

PROCEDURAL SAFEGUARDS (§300.129)

Definition: The LEA adopts the following definitions:

1. Consent means that 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; 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 the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).
2. Evaluation means procedures used in accordance with this section to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.
3. Personally identifiable means that information includes the name of the child, the child's parent, or other family member; the address of the child; a personal identifier, such as the child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Opportunity to examine records; parent participation in meetings. The parents of a child with a disability is afforded an opportunity to inspect and review all education records with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child, and participate in meetings with respect to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

Parent participation in meetings. The LEA provides notice consistent with that described in **INDIVIDUALIZED EDUCATION PROGRAMS (§300.128)** above, to ensure that parents of children with disabilities have the opportunity to participate in meetings described in this section. A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that LEA personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

Parent involvement in placement decisions. Parents of each child with a disability are members of any group that makes decisions on the educational placement of their child. In implementing these requirements, the LEA uses procedures consistent with the procedures described under "parent participation" in the section **INDIVIDUALIZED EDUCATION PROGRAMS (§300.128)**. If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the LEA uses other methods to ensure their participation, including individual or conference telephone calls, or video conferencing. A placement decision may be made by a group without the involvement of the parents, if the LEA is unable to obtain the parents' participation in the decision. In this case, the LEA maintains a record of its attempt to ensure parent involvement, including information that is consistent with the requirements of the IEP section. The LEA makes reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions

relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.

Independent educational evaluation. The parents of a child with a disability have the right under 34 CFR Part 300 to obtain an independent educational evaluation of the child, subject to the provisions outlined below. The LEA provides to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the LEA criteria applicable for independent educational evaluations as set forth below. For the purposes of this part, “independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the LEA and “public expense” means that the LEA either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

Parent right to evaluation at public expense. A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the LEA. If a parent requests an independent educational evaluation at public expense, the LEA, without unnecessary delay, either initiates a hearing under procedures described below to show that its evaluation is appropriate, ensure that an independent educational evaluation is provided at public expense, unless the LEA demonstrates in a hearing that the evaluation obtained by the parent did not meet the LEA criteria. If the LEA initiates a hearing and the final decision is that the LEA's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at LEA expense.

If a parent requests an independent educational evaluation, the LEA may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent is not required and the LEA does not unreasonably delay either providing the independent educational evaluation at LEA expense or initiating a due process hearing to defend the LEA's evaluation.

Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation is considered by the LEA, if it meets the LEA's criteria, in any decision made with respect to the provision of FAPE to the child, and may be presented as evidence at a hearing under this subpart regarding that child.

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

LEA criteria. If an independent educational evaluation is at LEA expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, is the same as the criteria that the LEA uses when the LEA initiates an evaluation, to the extent the criteria are consistent with the parent's right to an independent educational evaluation. Except for the criteria described in this section, the LEA does not impose conditions or timelines related to obtaining an independent educational evaluation at LEA expense.

Prior notice by the LEA; content of notice. Notice. Written notice that meets the requirements of this section is given to the parents of a child with a disability a reasonable time before the LEA proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child, or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

If the notice described above relates to an action proposed by the LEA that also requires parental consent under §300.505, the LEA may give notice at the same time it requests parent consent.

Content of notice. The notice required in this section includes the following.

1. A description of the action proposed or refused.
2. An explanation of why the LEA proposes or refuses to take the action.
3. A description of any other options that the LEA considered and the reasons why those options were rejected.
4. A description of each evaluation procedure, test, record, or report the LEA used as a basis for the proposed or refused action.
5. A description of any other factors which are relevant to the LEA's proposal or refusal.
6. A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained.
7. Sources for parents to contact to obtain assistance in understanding the provisions of 34 CFR Part 300.

Notice in understandable language. The notice is written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the LEA takes steps to ensure that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; that the parent understands the content of the notice; and that there is written evidence that these requirements of are met.

