

**PARENTS' GUIDE TO
PROCEDURAL SAFEGUARDS
AND PARENTS' RIGHTS
IN SPECIAL EDUCATION**

**A GUIDE FOR PARENTS
AND FAMILIES**

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Disclaimer

The material contained in this document is intended for general information and guidance regarding parent rights and the procedural safeguards afforded under the Individuals with Disabilities Education Act (IDEA) and thus implementing regulations at 34 CFR Part 300 and the RI Board of Regents Regulations Governing the Special Education of Students with Disabilities. This document explains a selection of some of the parent rights and procedural safeguards in special education and is not a complete list or explanation of those rights.

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**PARENTS' GUIDE TO
PROCEDURAL SAFEGUARDS
AND
PARENTS' RIGHTS IN
SPECIAL EDUCATION**

I N T R O D U C T I O N

As the parent of a child (or eligible student age 18 or older) who is suspected of or who has been identified as having a disability or is in need of special education and related services, you are entitled to certain rights from your local school department, also called the Local Educational Agency (LEA). The purpose of this guide is to further explain some of these rights, which include the following:

1. Parent and Student Participation
2. Free Appropriate Public Education (FAPE)
3. Referral and Evaluation
4. Individualized Education Program (IEP)
5. Least Restrictive Environment (LRE)
6. Procedural Safeguards

Some of this information may be new to you. Parents and individuals assisting parents are encouraged to discuss this information with personnel from the local school department, the student's school and teachers and with various parent support organizations. A list of parent support agencies appear at the end of this guide.

This Parents' Rights Guide will further explain your rights in the following areas:

1. PARENT AND STUDENT PARTICIPATION

The local school district must offer parents and adult students (and students school age, when appropriate) the opportunity to participate in meetings as a member of a group (in RI referred to as the Evaluation Team) of individuals that consider and make decisions with respect to:

- The identification, evaluation, and educational placement of the student; and
- Providing the student with a free, appropriate public education.

Participation often takes place by inviting the parent in writing (and student, when appropriate) to attend a meeting with other individuals from the local school district. Participation may also occur by telephone, telephone conferencing, and other methods to ensure participation.

2. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

Students identified as having a disability and in need of special education are entitled to a FREE APPROPRIATE PUBLIC EDUCATION (FAPE) which means:

Provide at public expense (no cost to parent)
special education for pre-school, elementary,
and secondary students through an Individualized
Education Program (IEP) for the student.

3. REFERRAL AND EVALUATION

Initial Evaluation

Students thought to have a disability must be evaluated to determine if they require special education and related services. This is accomplished by “referring” a student for an initial evaluation – also known as a referral for special education evaluation. The parent must provide written consent to the evaluations and must be afforded an opportunity to participate with other qualified professionals as a team known as the *evaluation team*. If the evaluation team determines that special education and related services are needed, an Individualized Education Program (IEP) will be developed for the student. If the evaluation team decides special education and related services are not needed, the team may refer the student for other support services available through the general education programs offered by the local school system.

Re-evaluation of Students Already Receiving Special Education

A parent will be invited in writing to participate in a meeting to conduct a re-evaluation of the student to determine if the student continues to have a disability and continues to need special education. This re-evaluation must take place at least every three years or upon request by a parent or school department. A parent will be asked to consent to any new or updated evaluations as part of the re-evaluation of the student.

4. INDIVIDUALIZED EDUCATION PROGRAM (IEP)

Students evaluated and determined eligible for special education and related services must be provided specialized education described in their Individualized Education Program or (IEP). A team of individuals that includes the parent(s) and school department personnel determine the educational services, program and placement of the student.

5. LEAST RESTRICTIVE ENVIRONMENT (LRE)

The Least Restrictive Environment (LRE) principle requires that to the maximum extent appropriate, children with disabilities are educated with non-disabled students. The LRE means that removal from the general education environment should occur only if the nature or severity of the student’s special education needs cannot be met in the general education setting, even with supplementary aids and services. This means that the IEP team must consider whether the student can be supported in the general education classroom before considering servicing the student in another setting. The LRE principle applies to educational and non-educational settings including arranging for the following:

Extra curricular services and activities;
School-sponsored outings and field trips;
Meals;
Recess periods;
Counseling services;
Athletics;

Transportation;
Health services;
Recreational activities;
Special interest groups and clubs; and
Employment of students sponsored by the public school district.

6. PROCEDURAL SAFEGUARDS

Parent's and student's rights in special education are protected and preserved through a series of "Procedural Safeguards." These procedural safeguards are meant to ensure that parents and students are provided with information and that information is adequately explained to enable them to participate in the educational process. These procedural safeguards are further explained below.

