



Georgia Department of Education  
Richard Woods, Georgia's School Superintendent  
"Educating Georgia's Future"

## Special Education: A Parent's Guide to Understanding Rights and Responsibilities

This guide is designed to help you understand your rights and responsibilities regarding special education. It should not be used as a substitute for the full version of the Parents' Rights outlined in the Individuals with Disabilities Education Act (IDEA) and the Rules of the Georgia State Board of Education (Ga. Bd. Of Educ. R.) pertaining to Special Education. (see Ga. Bd. Educ. R. 160-4-7-.09 PROCEDURAL SAFEGUARDS/PARENTS' RIGHTS.) To view the full version of the Georgia Parents' Rights please go to the Georgia Department of Education web site at [www.gadoe.org](http://www.gadoe.org) and select *Offices & Divisions*, then *Curriculum & Instruction*, then *Special Education Services and Supports*. You will then look under *Dispute Resolution* or *Family Engagement Information & Resources* to find Parent Rights. The full version of these rights is available in multiple languages and is also presented in video format.

<p><b>RECORDS:</b></p> <ul style="list-style-type: none"> <li>⇒ You have a right to look at your child's education records.</li> <li>⇒ You may also have the records interpreted or explained to you.</li> <li>⇒ You may request to have something in the record changed or removed if you feel it should not be in your child's record.</li> <li>⇒ You have the right to add information, comments, data or any other relevant written material to your child's record.</li> <li>⇒ You may ask for and receive copies of the Individualized Education Program (IEP) and/or any of your child's records. The school district may charge a fee for the copies but may not charge a fee for searching for and retrieving documents.</li> <li>⇒ With your written permission, you may have a person acting on your behalf inspect and review the records.</li> </ul>	<p><b>EVALUATION PROCEDURES:</b></p> <ul style="list-style-type: none"> <li>⇒ Your child has the right to a full and complete evaluation to determine if he/she has a disability and is in need of special education and/or related services.</li> <li>⇒ You have the right to have your child assessed in all areas of the suspected disability.</li> <li>⇒ The school district must test your child according to procedures outlined in the IDEA and Georgia Special Education Rules.</li> <li>⇒ Evaluations must consist of more than one test, and those tests must be given in the language that the child normally uses, unless the parent and school agree otherwise, and at least once every three years.</li> <li>⇒ You will be involved in the decision about eligibility and what programs and services your child needs during the re-evaluation.</li> </ul>
<p><b>CONFIDENTIALITY OF INFORMATION:</b></p> <ul style="list-style-type: none"> <li>⇒ Your child's educational records are <u>private</u>.</li> <li>⇒ You can ask to have copies of only your child's records.</li> <li>⇒ School employees involved with your child may see your child's records and do not require your permission.</li> <li>⇒ No one else may see the results of your child's records without your permission</li> </ul>	<p>Least Restrictive Environment:</p> <ul style="list-style-type: none"> <li>⇒ You have the right to have your child taught in classrooms and participate in all school programs and activities with other children without disabilities, of the same age and grade, to the greatest extent appropriate for your child.</li> <li>⇒ School district personnel must make accommodations and modifications so that your child can participate in all school programs and activities to the greatest extent appropriate.</li> </ul>
<p><b>INDEPENDENT EVALUATION:</b></p> <ul style="list-style-type: none"> <li>⇒ If you disagree with the school's evaluation, you may have your child tested by a professional evaluator not employed by the school district, at public or private expense. Contact the school system to find out the procedures for accessing this right.</li> <li>⇒ <u>Upon request</u>, the school district <u>must provide</u> you a list of <u>independent</u> evaluators so that you may choose one to test your child.</li> <li>⇒ The school district must consider the results of an independent evaluator.</li> <li>⇒ The IEP team uses the results of the test to determine if your child has a disability or needs special education.</li> </ul>	<p><b>SURROGATE PARENTS:</b></p> <ul style="list-style-type: none"> <li>⇒ When the school cannot find the child's parents of the child is a ward of the state, the school system will assign a surrogate (substitute) parent who will represent the child regarding the child's rights and interests for any evaluation, meeting, or educational decisions for special education services.</li> <li>⇒ Surrogate parents will receive special training and will act as the parent by giving consent and participating in IEP/other meetings.</li> <li>⇒ The surrogate parent has the same rights and responsibilities as a parent in special education in matters relating to a student.</li> </ul>
<p><b>NOTICE/PARENT PARTICIPATION:</b></p> <ul style="list-style-type: none"> <li>⇒ You must be notified of your parental rights.</li> <li>⇒ You must be invited to attend meetings about your child such as eligibility, reevaluation, or IEP meetings.</li> <li>⇒ You are to receive copies of all documents about your child's education program and can have them explained to you.</li> <li>⇒ Copies can be in your native language, Braille, or explained in sign language. If needed, the school district will provide a translator or interpreter.</li> </ul>	<p><b>COMPLAINTS, MEDIATION, HEARINGS:</b></p> <ul style="list-style-type: none"> <li>⇒ You have the right to ask for mediation or a due process hearing if you disagree with what the school has planned for your child.</li> <li>⇒ The school system can also ask for mediation or a due process hearing.</li> <li>⇒ The parent and the school system must both agree to try mediation before mediation will be scheduled.</li> <li>⇒ When you request a due process hearing, you have the right to participate in a resolution session that provides an opportunity</li> </ul>