Procedural safeguards notice. A copy of the procedural safeguards available to the parents of a child with a disability is given to the parents, at a minimum, upon initial referral for evaluation, upon each notification of an IEP meeting, upon reevaluation of the child; and upon receipt of a request for due process under **PROCEDURAL SAFEGUARDS (§300.129)**

Contents. The procedural safeguards notice includes a full explanation of all of the procedural safeguards available under §§300.403, 300.500-300.529, and 300.560-300.577 of IDEA, and the State complaint procedures available under §§300.660-300.662 of IDEA relating to (1) Independent educational evaluation; (2) Prior written notice; (3) Parental consent; (4) Access to educational records; (5) opportunity to present complaints to initiate due process hearings; (6) The child's placement during pendency of due process proceedings; (7) Procedures for students who are subject to placement in an interim alternative educational setting; (8) Requirements for unilateral placement by parents of children in private schools at public expense; (9) Mediation; (10) Due process hearings, including requirements for disclosure of evaluation results and recommendations; (11) State-level appeals; (12) Civil actions; (13) Attorneys' fees; and (14) The State complaint procedures under §§300.660--300.662, including a description of how to file a complaint and the timelines under those procedures.

Parental consent. Subject to requirements of this section described below, informed parent consent is obtained by the LEA, before conducting an initial evaluation or reevaluation and initial provision of special education and related services to a child with a disability. Consent for initial evaluation is not construed as consent for initial placement. Parental consent is not required before reviewing existing

data as part of an evaluation or a reevaluation or administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

Refusal. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the LEA may continue to pursue those evaluations by using the due process procedures, pre-hearing conference or the mediation procedures if appropriate. The LEA may not request an impartial due process hearing when written parental consent is not obtained, for instances where the parent withholds consent for the initial provision of program and services.

Failure to respond to request for reevaluation. It is the LEA's policy that informed parental consent need not be obtained for reevaluation if the LEA can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond. To meet the reasonable measures requirement in this section, the LEA uses procedures consistent with those in the IEP section -- **Parent participation. LEA responsibility and Other methods to ensure parent participation.** -- of this document.

Limitation. The LEA does not use a parent's refusal to consent to one service or activity described above to deny the parent or child any other service, benefit, or activity of the LEA.

Mediation. The LEA adheres to the procedures established for mediation under §300.506, consistent with the provisions of 22 Pa. Code §14.102(a)(2)(xx) to allow parties to resolve disputes involving the identification, evaluation and educational placement of the child and/or the provision of FAPE to the child through a mediation process which, at a minimum, are available whenever a hearing is requested under **PROCEDURAL SAFEGUARDS (§300.129)**. If a meeting is held by the LEA with the parent to encourage the use of mediation, the LEA will comply with 34 CFR §300.506(d); the 'disinterested party' would explain the benefits of the mediation process, and encourage the parents to use the process.

Requirements. The procedures meet the following requirements:

1. The mediation process is voluntary on the part of the parties; is not used by the LEA to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part B of IDEA; and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
2. A list of individuals is maintained who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
3. The cost of the mediation process, including the costs of meetings described below to encourage mediation is borne by the PA Department of Education.
4. Each session in the mediation process is scheduled in a timely manner and held in a location that is convenient to the parties to the dispute.
5. An agreement reached by the parties to the dispute in the mediation process is set forth in a written mediation agreement.
6. Discussions that occur during the mediation process are confidential and may not be used by the LEA as evidence in any subsequent due process hearings or civil proceedings, and the LEA consents, if asked as part of the mediation process, to sign a confidentiality pledge prior to the commencement of the process.

Impartial due process hearing; parent notice. The LEA may initiate a hearing relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child, except when the parent is withholding written consent for the initial placement. When a hearing is initiated, the LEA informs the parents of the availability of mediation described above. The LEA informs the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the LEA initiates a hearing under this section.

LEA responsible for conducting hearing. The hearing is conducted by the LEA directly responsible for the education of the child through the services of the Office for Dispute Resolution, under the provisions at 22 Pa. Code §14.162(p)(1). With regard to a child who is preschool aged (i.e., a child who is less than 'age of beginners' and at least 3 years of age), the Department is the agency responsible for the hearing which is conducted through the early intervention agency under the regulations of the State Board of Education under the provisions of 22 Pa. Code §14.162(p)(3).