PROCEDURAL SAFEGUARDS

(A) RIGHT TO RECEIVE PRIOR WRITTEN NOTICE

The parent of a student with a disability must be afforded the right to receive prior written notice ten (10) school days before the school district proposes or refuses to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education (FAPE).

This means the school district must provide the parent with prior written notice in the following circumstances:

- When the school district proposes an initial evaluation or re-evaluation;
- When the school district schedules an IEP meeting;
- When either the parent or school district requests a due process hearing;
- When the school district proposes to change or refuses to change the identification, evaluation or educational placement or the provision of a FAPE to the student (generally, anytime the local school district attempts to initiate a change in the student's current educational program).

(B) PARENTAL CONSENT

1. Consent means that (a) the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication; (b) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
2. Parental consent must be obtained before the following:
 - (a) Conducting an initial evaluation or re-evaluation; and
 - (b) Initial provision of special education and related services to a student with a disability.

3. Consent for initial evaluation may not be construed as consent for initial placement.
4. Parental consent is not required before the following:
 - (i) Reviewing existing data as part of an evaluation or a re-evaluation; or
 - (ii) Administering a test or other evaluation that is administered to all students unless, before administration of that test or evaluation, consent is required of parents of all students.
5. Refusal. If the parents of a student with a disability refuse consent for initial evaluation or a re-evaluation, the agency may continue to pursue those evaluations by using due process procedures or the mediation procedures.
6. Failure to respond to request for re-evaluation. Informed parental consent need not be obtained for re-evaluation if the public agency can demonstrate that it has take reasonable measures to obtain that consent, and the student's parent has failed to respond.
7. Limitation. A school district may not use a parent's refusal to consent to one service or activity of this section to deny the parent or student any other service, benefit, or activity.

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| (C) PARENT PARTICIPATION IN MEETINGS |
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1. The school district must take steps to ensure that one or both of the parents of a student with a disability are present at each meeting, including an IEP meeting, with respect to the identification, evaluation, educational placement of the student, and the provision of a free, appropriate public education, or are afforded the opportunity to participate, including: (a) notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend; and (b) scheduling the meeting at a mutually agreed on time and place.
2. The school district shall inform the parents of the right of either party to invite individuals who have knowledge or special expertise regarding their student, including related services personnel to the meeting.
3. Parent participation may include telephone calls, telephone conferencing, video conferencing, and other methods of participation.

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| (D) RIGHT TO INDEPENDENT EDUCATIONAL EVALUATION |
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As the parent of a student with a disability, you have the right to seek an independent educational evaluation of your student if you disagree with an evaluation obtained by the school district. Upon your request, the school district must provide you with information about where an independent education evaluation may be obtained.

The school department will pay for the cost of an independent educational evaluation unless the school district requests a due process hearing to show that its evaluation is appropriate.

The school district is obligated to consider the results of an independent evaluation obtained by the parent without regard to who pays for the evaluation.

When a parent requests an independent educational evaluation, the school district may ask the parent's reason why they do not agree with the school department's evaluation, but the school district may not unreasonably delay either providing for the evaluation or challenging the request for an independent evaluation at a due process hearing. The school district must notify the parent within 15 calendar days of the receipt of the parent's request for an independent educational evaluation whether they will see that the evaluation is paid for at public expense (at no cost to the parent) or if the school district will seek a due process hearing to challenge the request.

(E) COMPLAINTS, MEDIATION, DUE PROCESS HEARINGS

General

The RIDE encourages parents and school districts to attempt to resolve any disagreement regarding the special education of a student first at the school or school district level. Typically, for the parent this includes school personnel such as the classroom teachers, service providers, school principal, director of special education, and the superintendent.

In addition, each school district in Rhode Island has been assigned a special education consultant from RIDE. It is the responsibility of the special education consultant to assist parents and schools in the districts they are assigned to. This responsibility includes answering questions, offering information and advice, and actively interacting with parents and schools with issues of special education. To determine which special education consultant is assigned to your school district, contact the Rhode Island Department of Education, Office of Special Populations, at 255 Westminster Street, Providence, Rhode Island 02903-3400, or call (401) 222-4600 and speak to a member of the Rhode Island Department of Education staff. Also, please refer to the "Resources and Options" document/brochure available from the RIDE.

SPECIAL EDUCATION COMPLAINT

If a parent, individual or organization believes a school district has violated a federal or state special education law or regulation, they may file an administrative complaint with the RI Department of Education (RIDE).

A complaint must be written and signed by the complainant. The RIDE has a model form to assist individuals who wish to file a special education complaint. **(See Appendix A)**

The Rhode Island Department of Education will investigate the complaint and issue a complaint findings letter within sixty (60) calendar days. If the investigation reveals the school district violated a federal or state law or regulation, the Rhode Island Department of Education will issue a corrective action order.