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<ul style="list-style-type: none"> <li>⇒ You must be given opportunities to participate in any decision-making meeting regarding your child's special education.</li> <li>⇒ You must be invited to any meeting that is held to discuss your child's disability, evaluations, re-evaluations, placement of your child, and his/her IEP and it's contents.</li> <li>⇒ You are entitled to have IEP meetings held at a time and place mutually convenient to you and other members of the IEP Team.</li> <li>⇒ You have the right to excuse or not to excuse a member of your child's IEP Team from attending and IEP meeting. The school district cannot excuse a required member without your permission.</li> </ul>	<p>for parents and school systems to resolve any issues in a due process complaint so that the parents and systems can avoid a due process hearing and provide immediate benefit to the child.</p> <ul style="list-style-type: none"> <li>⇒ When you request a due process hearing, you have the right to an impartial due process hearing conducted by an administrative law judge (ALJ)/ hearing officer.</li> <li>⇒ You may file a formal written complaint with the Georgia Department of Education to conduct an investigation about any concerns, problems, or disagreements related to the IDEA or Georgia Special Education Rules. The complaint can be faxed to the Division for Special Education Services and Supports at 404-651-6457(fax) or mailed to the Division for Special Education Services and Supports at 1870 Twin Towers East, 205 Jesse Hill Jr. Drive SE, Atlanta, GA 30334.</li> </ul>
<p><b>CONSENT:</b></p> <ul style="list-style-type: none"> <li>⇒ The school cannot test/evaluate or re-evaluate your child without your permission/consent.</li> <li>⇒ The school cannot place your child in special education or change your child's program placement without your permission/consent.</li> <li>⇒ The school district cannot release your child's records without your permission/consent except to certain individuals identified in law.</li> <li>⇒ You have the right to <u>not</u> give your permission/consent.</li> <li>⇒ You have the right to take away your consent to special education and related services once you have given permission; you must do it in writing. Revoking consent means your child will no longer receive any special education services.</li> </ul>	<p><b>DISCIPLINE PROCEDURES AND RIGHTS:</b></p> <ul style="list-style-type: none"> <li>⇒ The school system must follow certain procedures when students with disabilities exhibit behaviors that cause the IEP Team to find other settings and/or ways to educate the child.</li> <li>⇒ Schools may remove students to alternative programs when there is a potential danger to the child, students, or school personnel.</li> <li>⇒ Regardless of the setting, the school district must continue to provide a free appropriate public education for your child.</li> <li>⇒ The setting must enable your child to continue to receive services that will allow him/her to meet the goals and objectives in his/her IEP.</li> <li>⇒ Disciplinary actions occur for violations involving drugs, alcohol, weapons, or other school rules violations.</li> <li>⇒ These rights protect you, your child, and the school system.</li> </ul>
<p><b>PRIVATE SCHOOL PLACEMENT:</b></p> <ul style="list-style-type: none"> <li>⇒ If you decide to place your child in a private school, you must inform school officials at the last IEP meeting you attend of your intent and explain your concerns about the public program.</li> <li>⇒ The school system is not required to pay for the private school if the school district offered a free appropriate public education to meet a child's educational needs that have been identified through the educational evaluation and are included in the IEP.</li> </ul>	<p><b>CONTACTS:</b></p> <ul style="list-style-type: none"> <li>⇒ When you have concerns about your child's education, it is important to tell the school principal or special education director.</li> <li>⇒ If you need further help, there are parent or advocacy groups from whom you may obtain help. Ask the school for information or a list of names. You also can contact Parent to Parent of Georgia which keeps an active list for referrals or other information. Call 1-800-229-2038 or go to <a href="http://www.p2pga.org">www.p2pga.org</a> .</li> <li>⇒ You may also contact the Division for Special Education Services and Supports at 404-656-3963 or 1-800-311-3627 or go to the Georgia Department of Education website at <a href="http://www.gadoe.org">www.gadoe.org</a> to help find other helpful resources.</li> </ul>
<p><b>LOCAL CONTACT INFORMATION:</b></p> <p style="text-align: center;"><b>Jennifer Mellor, Executive Director Program for Exceptional Children Bibb County School District 478-765-8710</b></p>	



