appoint a person to act as an educational surrogate. The Office shall maintain a registry of trained educational surrogates from which they will select individuals for appointment. If an educational surrogate dies, resigns, or is removed, within fifteen (15) days thereof, a replacement will be appointed.

Criteria for Appointment

The State Board of Education shall appoint a person to act as a surrogate for the parent or guardian of a child with a disability as defined in Section 162.675, RSMo., when:

A. the child has no identified parent;
B. the child has parents who, after reasonable efforts, cannot be located by a public agency;
C. the child is a ward of the state and is living in a facility or group home (and not with a person acting as a parent); or,
D. the child is an unaccompanied homeless youth.

Definitions

The Department will use the following definitions when determining a child's eligibility to receive a surrogate appointment:

A. the term "parent" means a biological, adoptive, or foster parent of a child or a guardian generally authorized to make educational decisions for the child (but not the State if the child is a ward of the State), a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives; an individual who is legally responsible for the child's welfare; or, an educational surrogate who has been appointed.

Qualifications for Appointment

Any person who is appointed to act as an educational surrogate shall:

A. be at least eighteen (18) years of age;
B. not be an employee of the SEA, responsible public agency or any other agency that is involved in the education or care of the child with disabilities (a person otherwise qualified to be an educational surrogate is not an employee of an agency simply because he or she is reimbursed to serve as an educational surrogate);
C. not be a contractor of a nonpublic agency that provides only non-educational care for the child;
D. not be a contractor of responsible public agency;
E. be free from any personal or professional interest that may conflict with the interests of the child represented; and,
F. have knowledge and skills that ensure adequate representation of the child.

In the case of a child who is a ward of the State, the educational surrogate alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the above requirements.

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary educational surrogates without regard to the above requirements, until an educational surrogate can be appointed that does meet those requirements.

Educational Surrogate Training

All educational surrogates shall participate in a training session in which they will become familiar with the Missouri Educational Surrogate Program, acquire a basic understanding of the special education process in Missouri, and develop the knowledge and skill necessary to adequately represent a student. The Department shall provide the educational surrogate training and may require assistance from the LEA to present an effective training session.

Responsible Public Agency Responsibilities

Specifically, a responsible public agency shall:

A. designate a staff member who will be responsible for overseeing the educational surrogate program in their district. Unless notified otherwise, the Department will assume that the educational surrogate contact person is the same as the district's special education director or contact person;
B. complete and return to the Department a "Determination of Need for Surrogate Appointment" form for each student believed to be eligible for receiving a surrogate appointment;
C. assist the Department in recruiting educational surrogate volunteers and submit their names and addresses to the Department;
D. be available to aid the Department with local educational surrogate training; and,
E. complete and return to the Department an “LEA Educational Surrogate Evaluation” form for each surrogate serving in the district.

Duties of the Educational Surrogate

An individual appointed to act as an educational surrogate shall:

A. complete and return to the Department an Educational Surrogate Application and Verification of Eligibility form;
B. attend an educational surrogate training session;
C. represent their assigned student in all decisions relating to the student's education including matters related to the identification, evaluation, and educational placement of the child, as well as the provision of a free appropriate public education to the child; and,
D. notify the LEA or the Department if any conflicts develop or if they will no longer be able to fulfill their educational surrogate role.

Immunity from Liability

The person appointed to act as an educational surrogate shall be immune from liability for any civil damage arising from any act or omission in representing the student in any decision related to the student's education.

This immunity shall not apply to intentional conduct, wanton and willful conduct, or gross negligence.

Reimbursement

The person appointed to act as an educational surrogate shall be reimbursed by the State Board of Education for all reasonable and necessary expenses incurred as a result of his or her representation of a student with a disability. Determination of "reasonable and necessary" expenses shall be made at the discretion of the Department and pursuant to State Office of Administration guidelines. Such expenses do not include attorney fees or child care/babysitting expenses.

Evaluation

The Department will send to each LEA an evaluation form to complete for each educational surrogate in which they will recommend the continuation or termination of the surrogate appointment. LEAs shall provide brief written discussions supporting a recommendation of termination and attach any existing documentation. Upon receipt of a recommendation of termination, the Office will investigate and reach a decision on whether to terminate.

Termination

The educational surrogate appointment shall be terminated at the request of the educational surrogate or in the event of any of the following situations:

A. the conclusions of the initial educational evaluation indicate that the student does not qualify for receiving special education;
B. the student's parent or guardian reappears to represent him or her or wardship is terminated;
C. the student is no longer in need of special education services;
D. the student reaches the age of majority;
E. the educational surrogate fails to fulfill their responsibilities as defined by State and Federal regulations; and,
F. the student graduates and/or reaches age twenty-one (21).

8. TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY (34 CFR 300.520)

When a student with a disability reaches age eighteen (18) or otherwise is emancipated in accordance with state law, the local school district or responsible public agency shall provide any required notice to both the student and the parents. All other rights accorded to parents under Part B of IDEA transfer to the student. All rights accorded to parents transfer to students, at age eighteen (18), who are incarcerated in an adult or juvenile, State or local correctional institution. The student and parent must be notified of the transfer of rights. The transfer does not apply if the student is declared incompetent by a court of competent jurisdiction.

9. DISCIPLINARY ACTIONS/REMOVALS/EXPEDITED HEARINGS

Authority of School Personnel

School personnel may consider any unique circumstances on a case by case basis when determining whether a change of placement, consistent with other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

Ten (10) School Days or Less

School personnel under this subsection may remove a child with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten (10) consecutive school days (to the extent such alternatives are applied to children without disabilities) without providing services. School personnel may also impose additional removals of not more than ten (10) school days consecutively in that same school year for separate incidents, as long as those removals do not constitute a change of placement. Once a child has been removed from his or her placement for a total of ten (10) school days in the same school year, the school district must, during any subsequent days of removal in that school year, provide services to the extent required below under the subheading "Services."

Long Term Suspension

If school personnel seek to order a change in placement that would exceed ten (10) school days consecutively and the behavior that gave rise to the violation of the school code is determined not to be 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 and for the same duration in which the procedures would be applied to children without disabilities, except services must be provided to ensure the child receives a free appropriate public education, although it may be provided in an interim alternative educational setting.

Change of Placement

A removal of a child with a disability from the child's current educational placement is a change of placement if:

A. the removal is for more than ten (10) school days in a row; or,
B. the child has been subjected to a series of removals that constitute a pattern because:

    1) the series of removals total more than ten (10) school days in a school year;
    2) the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and,
    3) of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another; and,

The school district determines whether a pattern of removals constitutes a change of placement on a case-by-case basis. That determination is subject to review through due process and judicial proceedings.

Services

The services that must be provided to a child with a disability who has been removed from the child's current placement may be provided in an interim alternative educational setting.

A school district is only required to provide services to a child with a disability who has been removed from his or her current placement for ten (10) school days or less in that school year, if it provides services to a child without disabilities who has been similarly removed.

A child with a disability who is removed from the child's current placement for more than ten (10) school days must:

A. continue to receive educational services, so as to enable the 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 child's IEP, and
B. receive, as appropriate, a functional behavioral assessment, and behavior intervention services, and modifications that are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for ten (10) school days in that same school year and, if the current removal is for ten (10) school days in a row or less and if the removal is not a change of placement (see definition below), then school personnel, in consultation with at least one (1) of the child's teachers, shall determine the extent to which services are needed to enable the 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 child's IEP.

If the removal is a change of placement, the child's IEP Team shall determines the appropriate services to enable the 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 child's IEP.

Manifestation

Within ten (10) school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or, if the conduct in question, was the direct result of the local educational agency's failure to implement the IEP.

If the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the LEA) determine that either the conduct in question was caused by or had a direct and substantial relationship to the child's disability; or, if the conduct in question, was the direct result of the local educational agency's failure to implement the IEP applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

Determination that Behavior Was a Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement. If the child already has such a behavioral intervention plan, the IEP Team must review it and modify it, as necessary, to address the behavior.

Unless the removal is due to weapons, drugs, or serious bodily injury, the child must be returned to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

Special Circumstances

Whether or not the behavior was a manifestation of the child's disability, school personnel may remove a student to an interim alternative educational setting (determined by the child's IEP Team) for up to forty-five (45) school days, if the child:

A. carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district;
B. knowingly has or uses illegal drugs (see the definition below) or sells or solicits the sale of a controlled substance (see the definition below) while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district; or,
C. has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the State Educational Agency or a school district.

On the date on which the decision to take that action is made, the parent must be notified of the decision and provided the Procedural Safeguards statement.

Determination of Setting (CFR 300.531)

The interim alternative educational setting must be determined by the IEP Team for removals that are changes of placement and forty-five (45) school day placements described under special circumstances.

Expedited Due Process Hearing (34 CFR 300.532)

The parent of a child with a disability who disagrees with any decision regarding placement, or the manifestation determination under this subsection, or a local educational agency that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others, may request an expedited due process hearing.