For more information about what to do when parents and the school department disagree, contact the:

Rhode Island Department of Education – Office of Special Populations
255 Westminster Street
Providence, RI 02903-3400
(401) 222-3505. Individuals using TTD call Relay RI at 1-800-745-5555.

MEDIATION

Disagreements between parents and school districts can often be resolved in a cooperative manner through mediation. Mediation is a process whereby both the parent and the school district must agree to allow a neutral third party attempt to help them reach agreement. The mediator is a person knowledgeable about special education and experienced in effective communication skills. The mediator attempts to solve disagreements by listening to both sides and encouraging the sharing of information in a respectful manner.

The Mediation Process Includes:

- The right to request mediation if disagreement occurs regarding the identification, evaluation, educational placement or the provision of a free and appropriate public education of a student with a disability;
- Having a free impartial state appointed and trained mediator assigned to hear your case within fifteen (15) days of the request to seek mediation;
- Sharing information at the mediation meeting;
- Bringing a support person, alternate, or representative to the meeting;
- A written mediation agreement (if the parties reach agreement);
- Ending the mediation process at any time without disturbing any of the parties' rights;
- Keeping anything that is said at the mediation meeting confidential;
- The opportunity to reach a quick agreement.

Participation in the mediation process is voluntary on the part of the parent and school district and cannot be used to deny or delay a parent's right to seek a due process hearing.

To request mediation contact

Rhode Island Department of Education – Office of Special Populations
255 Westminster Street
Providence, RI 02903-3400
(401) 222-3505
Individuals using TTD call Relay RI at 1-800-745-5555

IMPARTIAL DUE PROCESS HEARING

General

An impartial due process hearing is an administrative proceeding in which the parent and the school district present their respective cases before a hearing officer. Unlike mediation, if the parent and school district cannot reach an agreement, the hearing officer will make a decision on issues presented to them.

An impartial due process hearing procedure and rights include the following:

- A parent or the school district may request an impartial due process hearing on any matter involving any proposal or refusal to initiate or change the identification, evaluation, educational placement, or provision of a free appropriate public education of a student with or suspected of having a disability pursuant to IDEA.
- A school district request for a hearing may include the refusal of the parent to give consent for an initial evaluation or initial placement or special education or the withdrawal of such consent.
- A parent request for a hearing shall include the following: (a) the name of the student, the address of the residence of the student and the name of the school the student is attending; (b) a description of the nature of the problem of the student relating to such proposed initiation or change, including facts relating to such a problem; (c) a proposed resolution of the problem to the extent known and available to the parent at the time of the request. The request shall include a statement of the specific issues in dispute. The written request must be filed with the superintendent of the school district and a copy can be sent to the R.I. Department of Education, Office of Special Populations. The request should be filed on the State model "Request For Impartial Due Process Hearing" form supplied by the R.I. Department of Education. **(See Appendix B)**
- Upon receipt of a hearing request, the R.I. Department of Education will appoint an impartial due process hearing officer who will render a decision not later than forty-five (45) calendar days after the receipt of the request. A decision made by a hearing officer is final unless appealed to a court of competent jurisdiction.
- A hearing or review officer may grant specific extensions of time beyond the periods set out in this section at the request of either party.

Expedited Due Process Hearing

A parent may request an expedited due process hearing to challenge a determination that the student's behavior was not a manifestation of the student's disability (for discipline removals) or with any decision regarding placement of the student in an interim alternative educational setting for the following reasons:

- (a) Possessing a weapon at school or at a school function;
- (b) Knowingly possessing or using illegal drugs or selling or soliciting the sale of a controlled substance at school or at a school function; or by
- (c) A decision of a due process hearing officer that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

An expedited due process hearing shall be conducted by an impartial due process hearing officer appointed by the R.I. Department of Education, and a decision rendered not later than ten (10) business days after the receipt of a request. The hearing officer may grant specific extensions of time beyond the 10 business days upon request, but not to exceed forty-five (45) days of the receipt of the request for an expedited hearing.

Due Process Hearing Rights

A party to hearing has the right to the following:

- (a) Accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities;
- (b) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- (c) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;
- (d) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- (e) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

Additional Disclosure of Information:

At least five (5) business days prior to a due process hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at hearing.

Additional Parental Rights At Hearings:

- (a) The parent has the right to have the student who is the subject of the hearing present; and
- (b) Have the hearing open to the public;
- (c) The record of the hearing and the findings of fact and decision must be provided at no cost to the parent(s).