## BIBB COUNTY SCHOOL DISTRICT

STRENGTH OF CHARACTER AND COLLEGE OR CAREER READY

### PROGRAM FOR EXCEPTIONAL CHILDREN

484 MULBERRY STREET, SUITE  
MACON, GEORGIA 31208 478-765-8705

## Notice of Parents Rights under the Individuals with Disabilities Education Act (IDEA)

The following information summarizes your rights as a parent of a student who receives special education or of a student who is suspected of being qualified for special education.

You should be fully informed in your native language or other manner of communication (such as sign language, Braille, translator services, read to and explained or other forms of communication) about all the information included in these parent rights.

If you need help understanding these rights please contact the special education director in your school system, the Parent to Parent of Georgia office (770 451-5484 or 1-800-229-2038) or the Georgia Department of Education, Division for Special Education (404 656-3963 or 1-800-311-3267).

### Consent

- The school cannot test/evaluate or reevaluate your child without your written permission/consent.
- Your consent to allow the first evaluation does not mean that your child will receive special education services. The permission to receive special education requires a separate written consent.
- If you, the parent, do not respond to the school's request to retest, the school may test/evaluate without your written consent.
- The school cannot place your child in special education services without your written permission/consent.
- You have the right to refuse an evaluation or initial placement into special education.
- You have the right to take away your consent to special education and related services once you have given permission. You must do this in writing. Revoking consent means your child will no longer receive any special education services. The services will not stop until the school has provided you with prior written notice. Prior written notice (PWN) is a written explanation of any change to the evaluation, identification, placement or services your child receives in special education. PWN will tell you what the change is, when it will occur and why it is proposed.
- The school system cannot release your child's records without your written permission/consent except to certain individuals identified in law such as other public schools, law enforcement or child protection agencies.

### Private School Placement

- Private school placement may occur in three circumstances:
  - ✓ First, when the public school determines that it cannot provide Free and Appropriate Public Education (FAPE), the public school must identify and pay for a private school to provide services. This is at no cost to the parent.
  - ✓ Second, a parent may remove the child from public school at any time and enroll the child in private school. Under certain circumstances the parent may request reimbursement from the school system to pay for the private placement.
    - The parents must tell the IEP team they disagree with the proposed IEP and placement and want the school system to reimburse them.
    - The parents may also notify the school system in writing, at least ten days prior to removing the child from public school, that they disagree with the IEP and placement and want the school system to reimburse them for the private school tuition.
    - If the public school asks to evaluate the child during the ten day period and the parents refuse, then reimbursement may be denied.
    - If the parents want to be reimbursed for all the costs of private school and the system does not agree to it, the parties must go before a due process hearing officer to determine if the public school provided FAPE.
  - ✓ Third, the parent may choose to use a private school instead of public school at the parent's expense, in which case, FAPE is not an issue.
    - When the student is in private school by parent choice, the student and the parent lose their individual rights to special education services.
    - The school system may consider some services when students are placed in private school or home school. The special education director of the local system has more information.
- The Individuals with Disabilities Education Act (IDEA) does not require a school system to pay for the cost of private school if FAPE has been or can be provided by the public school.

### Discipline Procedures and Rights

- Students with disabilities may be suspended out of school for less than 10 days in any school year, and no services are required to be provided.
- If your child is suspended or expelled out of school for more than ten days, the school district must continue to provide a free appropriate public education (FAPE) for your child even though the child is not attending school. The location or place where the services are provided will change.
- If the student possesses or sells illegal drugs or weapons or causes serious bodily injury, the school may change the placement for up to 45 calendar days without consent of the parent.