Parent notice to the LEA. The LEA requires the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the LEA when the parent requests a hearing under this section.

Content of parent notice. The notice required above must include the name of the child, the address of the residence of the child, the name of the school the child is attending, a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem, and a proposed resolution of the problem to the extent known and available to the parents at the time.

Model form to assist parents. The LEA adopts for use the PA Department of Education developed model form to assist parents in filing a request for due process that includes the information required above.

Right to due process hearing. The LEA does not deny or delay a parent's right to a due process hearing for failure to provide the above model notice.

Impartial hearing officer. A hearing is not conducted by a person who is an LEA employee that is involved in the education or care of the child or by any person having a personal or professional interest that would conflict with his or her objectivity in the hearing. A person who otherwise qualifies to conduct a hearing is not an employee of the LEA solely because he or she is paid by the LEA to serve as a hearing officer. The LEA keeps a list of the persons who serve as hearing officers. The list includes a statement of the qualifications of each of those persons.

Hearing rights. It is the LEA's policy that any party to a hearing conducted under this section, or an appeal conducted under this section, has the following rights.

1. May be represented by legal counsel and accompanied and advised by individuals with special knowledge or training with respect to the problems of children with disabilities.
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses.
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing.

4. Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing.
5. Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

Additional disclosure of information. It is the LEA's policy, that at least 5 business days prior to a hearing conducted under this section, each party shall disclose to parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with the disclosure requirements of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental rights at hearings. Parents involved in hearings must be given the right to have the child who is the subject of the hearing present and open the hearing to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to parents.

Findings and decision to advisory panel and general public. After deleting any personally identifiable information, the Office for Dispute Resolution transmits, on behalf of the LEA, the findings and decisions to the State advisory panel and makes those findings and decisions available to the public.

Finality of decision; appeal; impartial review. Finality of decision. It is the LEA's policy, that a decision made in a hearing conducted under this section is final, except that any party involved in the hearing may appeal the decision for state level review to the PA Department of Education.

Appeal of decisions; impartial review. It is the LEA's policy that any party aggrieved by the findings and decision in the hearing may appeal to PA Department of Education.

Timelines and convenience of hearings and reviews. The LEA, through the Office for Dispute Resolution, provides that not later than 45 days after the receipt of a request for a hearing a final decision is reached in the hearing and a copy of the decision is mailed to each of the parties. A hearing officer may grant specific extensions of time beyond the periods set out in this section at the request of either party. Each hearing involving oral arguments is conducted at a time and place that is reasonably convenient to the parents and child involved.

Attorneys' fees. In any action or proceeding brought under section 615 of IDEA (Individuals with Disabilities Education Act), the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party. It is the LEA's policy that funds under Part B of IDEA (Individuals with Disabilities Education Act) are not used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of IDEA (Individuals with Disabilities Education Act) and the procedural safeguards described in this document. The LEA may use funds under Part B of the Act for conducting an action or proceeding under section 615 of IDEA (Individuals with Disabilities Education Act).

Child's status during proceedings. Except when a child is placed in an appropriate interim alternative educational setting because the child carried to or possessed a weapon at school, on school premises, or at a school function, or the child knowingly possessed or used illegal drugs or sold or solicited the sale of a controlled substance while at school or a school function, during the pendency of any administrative or judicial proceeding regarding a due process complaint, unless the LEA and the parents of the child agree otherwise, the child involved in the complaint remains in his or her current educational placement.

If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, is placed in the public school until the completion of all the proceedings. If the decision of a PDE review official - appellate hearing officer - in an administrative appeal regarding a school aged student, agrees with the child's parents that a change of placement is appropriate, that placement is treated as an agreement between the LEA and the parents.

Surrogate parents. To ensure that the rights of a child are protected, if no parent can be identified, the LEA, if after reasonable efforts, cannot discover the whereabouts of a parent, or the child is a ward of the State under the laws of PA, assigns an individual to act as a surrogate parent for the child.