Student's Status During Proceedings

During the pendency of any due process hearing or appeal of a hearing, the student must remain in their present educational placement and program unless the following occurs:

- (a) The parent and school district agree otherwise; or
- (b) The student is placed in an interim alternative educational setting;
- (c) If the complaint involves an application for initial admission to public school, the student, with the consent of the parents, must be placed in the public school until the completion of dispute resolution proceedings, (i.e. mediation, due process hearing, appeal review and appeal to State or Federal Court;
- (d) If the decision of a hearing officer agrees with the student's parent(s) that a change of placement is appropriate that placement must be treated as an agreement between the parties and becomes the student's placement.

**(F) PARENT REQUIREMENT TO NOTIFY SCHOOL DISTRICT
OF PARENT PLACEMENT AT PRIVATE SCHOOL**

A parent who decides to place their student at a private school because they believe the public school district is not providing the student with a free appropriate public education (FAPE) must notify the public school district before they remove the student if they want the public school district to pay the private school expenses. This notice is required either at an IEP team meeting or in writing at least 10 business days before the student is removed from the public school program. The notice must inform the public school district why they disagree with the IEP for their student and state their intention to remove the student from the public school and enroll them in a private school. If the school district requests to evaluate the student prior to their removal from the public school, the parent must make the student available for that evaluation process. If the public school district refuses to pay for the private school placement selected by the parent, the parent may seek mediation or an impartial due process hearing.

(G) ATTORNEY'S FEES

A parent may seek a court to award reasonable attorney fees for the cost of bringing a successful action against a school district to enforce their rights in a special education matter that a court deems appropriate.

(H) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY

When a student with a disability reaches age eighteen (18) (except for a student who has been determined to be incompetent by a court):

- (a) The school district shall provide any notice required by federal and state statute and regulation to both the student and the parents;
- (b) All other rights accorded to the parents under special education transfer to the student; and
- (c) All rights accorded to the parents under special education transfer to students who are incarcerated in an adult or juvenile correctional institution.

Whenever the transfer of rights occurs, the school district shall notify the individual and the parents of the transfer of rights.

(I) EDUCATIONAL SURROGATE PARENT PROGRAM

If a student is in the custody of a state agency, the RIDE has the responsibility to ensure there is an adult with no conflicting interests to make special education decisions on behalf of the

student. In such cases, the RIDE will determine if it is appropriate to appoint an educational surrogate parent for the student. An educational surrogate parent appointed by the RIDE under Federal and State guidelines has all of the procedural safeguards of a parent.

For information on the Educational Surrogate Parent Program contact:

Educational Surrogate Parent Program
Sherlock Center - Alumni House/RI College
600 Mt. Pleasant Avenue
Providence, RI 02908 (401) 456-1945

**(J) RIGHT TO EXAMINE EDUCATIONAL RECORDS
CONFIDENTIALITY RIGHTS**

The parents of a student with a disability must be afforded an opportunity to inspect and review all educational records with respect to the following:

- (a) The identification, evaluation, and educational placement of the student;
- (b) The provision of a free, appropriate, public education to the student; and
- (c) All educational records relating to their student that are collected, maintained or used by the school district.

The school district shall comply with a parental request without unnecessary delay to inspect and review their student's educational records, and in no case more than ten (10) calendar days after the request has been made.

The right to inspect and review education records under this section includes the following:

- (a) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;
- (b) The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- (c) The right to have a representative of the parent inspect and review the records.

The school district must keep a record of individuals obtaining access to education records collected, maintained, or used, (except access by parents and authorized employees of the school district), including the name of the individual, the date access was given, and the purpose for which the individual is authorized to use the records.

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their student or to be informed of that specific information.

The school district shall provide parents on request a list of the types and locations of education records collected, maintained, or used by the school district.

The school district may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. The school district may not charge a fee to search for or to retrieve information under this part.

- (a) A parent who believes that information in the education records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the student may request the school district amend the information.
- (b) The school district shall decide whether to amend the information within a reasonable period of time of receipt of the request.
- (c) If the school district decides to refuse to amend the information, it must inform the parent of the refusal and advise the parent of the right to a due process hearing.

Opportunity For A Hearing.

The school district shall, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

- (a) If, as a result of the hearing, the school district decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, it must amend the information accordingly and inform the parent in writing;
- (b) If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it must inform the parent of the right to place in the student's records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the school district.

Any explanation placed in the records of the student under this section must be maintained by the school district as part of the records of the student as long as the record of contested portion is maintained by the school district; and if the records of the student or the contested portion are disclosed by the school district to any party, the explanation must also be disclosed to the party.

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| (K) PROVIDING YOUR WRITTEN CONSENT |
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The local school district must obtain your written consent (at a minimum) under the following circumstances:

1. Before evaluating your student for eligibility for special education;
2. Before initially providing special education and related services under an IEP; and
3. Before conducting a re-evaluation unless steps have been taken to obtain your consent and you have not responded.