- Once a student has been suspended for 10 or more days in a school year, the following must occur:
  - ✓ A manifestation determination will occur. The manifestation determination must decide whether the behavior was caused by the disability and/or whether the IEP was followed.
  - ✓ If the team determines the behavior was caused by the disability and/or the IEP was not followed, then the student must return to the original setting unless it is a case of illegal drugs, weapons or serious bodily injury.
    - A Functional Behavior Assessment (FBA) and a Behavior Intervention Plan (BIP) must either be conducted or reviewed and revised when the behavior is a manifestation.
  - ✓ If the team determines that the behaviors were not caused by the disability and that the IEP was followed, then the student may be disciplined according to school policy.
    - The student must continue to receive FAPE. The IEP team will determine how the services can be provided. An FBA/BIP may be developed or reviewed and revised to prevent further behavior problems.
  - ✓ If you disagree with the decision of the manifestation determination, you may appeal by requesting a due process hearing. An expedited hearing must occur within 20 school days. Your child will remain in the setting decided by the discipline process until the hearing occurs
- Under special situations, if the behavior that causes your child to get into trouble and be suspended is not related to your child's previous behavior that resulted in discipline or to your child's disability, the school system may review the incidents and determine that a new suspension that results in more than ten cumulative days of suspension for this school year is not a change in placement and, therefore, does not require services to continue.
- If your child is moved to another setting due to discipline, your child must continue to participate in the general curriculum and to meet the goals and objectives in his/her IEP.
- When the school system had knowledge that the child might be a child with a disability prior to the behavior occurring, the child will have the same protections of discipline as a child with an IEP. A school system has knowledge when:
  - ✓ the parent expressed concern in writing to the school; or
  - ✓ the parent requested an evaluation for special education; or
  - ✓ the child's teacher or other school system staff expressed concerns about a pattern of behavior.
- Any evaluations that have been requested for a student being disciplined must be completed quickly.
- A free and appropriate public education, even though it is in a different location, shall be provided to all children with disabilities who have been suspended out of school or expelled so that the child can continue to make progress toward meeting the goals and objectives of his IEP and make progress in the curriculum.

### **Confidentiality of Information**

- You have a right to keep your child's education records private.
- School employees or contractors for school services involved with your child may see your child's records. School employees do not need your permission. No one else may see your child's records without your permission unless allowed by other education laws.
- You have a right to have your child's records read to you in your native language and/or explained to you.
- Your child's records must be made available for review within 45 days of your request.
- The school must keep a record of the people who access the child's record.
- You have the right to ask to have something in the record changed or removed. The school system has the right to refuse to change the record. If the school system does not agree to change the record, they must provide a hearing to decide whether the change will be made.
- You have the right to ask for a complete copy of your child's school records. The school system may charge a fee for the copies. The school system may not charge a fee for searching for and providing the records. The school system must provide the records free of charge if you cannot pay the fee.
- You have the right to have a person acting on your behalf inspect and review the records with your permission.

### **Evaluations**

- You have the right to request that your child receive a full and complete evaluation to determine whether he/she has a disability and is in need of special education and/or related services.
- You have the right, when an initial evaluation for determination is being conducted, for your child to receive a full and complete evaluation. This will include having your child assessed in all areas of the suspected disability (including but not limited to behavior, academics, communication, social skills and daily living skills).
- You have the right for the evaluation to consist of several sources of information, including more than one test. These tests must be given in the language that the child normally uses (native language), unless it is not possible to do so.
- You have the right for your child to be given appropriate tests by qualified examiners.
- The initial evaluation must be completed in 60 calendar days from the date you sign permission for the evaluation.
- When you give permission for the initial evaluation and less than 30 days of school are left in the school year, the school still has 60 days to complete the evaluation.
  - ✓ the 60 day count stops when the teachers finish for the school year and starts again when they return for the new school year;
  - ✓ or, worded another way, the 60 days are totaled by counting the days until teachers are no longer working and continuing the count to 60 days when the teachers return to work.

- When school is closed for more than 5 days for holidays or other breaks, those days and the weekends before and after do not count in the 60 days allowed for the initial evaluation.
- You have the right for your child to have a reevaluation at least every three years. The parent or teacher can make a request for reevaluation in less than three years if needed. Reevaluations shall not occur more frequently than one time per year unless the parent and school agree one is needed.
- You have the right to be involved in the decision about your child's eligibility and what programs and services your child needs as part of the first evaluation and the reevaluation.

### **Least Restrictive Environment**

- To the greatest extent appropriate, you have the right to have your child placed in classrooms and for your child to participate in all school programs and activities with other children without disabilities.
- To the greatest extent appropriate, school system personnel must make accommodations (supports) and modifications (changes) so your child can participate in all school programs and activities.
- You have the right for your child to participate in non-classroom and extracurricular activities (such as lunch, recess, counseling, sports and clubs) to the same extent as a non-disabled child.
- You have the right for the IEP team to consider a variety of different special education services to meet the needs of your child in the least restrictive environment.
- To the greatest extent appropriate, you have the right to have supplementary aides and services (extra support) provided to allow your child to remain in regular classes as much as appropriate before considering whether to remove your child from the general education classroom.
- You have the right to have your child placed in the neighborhood school unless the IEP Team determines otherwise.