Authority of Commission~~er~~ in Expedited Hearings

~~A qualified hearing Commissioner~~ **The Administrative Hearing Commission** will hold the due process hearing and make a decision. The ~~hearing~~ Commission~~er~~ may:

A. return the child with a disability to the placement from which the child was removed if the ~~hearing~~ Commission~~er~~ determines that the removal was a violation of the requirements described under the heading Authority of School Personnel, or that the child's behavior was a manifestation of the child's disability, or
B. order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) school days if the hearing Commission~~er~~ determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

These expedited hearing procedures may be repeated, if the school district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or a school district files a due process complaint to request such a hearing:

A. The Administrative Hearing Commission must arrange for an expedited due process hearing, which must occur within twenty (20) school days of the date the hearing is requested and must result in a determination within ten (10) school days after the hearing.
B. Unless the parents and the school district agree, in writing, to waive the meeting or agree to use mediation, a resolution meeting must occur within seven (7) calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen (15) calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings.

The timeline for an expedited due process hearing may not be extended; however, the case may be withdrawn and re-filed.

Placement During Appeals (34 CFR 300.533)

When the parent or responsible public agency has filed a due process complaint related to disciplinary matters, the child must (unless the parent and the State Educational Agency or school district agree otherwise) remain in the interim alternative educational setting pending the decision of the Administrative Hearing Commission, or until the expiration of the time period of removal as provided for and described under the heading Authority of School Personnel, whichever occurs first.

Protection for Children Not Yet Eligible for Special Education and Related Services (34 CFR 300.534)

Students who have not been identified as disabled may be subjected to the same disciplinary measures applied to children without disabilities if the district did not have prior knowledge of the disability. If the school district is deemed to have knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action, the child may assert any of the protections for students with disabilities in the area of discipline. The district has knowledge of the disability when:

A. the parent has expressed concern in writing that the student needs special education services to supervisory or administrative personnel of the appropriate educational agency or a teacher of the child; or,
B. the parent has requested an evaluation; or,
C. the student's teacher or other school staff has expressed specific concern about a pattern of the student's behavior directly to the director of special education or to other supervisory personnel in accordance with the agency's established child find or special education referral system.

A school district would not be deemed to have knowledge that the child is a child with a disability, if the school district conducted an evaluation and determined that the child was not a child with a disability; or determined that an evaluation was not necessary and provided proper Notice of Action Refused prior to the behavior incident; or, if the parent of the child has not allowed an evaluation of the child pursuant to IDEA or has refused services.

If a request for evaluation is made during the period the student is subject to disciplinary measures, the evaluation will be expedited. Until the evaluation is completed (assuming the school district is not deemed to have knowledge that the child is a child with a disability prior to the behavior that precipitated the disciplinary action), the child remains in the educational placement determined by the school district, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, the school district shall provide special education and related services and follow all required procedures for disciplining students with disabilities.

Reporting Crimes Committed by Students With Disabilities

Nothing in this part shall be construed to prohibit a school district from reporting crimes, to appropriate law enforcement and judicial 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 students with disabilities. An agency reporting a crime shall ensure 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. Transmittal of records must be in accordance with Family Educational Rights and Privacy Act (FERPA).

Definitions

A. Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act (21 USC 812 (c)).
B. Illegal drug means a controlled substance but does not include such a substance that is legally possessed or used under the supervision of a licensed healthcare professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
C. Substantial evidence means beyond a preponderance of the evidence.
D. Weapon means dangerous weapon as defined under paragraph (2) of the first subsection (g) of Section 930 of title 18, United States Code. The term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.
E. A serious bodily injury involves an injury with a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, protracted loss or impairment of the function of a bodily member, organ, or mental faculty (18 USC 1365 (h)(3)).

LISTED BELOW ARE THE STATUTES OF THE STATE OF MISSOURI WHICH PROVIDE A LEGAL BASIS FOR PROCEDURAL SAFEGUARDS IN THIS STATE:

(Section 162.962 RSMo)
(Section 162.955, RSMo)
(Section 162.958, RSMo)
(Section 162.959, RSMo)
(Section 162.961 (1)(2)(3)(4)(5), RSMo)
(Section 162.963(1)(2), RSMo)
(Section 162.997(1)(2), RSMo)
(Section 162.998(1)(2), RSMo)
(Section 162.999(1)(2)(3)(4)(5)(6)(7)(8), RSMo)