Consent means the following:

- (a) You have been fully informed of all information relevant to the activity for which consent is sought in your native language or other mode of communication;

- (b) You understand and agree to the carrying out of the activity for which your consent is sought; and
- (c) You understand that it is your voluntary choice to give consent and you may revoke your consent at any time. If you revoke your consent, from that point forward the district must cease the activity to which you have previously consented.

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| (L) STUDENT DISCIPLINE |
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Students with disabilities that violate a school's disciplinary code may be subject to school discipline procedures that include being suspended or removed from their current educational program for up to ten (10) school days (cumulative) during a school year without being provided educational services.

Students that possess, use, sell or solicit illegal drugs on school grounds or at a school-sponsored event or carry or possess a weapon to/at school or school function, may be placed by the school district in an interim alternative educational setting for up to 45 calendar days. Thereafter, the student may return to their prior educational setting unless a new IEP is developed for the student or they have been ordered to another educational placement by a hearing officer after a hearing.

With the exception of removals to an interim alternative educational setting for illegal drugs/weapons, before a student with a disability is suspended or removed from their educational program for more than ten (10) school days cumulative (before the 11th day) and for every school suspension/removal thereafter, the following procedural protections must occur:

1. An IEP team meeting must be conducted;
2. A manifestation determination must be made to ensure the student is not subjected to a disciplinary suspension/removal from school for behavior that is directly related to the student's disability;
3. If, as a result of the manifestation determination, the student's behavior is related to their disability, the student cannot be suspended or removed from school, and the IEP team should reconsider the appropriateness of the student program and placement including the need to conduct a functional behavioral assessment and developing a behavioral intervention plan;
4. If, as a result of the manifestation determination, the student's behavior is not related to their disability, the student can be suspended/removed from their educational program and the following must occur:
 - Educational services, including all IEP services and access to the general educational curriculum, must continue, although in an alternate and/or out of school setting; and
 - Within ten (10) business days from a decision to take disciplinary action, a functional behavioral assessment (if not previously conducted) must be conducted and a behavioral intervention plan implemented for the student.

In considering whether the student's behavior is a manifestation of the student's disability, the IEP team considers evaluation information, observational information, the student's IEP and

placement, and must determine whether the behavior prompting disciplinary removal was a manifestation of the student's disability. The Team considers if the student understood the impact and consequences of the behavior, and further considers if the student's disability impaired the student's ability to control his/her behavior.

If the parent disagrees with the Team's decision on the "manifestation determination" or with the decision relating to placement of the child in an interim alternative education setting or any other disciplinary action, the parent has the right to request an expedited due process hearing. (For more information on student discipline, see **Appendix C**)

OTHER SOURCES OF INFORMATION

This parent's rights document includes valuable information about the rights afforded a parent of a student with disabilities in need of special education and related services. Additional information is available by contacting the local school district, the R.I. Department of Education, and parent and special education related agencies. (For additional resources, please see **Appendix D**)

The R.I. Department of Education hopes this document will assist parents in understanding their rights when taking an active role in their student's educational experience.

A P P E N D I X A

**Model Form to File a
Special Education Complaint**



State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Peter McWalters **SPECIAL EDUCATION COMPLAINT INFORMATION FORM**
Commissioner (to be completed by person filing the complaint)
Complaint Procedures attached

Thomas P. DiPaola, Ph.D.
Director, Office of Special Populations

PERSON FILING COMPLAINT: _____

ADDRESS: _____
Street City/Town Zip Code State

TELEPHONE/FAX: _____

RELATIONSHIP TO STUDENT: _____

STUDENT'S NAME: _____ **DATE OF BIRTH:** _____

PARENT'S NAME: (if known) _____

ADDRESS: (if known) _____
Street City/Town State Zip Code

SCHOOL AND GRADE LEVEL: _____

State the nature of the complaint (include specific dates and instances of special education violations.
Additional space on back of this form) _____

Has the school been made aware of this complaint? Yes ---- No ---- and if so, when and how?

To whom? _____ In writing _____ verbal _____

SIGNATURE: _____ **Print Name:** _____ **DATE:** _____

Return to the R.I. Department of Education, Office of Special Populations, 255 Westminster Street,
Providence, RI 02903

Individuals needing assistance can contact the R.I. Department of Education, Office of Special
Populations, at 222-3505, Fax (401) 222-6030.