### **Independent Educational Evaluation**

- You may always pay for and provide an independent evaluation for the IEP team to consider.
- You can ask the school system for a list of free or low-cost private evaluators who meet the state qualifications, in order to provide an evaluation for your child.
- If you do not agree with a school system's evaluation, the school system must help you get a second opinion if you ask for an independent evaluation. When you ask for an independent evaluation, the school system must pay for another evaluation or it must ask for a due process hearing in order to prove that the evaluation done by the school system is appropriate. This hearing will decide whether the system's evaluation is right. If the school system does pay for your private testing, the testing must meet the same rules the school system uses for its testing.
- The school system cannot require you to explain why you disagree with the evaluation.

### **Surrogate Parents**

- The school system will give a child a surrogate (substitute) parent if it cannot find a child's parents. The school system will give a child a surrogate (substitute) parent if the state has custody of the child.
- Surrogate (substitute) parents will get special training so they will understand the rights of the child
- The surrogate (substitute) parent will speak for the child about the child's rights and interests in any evaluation, meeting or education decisions for special education.
- Surrogate (substitute) parents will act as the parent by giving consent. Surrogate (substitute) parents will act as the parent by going to IEP and other meetings.
- A surrogate (substitute) parent has the same rights and responsibilities as a parent in making decisions about a child's education.

### **Notice/Parent Participation**

- The school system must let you know your rights as a parent. They must provide these rights at least one time every school year. They also must give them to you whenever you request an evaluation, the first time each school year that you file a written complaint, the first time each school year you request a due process hearing or when a discipline incident results in a change of placement.
- You have the right to written notice that describes the school system's planned action before that action happens. You have the right to have the school system explain why it proposes the action.
- You have the right to have the school system describe the choices and tests it considered and why it rejected those other choices.
- You have the right to copies of all documents about your child's education and to have them explained to you. Copies can be in your native language, Braille or explained in sign language. The school system will provide a translator or interpreter if needed.
- You may also choose to receive all notices and documents by email.
- You must be given chances to participate in any decision-making meeting about your child's special education.
- You must be invited to any meeting held to discuss your child's disability, evaluations, reevaluations, placement and his/her IEP and its contents.
- You have the right to have IEP meetings held at a time and place convenient to you and other members of the IEP Team.
- You have the right to excuse or not to excuse a member of your child's IEP Team from an IEP meeting. The school district cannot excuse a required member without your permission.

## **Transfer of Rights**

- When your child reaches the age of 18, all educational rights under the IDEA will transfer to the student, unless he or she has been determined by a court to be incompetent or unable to make decisions.
- Even though the rights or the IEP decision making transfers to the student, you, the parent, will still receive all notices that are required by the law.
- You and your child must receive notice about the transfer of rights.
- You may continue to attend any meetings about the education of your child.

## **Dispute Resolution**

The IDEA provides three different ways to help parents and school systems resolve disagreements. They are mediation, formal complaints, and due process hearings. These are discussed in more detail below.

### Mediation

- You have the right to ask for mediation if you disagree with the special education for your child. The Georgia Department of Education (GaDOE) will randomly select one of its mediators to guide the mediation. The mediator will be neutral. The mediator will be qualified and trained in mediation.
- The parent and the school system must both agree to try mediation before mediation will be scheduled.
- Mediation is free to both the parent and the school system. If a party chooses to bring a lawyer or other advisor to the mediation, that party must pay the cost of the advisor.
- All discussions during mediation are private. Discussions during mediation cannot be used as evidence in any later due process hearing.
- Mediation cannot be used to deny or delay your right to a due process hearing.
- If the parties reach an agreement during mediation, the parties must sign a binding agreement in writing. The agreement may be enforced in a court. The agreement may be enforced by the GaDOE if you file a formal complaint.

### Complaints

- A parent or any citizen may file a formal complaint with the GaDOE if he or she believes the school system violated the IDEA.
- The school system and the GaDOE provide forms to help parents file formal complaints.
- A formal complaint must be signed and must state how the school system violated the requirements of the IDEA and the facts that support the belief. A complaint must be based on a violation that happened less than one year before the date the complaint is filed. The parent and the school system may agree to try to resolve formal complaints through mediation.
- The GaDOE will begin an investigation when you file the complaint.
  - ✓ The school system must provide a response to the complaint to the GADOE and the person filing the complaint in writing.
  - ✓ GaDOE will reach a decision in 60 days unless the person filing the complaint agrees to provide more time to resolve the concern.
  - ✓ The GaDOE's decision is final and cannot be appealed.