Criteria for selection of surrogates. The LEA trains individuals to serve as surrogate parents to ensure their knowledge and skills will provide adequate representation of the child. Except as provided below, the LEA selects a person as a surrogate who is not an employee of the Department of Education, the LEA, or any other agency that is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. The LEA may select, on a case-by-case basis, an individual to serve as a surrogate parent, including an individual who is a foster parent who is an employee of a nonpublic agency that only provides non-educational care for the child.

Non-employee requirement; compensation. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

Responsibilities. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child.

Change of placement for disciplinary removals. For purposes of removals of a child with a disability from the child's current educational placement, it is the LEA's policy that a change of placement occurs if the removal is for more than 10 consecutive school days or the child is subjected to a series of removals that constitute a pattern because they cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time the child is removed, and the proximity of the removals to one another. It is the LEA's policy that disciplinary exclusion of a student with a disability for more than 15 cumulative schools days in a school year will be considered a pattern so as to be deemed a change in educational placement.

Authority of school personnel. The LEA may order, to the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement for not more than 10 consecutive school days for any violation of school rules, and additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under the paragraph above).

After a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the LEA provides services to the extent required to provide FAPE and a change in placement of a child with a disability to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days, if the child carries or possesses a

weapon to school or at school, on school premises, or to or at a school function under the jurisdiction of a State or a local educational agency, or the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency.

Either before or not later than 10 business days after either first removing the child for more than 10 school days in a school year or commencing a removal that constitutes a change of placement described above, if the LEA did not conduct a functional behavioral assessment and implement a behavioral intervention plan for the child before the behavior that resulted in the removal described above, the LEA convenes an IEP meeting to develop an assessment plan.

If the child already has a behavioral intervention plan, the IEP team shall meet to review the plan and its implementation, and, modify the plan and its implementation as necessary, to address the behavior. As soon as practicable after developing the assessment plan, and completing the assessments required by the plan, the LEA convenes an IEP meeting to develop appropriate behavioral interventions to address that behavior and implements those interventions.

If subsequently, a child with a disability who has a behavioral intervention plan and who has been removed from the child's current educational placement for more than 10 school days in a school year is subjected to a removal that does not constitute a change of placement, the IEP team members shall review the behavioral intervention plan and its implementation to determine if modifications are necessary. If one or more of the team members believe that modifications are needed, the team shall meet to modify the plan and its implementation, to the extent the team determines necessary.

For purposes of this section, the following definitions apply: (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). (2) Illegal drug means a controlled substance, but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. (3) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code, means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length.

Authority of hearing officer. An LEA hearing officer may order a change in the educational placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer, in an expedited due process hearing, determines that the LEA has demonstrated by substantial evidence that maintaining the current educational placement of the child is substantially likely to result in injury to the child or to others; considers the appropriateness of the child's current placement; considers whether the LEA has made reasonable efforts to minimize the risk of harm in the child's current educational placement, including the use of supplementary aids and services; and determines that the interim alternative educational setting that is proposed by the LEA personnel who have consulted with the child's special education teacher, meets the following requirements:

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1. Is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP.

2. Includes services and modifications to address the behavior that are designed to prevent the behavior from recurring.

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

Determination of setting. The interim alternative educational setting is determined by the IEP team and other qualified personnel in a meeting.

Additional requirements. Any interim alternative educational setting in which a child is placed is selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP, include services and modifications to address the behavior that are designed to prevent the behavior from recurring.

Manifestation determination review. If an action is contemplated regarding behavior or involving a removal that constitutes a change of placement for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the LEA that applies to all children, not later than the date on which the decision to take that action is made, the parents are notified of that decision and provided the procedural safeguards notice, and immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review is conducted of the relationship between the child's disability and the behavior subject to the disciplinary action.

Individuals to carry out review. A manifestation determination review is conducted by the IEP team and other qualified personnel in a meeting.