(revised 2/01)

Telephone (401)222-4600 Fax (401)222-6178 TTY 800-745-5555 Voice 800-745-6575

The Board of Regents does not discriminate on the basis of age, color, sex,
sexual orientation, race, religion, national origin, or disability

**RHODE ISLAND DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL POPULATIONS**

Complaint Procedures

- 1. When a Special Education Complaint Form is received by the Rhode Island Department of Education, the Department will,**
 - A) complete “Complaint Report” based on information contained in the “Special Education Complaint Information Form”.**
 - B) log the complaint, file a copy with all letters, materials or other backup data, and mail the “Complaint Report” to the appropriate superintendent and complainant with a copy to the special education director of the district, requesting a response within ten (10) days.**
- 2. The Department may need to conduct on-site visit(s) or interview(s) in the investigation of the complaint.**
- 3. The complainant may submit additional information, either verbally or in writing, about the allegations in the complaint.**
- 4. The Department will review all relevant information and make an independent determination as to whether the school department is violating a Special Education regulation.**
- 5. The Rhode Island Department of Education will issue a written final decision to the complainant, superintendent, and director of special education that addresses each allegation in the complaint and contains –**
 - (i) Findings of fact and conclusions; and**
 - (ii) The reasons for the Department’s final decision.**
- 6. The Department’s final decision shall be completed within 60 days after the receipt of the complaint by the Department. An extension in time beyond the 60 days is permitted only if exceptional circumstances exist with respect to a particular complaint. All parties will be notified of any extension.**
- 7. Confidentiality statutes preclude the R.I. Department of Education from providing personally identifiable information to a non-parent complainant without parent consent. The complainant will, however, be notified that a final decision has been made by the R.I. Department of Education.**

A P P E N D I X B

**Model Form to Request a
Due Process Hearing**



State of Rhode Island and Providence Plantations
DEPARTMENT OF EDUCATION
Shepard Building
255 Westminster Street
Providence, Rhode Island 02903-3400

Peter McWalters
Commissioner

APPENDIX B

REQUEST FOR IMPARTIAL DUE PROCESS HEARING

DATE HEARING REQUEST FILED: _____

PERSON FILING HEARING REQUEST: _____

ADDRESS: _____

ATTORNEY OF RECORD (if represented): _____

ADDRESS: _____ **TELEPHONE/FAX:** _____

STUDENT'S NAME: _____ **DOB:** _____

ADDRESS: _____ **TELEPHONE:** _____

SCHOOL AND GRADE LEVEL: _____

SPECIFIC COMPLAINT: (attach a separate sheet if more room is needed) _____

PROPOSED RESOLUTION OF COMPLAINT/PROBLEM: (attach a separate sheet if more room is needed)

A copy of this complaint/request MUST be filed with the Superintendent of the School District.

A party may also request mediation and/or file an administrative complaint.

NOTICE: FAILURE TO FILL OUT THIS FORM COMPLETELY MAY RESULT IN A REDUCTION OF ANY ATTORNEY'S FEES TO WHICH THE PARENT MAY ULTIMATELY BE ENTITLED.

Telephone (401)222-4600 Fax (401)222-6178 TTY 800-745-5555 Voice 800-745-6575

The Board of Regents does not discriminate on the basis of age, color, sex, sexual orientation, race, religion, national origin, or disability

APPENDIX C

DISCIPLINE GUIDE

SPECIAL EDUCATION
 DISCIPLINE GUIDELINES FOR STUDENTS WITH DISABILITIES
 UNDER IDEA 1997
 STUDENT VIOLATES SCHOOL CODE OF CONDUCT

1. SUSPENSIONS NOT TO EXCEED 10 SCHOOL DAYS (CUMULATIVE)

| <u>OPTION #1</u> | <u>OPTION #2</u> | <u>OPTION #3</u> |
|--|--|---|
| <p>LEA can suspend a student for a maximum of 10 school days (cumulative). No requirement for LEA to provide student with a Free Appropriate Public Education (FAPE) during these 10 days.</p> | <p>LEA can provide alternate educational opportunities for students that may or may not count as a day of suspension (i.e.) in school alternative educational setting with the opportunity to progress in the general curriculum and receive IEP services.</p> | <ul style="list-style-type: none"> - LEA can place student in an Interim Alternative Education Setting (IAES) for a maximum of 10 school days. - IEP Team determines IAES - IAES must enable student to participate in general curriculum and Receive IEP services, and services and modifications to address the behavior so it does not recur. |

Not Required – Best Practice

Within 10 business days IEP Team must develop and implement a Behavioral Intervention Plan or review and modify, if necessary, existing Behavioral Intervention Plan.

2. SUSPENSIONS THAT EXCEED 10 SCHOOL DAYS (CUMULATIVE)

Immediately, if possible, and in no case later than ten (10) school days after the student has been suspended for ten (10) school days cumulative (before the 11th day of suspension and before each subsequent series of suspensions), the IEP Team must reconvene to determine if the behavior is a manifestation of the disability – Manifestation Determination.