### Due Process Hearing

- A due process complaint is filed to ask for a hearing in order to get a ruling to resolve a disagreement between the parent(s) and the school system. Either a parent or school system may ask for a due process hearing. The hearing can be about any issue related to a student's identification, evaluation, educational placement or receiving a free appropriate public education (FAPE). You may also ask for mediation to take place before you reach a hearing.
- The school system must give parents a list of any free or low-cost legal services when the parent asks for the list or when the parent or agency starts a due process complaint.
- The due process hearing request must state a violation of the IDEA or a problem with special education. These must have taken place less than two (2) years before the date the parent knew (or should have known) about the problem in the complaint. The two year time limit does not apply if:
  - ✓ The school system said that it had resolved the problem in the complaint but the school system had not.
  - ✓ The school system did not give information about the problem that the parent had a right to have.

### Process

- The school system and the GaDOE have forms to help parents file due process hearing requests. To file a due process hearing request, a parent or school must provide notice of the request to the school system and the GaDOE. To request a due process hearing the following information is needed:
  - ✓ the name and home address of the child;
  - ✓ the name of the school the child attends;
  - ✓ in the case of a homeless child, the child's contact information and the name of the child's school;
  - ✓ a description of the of the problem or violation, and
  - ✓ a possible solution to the problem or violation.
- After you send your due process hearing request to the school system and GaDOE, you will be contacted with more instructions.
- If the school system thinks that the parent's due process request does not meet the requirements of the IDEA, the system must notify the hearing officer.
  - ✓ This must be done in writing within 15 days.
  - ✓ The hearing officer then has five (5) days to decide whether the request meets the requirements of the IDEA. The hearing officer will immediately notify all parties in writing of that decision.

- If the hearing officer decides that the due process hearing request meets the requirements of the IDEA, the school system must respond to the due process request.
  - If the hearing officer decides that the complaint is not valid, the parent may amend the request or may file a new due process hearing request.
- When the school system receives a due process hearing request, it must first decide whether it provided prior written notice about the issue in the due process complaint. Prior written notice must contain the following:
  - ✓ an explanation of why the agency proposed or refused to take the action in the due process complaint;
  - ✓ an explanation of other options that the IEP team considered and the reasons those options were rejected;
  - ✓ an explanation of each evaluation procedure, assessment, record or report the school system used to make the decision; and
  - ✓ an explanation of the relevant factors in the school's decision.
- If the school system has not given prior written notice as outlined above, the school system must provide a response to the parents within 10 days of getting the due process hearing request.

#### *Resolution Meeting*

- When you ask for a due process hearing, you will be given the opportunity to participate in a resolution meeting with representatives of the school system to try to resolve any issues in the due process complaint. This meeting helps parents and systems avoid a due process hearing, which will provide immediate benefit to the child.
- You must participate in the resolution meeting unless both the parent and school system agree in writing not to have the meeting.
- The resolution meeting must happen within 15 days of when you ask for a due process meeting.
- Relevant members of the IEP team must attend the resolution meeting. Relevant members are those who know about the situation or problem the resolution meeting is trying to improve.
- The school system must have someone at the meeting who has authority to make decisions.
- The school system cannot have a lawyer at the meeting unless the parent also has a lawyer at the meeting.
- If the parent and the school system reach an agreement at the resolution meeting, they must sign a binding agreement. That agreement is enforceable in court. For up to three days after they sign the agreement, both the parent and school system may cancel the agreement.
- If the parent and school system do not reach an agreement at the resolution meeting, then the parties may proceed to a due process hearing.

#### *Stay-Put*

- Once you file a due process hearing request, you have the right to have your child stay in his or her current educational placement. Your child may stay in that placement until the end of all hearings and appeals. This is commonly called "stay-put."
  - ✓ If you and the school system agree to place your child in a different placement, you may do so as the due process hearing continues.
- "Stay-put" does not apply when the parent is appealing a decision to place the child in an interim alternative setting because of discipline.
- If your due process hearing request is about admission into public school, you have the right to have your child placed in a public school program until the end of the due process hearing.