Conduct of review. In carrying out a manifestation determination review, the IEP team and other qualified personnel may determine that the behavior of the child was not a manifestation of the child's disability only if the IEP team and other qualified personnel:

1. First, consider in terms of the behavior subject to disciplinary action, all relevant information, including evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the child, observations of the child, and the child's IEP and placement; and

2. Then determine that in relationship to the behavior subject to disciplinary action:

a. The child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

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

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

Decision. If the IEP team and other qualified personnel determine that any of the standards above were not met, the behavior must be considered a manifestation of the child's disability.

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Meeting. The manifestation review determination may be conducted at the same IEP meeting that is convened to consider the need for a functional behavioral assessment/review or development of a behavior plan.

Deficiencies in IEP or placement. If, in the manifestation review determination, the LEA identifies deficiencies in the child's IEP or placement or in their implementation, it takes immediate steps to remedy those deficiencies.

Determination that behavior was not manifestation of disability. If the result of the manifestation review determines that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except that the IEP team must determine what services may be necessary to ensure FAPE.

Additional requirement. If the LEA initiates disciplinary procedures applicable to all children, the LEA transmits the special education and disciplinary records of the child with a disability for consideration by the person or persons making the final determination regarding the disciplinary action.

Child's status during due process proceedings. Except as provided in the section **Child's status during proceedings.**, regarding interim alternative placements, the child remains in his/her current educational placement during any proceedings if a parent requests a hearing to challenge a determination, made through the manifestation review, that the behavior of the child was not a manifestation of the child's disability.

Parent appeal. If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement under these disciplinary provisions, the parent may request a hearing. The LEA arranges for an expedited hearing if a hearing is requested by a parent.

Review of decision. In reviewing a decision with respect to the manifestation determination, the LEA hearing officer shall determine whether the LEA has demonstrated that the child's behavior was not a manifestation of the child's disability consistent with the requirements of this section. In reviewing a decision to place the child in an interim alternative educational setting, the hearing officer shall apply the standards under **Authority of Hearing Officer** above.

Placement during appeals. If a parent requests a hearing or an appeal regarding a disciplinary action to challenge the interim alternative educational setting or the manifestation determination, the child remains in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45-day time period, whichever occurs first, unless the parent and the LEA agree otherwise.

Current placement. If a child is placed in an interim alternative educational setting and the LEA proposes to change the child's placement after expiration of the placement in interim alternative educational setting, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided under

Expedited hearing.

Expedited hearing. If the LEA maintains that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the LEA may request an expedited due process hearing. The procedures in this paragraph may be repeated, as necessary.

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

Basis of knowledge. The LEA deems itself to have knowledge that a child is a child with a disability if the parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the LEA that the child is in need of special education and related services; the behavior or performance of the child demonstrates the need for these services; the parent of the child has requested an evaluation of the child under IDEA; or the teacher of the child, or other personnel of the LEA, has expressed concern about the behavior or performance of the child to the director of special education of the LEA or to other personnel in accordance with the LEA's established child find or special education referral system.

Exception. A LEA would not be deemed to have knowledge under this section if, as a result of receiving the information specified under **Basis of knowledge.**, the LEA either conducted an evaluation and determined that the child was not a child with a disability under 34 CFR Part 300 or determined that an evaluation was not necessary; and provided notice to the child's parents of the LEA's determination.

Conditions that apply if no basis of knowledge. If the LEA does not have knowledge that a child is a child with a disability prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviors.

Limitations. If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the child remains in the educational placement determined by the LEA, which can include suspension or expulsion without educational services. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the LEA and information provided by the parents, the LEA provides special education and related services.

Expedited due process hearings. Expedited due process hearings meet the requirements of the hearing section of this document. In the case of an expedited due process hearing, a written decision will be mailed to the parties within 45 days of the public agency's receipt of the request for the hearing, without exceptions or extensions. This timeline is the same for hearings requested by parents or the LEA.

Referral to and action by law enforcement and judicial authorities. The LEA, when reporting a crime committed by a child with a disability, transmits copies of the special education and disciplinary records of the child for consideration by the appropriate authorities to whom it reports the crime. The

LEA, when reporting a crime under this provision transmits copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