Parent notification of disciplinary action and all procedural safeguards accorded **no later than the date on which the decision to take action is made the LEA must notify the parent of the decision to seek removal from school.**

MANIFESTATION DETERMINATION

IEP Team makes determination

| | | |
|---|------------------|---|
| <u>First, IEP Team Must Consider</u> (in relationship to behavior/disciplinary action) | then..... | <u>IEP Team Must Determine</u> (in relationship to behavior/disciplinary action) |
|---|------------------|---|

- 1) Evaluation/diagnostic results
- 2) Observations of student
- 3) IEP and placement
- 4) Other relevant information supplied by parent

- 1) IEP and placement were appropriate
- 2) Supplementary aids and services were provided
- 3) Behavioral intervention strategies were provided consistent with IEP
- 4) The child understood the impact and consequences of the behavior, and the student’s disability did not impair their ability to control their behavior

Result

No Manifestation

Child can be disciplined as non-disabled, **but must continue FAPE.** (Parent(s) have a right to an expedited hearing- stay put applies)

Is a Manifestation

Child’s placement cannot be changed except via IEP Team process
 Student can be placed in Interim Alternative Educational Setting by LEA if weapons/illegal drugs are involved or by ORDER of a Hearing Officer if “dangerous” student.

Within 10 business days IEP Team must develop and implement a Behavioral Intervention Plan or review and modify, if necessary, existing Behavioral Intervention Plan.

3. WEAPONS/ILLEGAL DRUGS

OPTION #1

LEA follows regular discipline for special education student.

- Less than/more than 10 days of suspension
- Manifestation Determination

OPTION #2

LEA may place student in an Interim Alternative Educational Setting (IAES) for maximum of 45 days. (student returns to original placement on 46th day unless school and parent agree otherwise.

- IEP Team determines the IAES
- IAES must enable student to participate in the general curriculum and student receives IEP services and services and modifications to address the behavior so it does not recur
- Within 10 business days IEP Team develops and implements a Behavioral Intervention Plan or modify, if necessary, existing Behavioral Intervention Plan
- LEA can seek Hearing or Expedited Hearing to extend 45 days setting or seek another appropriate setting that includes components of IAES.

4. DANGEROUS/LIKELIHOOD OF INJURY

Option #1

LEA can seek Due Process Hearing Officer Order to place student into Interim Alternative Educational Setting (IAES) for not more than 45 days; **OR** Pending a Due Process Hearing, an LEA may request an Expedited Hearing to seek an order to place a “dangerous” student in an IAES or another appropriate setting for not more than 45 days.

Hearing Officer Must:

- 1) Decide if LEA has proven by substantial evidence that maintaining student in current placement is substantially likely to result in injury to student or others;
- 2) Consider appropriateness of student’s placement;
- 3) Consider if LEA made reasonable steps to minimize risk of harm in student’s placement with supplementary aids/services;
- 4) Determines IAES allows child to participate in general curriculum and continue to receive IEP services and provides services to ensure behavior doesn’t recur.

Option #2

LEA can seek Court Order to remove student

5. STUDENTS NOT DETERMINED ELIGIBLE FOR SPECIAL EDUCATION

A child who has not been determined to be eligible for special education and related services and who has engaged in behavior that violated a rule or code of conduct of the school district may assert any of the disciplinary protections if the school district had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A school district shall be deemed to have knowledge that a child was a child with a disability if:

the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with this requirement) to personnel of the appropriate educational agency that the child is in need of special education and related services;

the behavior or performance of the child demonstrates the need for such services;

the parent of the child has requested an evaluation of the child; or,

the teacher of the child, or other personnel of the school district has expressed concern about the behavior or performance of the child to the director of special education or other personnel.

If the school district does not “have knowledge” that a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as are applied to children without disabilities who engage in comparable behaviors.

If a parent requests an evaluation of a regular education child who is suspended or expelled, the evaluation must be expedited. Pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities.

APPENDIX D

RESOURCES FOR CHILDREN WITH SPECIAL NEEDS

1. Rhode Island Department of Education (RIDE)

255 Westminster Street, Providence, RI 02903
(401) 222-3505 – Office of Special Populations

Staff in the Office of Special Populations are able to answer questions and respond to requests for information regarding special education. Every school district has a RIDE consultant assigned to ensure that children with disabilities receive a free, appropriate public education and to provide technical assistance to parents and school personnel. Written complaints that a school district is violating the special education regulations can be filed with the RIDE by completing a form provided by the RIDE. Complaints are investigated, and if non-compliance is found, an order is issued requiring compliance and corrective action. The Office of Special Populations (OSP) also operates a Dispute Resolution System that includes referral and formal mediation and a formal complaint investigation mechanism. More details and information about mediation complaint investigation is available from the RIDE-OSP.