#### *Hearing Rights*

- In a due process hearing, you have the right to:
  - ✓ have a hearing at no cost, except that if you choose to bring a lawyer, other advisor or expert witnesses to the hearing, you must pay any cost connected with these persons;
  - ✓ have the hearing conducted by a hearing officer who is not employed by a public agency involved in the education of your child;
  - ✓ have a hearing officer who does not have a personal or professional interest in the hearing;
  - ✓ be provided a list of the people who serve as hearing officers and a statement of the qualifications of these people;
  - ✓ have a lawyer or people with special knowledge or training about children with disabilities go with you to the hearing;
  - ✓ have your child at the hearing;
  - ✓ have the hearing open to the public;
  - ✓ present evidence and confront, cross-examine and subpoena the attendance of witnesses at a hearing;
  - ✓ have the hearing set at a time and place reasonably convenient to you and your child;
  - ✓ ask a hearing officer to prohibit any evidence at the hearing that was not given to you at least five days before the hearing;
  - ✓ get an exact written or electronic record of the hearing;
  - ✓ receive a decision by the hearing officer within 45 days after the end of the resolution period, unless the hearing officer extends the timeline because of a request of a party;
  - ✓ get a written or electronic decision and findings of fact from the hearing officer.

#### *Appeals*

- The decision of the hearing officer in a due process hearing must be followed by the parent and the school system. If the parent or the school system disagrees with the decision, either party may appeal the decision by bringing a civil action as described below.
- If either the parent or the school system believes the hearing officer's final decision is wrong, the party may bring a civil action in state or federal court. The party must file the civil action within 90 days from the date of the hearing officer's decision.

- If a party brings a civil action, your child will stay in his or her current educational placement until end of the civil action and its appeals. You and the school system may agree to place your child in a different placement as the civil action continues.
- If the hearing officer in a due process hearing agrees with you that your child needs a change of the placement, your child will stay in the educational placement decided by the hearing officer until the end of the civil action and its appeals. That means that if the hearing officer orders a change of placement during a due process hearing, the school district must follow the hearing officer's order, unless you agree to a different placement.

#### *Attorneys' Fees*

- In a civil action, a federal court can order a school system or parent to pay the attorneys' fees of the other party. The federal court can only award attorneys' fees to a party that prevailed in a due process hearing or civil action.
- Attorneys' fees may only be awarded to school systems under certain guidelines. The parents or their attorney may be forced to pay the school system's attorneys' fees when:
  - ✓ the parents' attorney files a complaint or civil action that is or becomes frivolous, unreasonable or without foundation; or
  - ✓ the parents' complaint or civil action was presented for any improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of litigation.
- Not all legal and administrative costs and services can be awarded. A court may not award attorneys' fees for any services performed after the school system makes a written offer of settlement to the parents if:
  - ✓ the offer is made in accordance with Rule 68 of the Federal Rules of Civil Procedure;
  - ✓ in the case of an administrative hearing, the offer is made more than 10 days before to the hearing;
  - ✓ the offer is not accepted within 10 days; or
  - ✓ the court or hearing officer finds that the relief finally obtained by the parents is not more favorable than the offer of settlement.
- However, attorneys' fees may be awarded to parents who were substantially justified in rejecting the settlement offer.
- IEP Team meetings are not eligible for reimbursement unless the meeting is convened as a result of an administrative proceeding or judicial action or for a mediation session. Attorneys' fees for Resolution Sessions are also not eligible for reimbursement.



## DEFINITIONS OF TERMS USED IN THIS DOCUMENT

**Accommodation** means a change in how instruction is given, how the child is expected to respond, how the child participates in class activities or kinds of learning materials and how they are used. Accommodations provide children with disabilities different ways to access the curriculum so that their disabilities are not barriers to achievement. Children with accommodations are still expected to meet the same grade-level curriculum as their peers without disabilities.

**Behavioral Intervention Plan (BIP)** is a plan for a child with disabilities that addresses the child's behavior. A BIP is sometimes included in the IEP. A BIP should use positive behavior interventions and supports to help the child learn appropriate and responsible behavior.

**Civil Action** means the appeal of a due process hearing decision to a court.

**Consent** means the parent has been fully informed of all information about the activity for which consent is needed. Information given to obtain consent must be in a parent's native language. Consent is voluntary and may be revoked at any time. A parent who gives consent should agree in writing to the activity for which consent is needed. If a parent revokes consent, that revocation is not retroactive (i.e., it does not undo an action that has occurred after the consent was given and before the consent was revoked).

**Due Process Hearing** is process to solve disagreements between parents and school systems. It is similar to going to court. A hearing officer is appointed. A hearing officer asks each party for its side of the facts and opinion on the law. The hearing officer holds a hearing if needed. The hearing officer makes a decision that the parties must follow or appeal.

**Eligibility Team** is composed of a group of qualified professionals and the parents of the child. The eligibility team determines whether the child is a child with a disability and whether the child needs special education and related services. The eligibility team also determines the educational needs of the child.

**Evaluation** means the procedures used to decide whether a child has a disability and the nature and extent of the special education and related services that the child needs.

**Expulsion or Expel** is a student discipline order that means that a school system has decided that a child cannot attend school in the system for the current school term or more. A school system must follow certain procedures before it can expel a student. A school system must continue to provide some services to a child with a disability who has been expelled.

**Free Appropriate Public Education (FAPE)** means special education and related services that:

1. are paid by the public, under public supervision and are free to the parent;
2. meet Georgia's educational standards;
3. include an appropriate preschool, elementary school or secondary school education; and
4. are provided through an individualized education program (IEP) that meets the requirements of the IDEA.

**Functional Behavioral Assessment (FBA)** is a process for defining a child's specific behavior and deciding the reason why (function or purpose) the behavior is happening. An FBA will look at the context and environment of the child's behavior. The purpose of an FBA is to decide whether a Behavioral Intervention Plan is needed.

**Georgia Performance Standards (GPS)** means the curriculum taught to all students in Georgia public schools, also now referred to as the CCGPS or Common Core Georgia Performance Standards.

**Individualized Education Program (IEP)** is a written statement that describes a child's special education and related services. An IEP must be developed, reviewed and revised in accordance with the IDEA.

**Individualized Education Program Team (IEP Team)** is a group of individuals, including the parent, that is responsible for developing, reviewing or revising an IEP for a child.

**Individuals with Disabilities Education Act (IDEA)** is the major federal law that governs special education. You can find more information about the IDEA at <http://idea.ed.gov/>. You can find out more about how Georgia implements the IDEA at [http://www.gadoe.org/ci\\_exceptional.aspx](http://www.gadoe.org/ci_exceptional.aspx).

**Least Restrictive Environment (LRE)** is a requirement under the IDEA that requires a child with a disability to be educated as much as possible in settings with children who do not have disabilities.

**Manifestation determination** is a process used by members of an IEP team to decide whether a child's behavior is a result of his or her disability.

**Mediation** is a process for a parent and a school system to work together to solve disagreements. Mediation is conducted by a mediator who is trained, unbiased and appointed by the Georgia Department of Education. The mediator will help a parent and school system to try to reach agreements.

**Modification** means alterations that change, lower or reduce learning expectations. Modifications can increase the gap between the achievement of students with disabilities and expectations for a particular grade level. Overuse of certain modifications could adversely affect students throughout their education.

**Parent** can mean a biological parent, adoptive parent, foster parent, legal guardian, person acting in the place of a parent that lives with the child, person legally responsible for the child's welfare or an appointed surrogate parent.

**Related services** means supportive services needed to help a child with a disability benefit from special education services. Related services are decided by the IEP team based on the needs of the child. Related services may include: transportation, speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, counseling services, orientation and mobility services and medical services for diagnostic or evaluation purposes. Related services also include school health services and school nurse services, social work services in schools and parent counseling and training.

**Resolution Meeting** is a meeting that is part of the due process hearing procedure. The goal of the meeting is to help the parent and school system reach an agreement before the due process hearing.

**Special education** means specially designed instruction, at no cost to the parents, to meet the individual needs of a child with a disability.

**Stay-Put** means a child with a disability will remain in his or her current educational setting while a due process hearing or appeal proceeds. Stay-put is not available in certain situations, such as an appeal from a discipline hearing.

**Supplementary aids and services** are aids, services and other supports that are provided in regular education classes, other education-related settings and in extracurricular and nonacademic settings. Supplementary aids and services are meant to help children with disabilities be educated with nondisabled children as much as possible.

**Suspension or Suspend** is a student discipline order that means that a school system has decided that a child cannot attend school in the system for a period of time, but that the student can return to school before the current school term ends. A school system must follow certain procedures before it can suspend a student for more than ten days each school year. A school system must continue to provide some services to a child with a disability who has been suspended.

**Transition services** are individualized activities for a child with a disability that are meant to help the child's movement from school to post-school activities.

The Georgia Special Needs Scholarship Program is a school choice program available to special needs students attending GA public schools, who are served under IDEA.

For more information, please visit: [www.gadoe.org](http://www.gadoe.org)