2. IEP Hot Line (RI Department of Education, Office of Special Populations)

The IEP Hot Line is designed to address questions regarding IEP development and the IEP form (not specific questions or problems about a particular student) answered Monday-Friday from 4:00 P.M. – 6:00 P.M. Messages accepted anytime.

3. Rhode Island Parent Information Network, Inc. (RIPIN)

175 Main Street, Pawtucket, RI 02860
(401) 727-4144; 1-800-464-3399 x63 (Toll free in Rhode Island)
(Fax: 401 727-4040) E-mail: ripin@ripin.org Website: www.ripin.org

The Rhode Island Parent Information Network (RIPIN) is a statewide, non-profit organization offering training, information, referrals and support to parents seeking positive outcomes for their children. RIPIN strives to educate, encourage and empower all parents by responding to telephone inquiries; supplying current literature about numerous parenting issues including special education, disabilities, chronic illness and health care; by maintaining a web site; and by offering dozens of training workshops throughout the year. Under certain circumstances, volunteer facilitators may be available to accompany parents to meetings with school personnel.

4. Parent Support Network (PSN)

400 Warwick Avenue, Suite 12, Warwick, RI 02888
(401) 467-6855; 1-800-483-8844; (Fax: 401-467-6903)

The Parent Support Network of Rhode Island (PSN) is a chapter of the national Federation of Families for Children's Mental Health. The Parent Support Network of R.I. is an organization of families supporting families with children and youth who are at risk for or have serious emotional, behavioral, and/or mental health challenges, having consideration for their background and values. The goals of PSN are to:

- Strengthen and preserve families;

- Enable families in advocacy;
- Extend social networks, reducing family isolation; and
- Develop social policy and systems of care

Parent Support Network accomplishes these goals through (a) providing advocacy, education, and training; (b) promoting outreach and public awareness; (c) facilitating social events for families; (d) participating on committees responsible for developing, implementing, and evaluating policies and systems of care.

5. Rhode Island Disability Law Center (formerly RIPAS)

349 Eddy Street, Providence, RI 02903
(401) 351-3150; 1-800-733-5332

The DLC is federally funded to provide legal services to persons with disabilities without regard to income. DLC currently has five federal grant programs which allow it to handle cases involving people with developmental disabilities, people with serious mental health problems, people in need of assistive technology services, people in need of advocacy in order to help them to live independently and various other disability related legal issues.

6. Volunteer Lawyer Program (VLP)

Rhode Island Bar Association, 115 Cedar Street, Providence
(401) 421-7758; 1-800-339-7758

VLP provides attorneys for persons who are income eligible under federally determined guidelines. Attorneys are available to assist with special education problems, as well as other priority areas of law.

7. Educational Surrogate Parent Program

Alumni House, RI College, 600 Mt. Pleasant Avenue, Providence, RI 02908 (401) 456-1943

This is a program supported by the RIDE, OSP. The Educational Surrogate Parent Program acts as the “parent” for special needs children in the care of DCYF whose parents are deceased, their whereabouts are unknown, or whose rights to make educational decisions have been removed.

8. Rhode Island Special Education Advisory Committee (RISEAC)

Rhode Island Department of Education/Office of Special Populations (RIDE/OSP)
(for more information you may contact 222-4600 x2374/e -mail jake@ride.ri.net)

The Rhode Island Special Education Advisory Committee (RISEAC) consists of members appointed by the Commissioner of Education who are involved in or concerned with the education of children with disabilities. It is the function of the Advisory Committee to advise the R.I. Department of Education of the unmet educational needs of children with disabilities.

9. Local Special Education Advisory Committee

The School Committee of each local education or regional special education program appoints an Advisory Committee on Special Education. The Local Special Education Advisory Committee functions and operates similar to the State Advisory Committee with similar membership and purpose. You may contact the Special Education Administrator for information regarding Local Special Education Advisory Committee's at the district level.

10. R.I. Technical Assistance Project (RITAP) at Rhode Island College

600 Mount Pleasant Avenue, Providence, Rhode Island 02908
(401) 456-4600; (Fax: (401) 456-8117); Website: www.ritap.org

The Rhode Island Technical Assistance Project (RITAP) is a statewide education resource center for technical assistance and support, professional development and training, policy analysis and interpretation and interagency collaboration. RITAP is a joint effort between the Rhode Island Department of Education and Rhode Island College. It provides policy makers, practitioners and families with the knowledge and resources necessary to increase their capacity to provide comprehensive and coordinated services to all children that result in improved educational performance and enhanced life-long outcomes.

The resources of the RITAP are organized to assist schools, state and local agencies, institutions of higher education and families in the delivery of quality education and support services for all children, including those with disabilities and other learning differences.