PROCEDURAL SAFEGUARDS

The District shall establish and maintain procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of a free appropriate public education (FAPE). *20 U.S.C. 1415(a)–(b)*

These procedures shall include:

EXAMINATION OF RECORDS AND PARTICIPATION IN MEETINGS

1. An opportunity for the parents to review all education records and to participate in meetings relating to the identification, evaluation, and educational placement of the child and the provision of FAPE to the child. *34 CFR 300.501*

INDEPENDENT EDUCATIONAL EVALUATION

2. An opportunity for the parents to obtain an independent educational evaluation of the child. *34 CFR 300.502*

ASSIGNMENT OF SURROGATE PARENT

3. Assignment of an individual to act as a surrogate for the parent when no parent can be identified, the District cannot locate the parents, or the child is a ward of the state. *34 CFR 300.519*

PRIOR WRITTEN NOTICE

4. Prior written notice to the parents whenever the District proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. *34 CFR 300.503* [See PRIOR NOTICE AND CONSENT, below]

MEDIATION

5. Procedures to allow parties to resolve disputes through a mediation process. *34 CFR 300.506*

COMPLAINTS

6. An opportunity for any party to file a due process complaint on any matter relating to the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. [See COMPLAINT PROCEDURES, below] *34 CFR 300.507*

DUE PROCESS COMPLAINT

7. Procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which shall remain confidential). *34 CFR 300.508*

CONSENT

Consent means that:

1. 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;

2. The parent understands and agrees in writing to 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

3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. A revocation of consent is not retroactive.

   If the parent revokes consent in writing for his or her child's receipt of services after the child is initially provided special education and related services, the District is not required to amend the child's education records to remove any references to the child's receipt of services because of the revocation of consent.

34 CFR 300.9

LANGUAGE OF NOTICES

The procedural safeguards and prior notices described below must be written in language understandable to the general public. The notice must be 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. *34 CFR 300.503(c), .504(d)*

ELECTRONIC DELIVERY OF NOTICES

A parent may elect to receive the procedural safeguards notice, prior notice, or notice of due process complaint by electronic mail if the district makes that option available. *34 CFR 300.505*

PROCEDURAL SAFEGUARDS NOTICE

The District shall provide a copy of the procedural safeguards to parents only one time a year, except that a copy also shall be given to the parents:

1. Upon initial referral or parental request for evaluation;
2. Upon receipt of the first state complaint and upon receipt of the first due process complaint in a school year;
3. On the date of a decision to make a disciplinary removal that is a change in placement; and
4. Upon request by a parent.

The District may place a current copy of the procedural safeguards notice on its Internet Web site, if it has one.

CONTENTS OF NOTICE

The notice shall include a full explanation of the procedural safeguards relating to:

1. Independent educational evaluations;
2. Prior written notice;
3. Parental consent;
4. Access to educational records;

5. Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
   a. The time period in which to file a complaint,
   b. The opportunity for the District to resolve the complaint; and
   c. The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures.
6. The availability of mediation;
7. The child's placement during pendency of any due process proceedings;
8. Procedures for children who are subject to placement in an interim alternative educational setting;
9. Requirements for unilateral placement by parents of children in private schools at public expense;
10. Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
11. Civil actions, including the time period in which to file such actions; and
12. Attorneys' fees.

20 U.S.C. 1415(a)–(b), (d); 34 CFR 300.504(c)

PRIOR NOTICE AND CONSENT

The District shall provide prior written notice to the parents a reasonable time before the District proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child or the provision of FAPE to the child. *34 CFR 300.503(a)*

"Reasonable time" is defined as at least five school days, unless the parents agree otherwise. *19 TAC 89.1015*

CONTENTS OF NOTICE

The notice must include:

1. A description of the action proposed or refused by the District;
2. An explanation of why the District proposes or refuses to take the action;

3. A description of each evaluation procedure, assessment, record, or report the District used as a basis for the proposed or refused action;

4. A statement that the parents have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of the procedural safeguards can be obtained;

5. Sources for parents to contact to obtain assistance in understanding the IDEA rules;

6. A description of other options the ARD committee [see EHBAB] considered and the reasons why those options were rejected; and

7. A description of other factors that are relevant to the district's proposal or refusal.

34 CFR 300.503(b)

CONSENT TO INITIAL EVALUATION

Before the District conducts an initial evaluation, it shall provide prior written notice, including a description of any evaluation the District proposes to conduct, and obtain informed consent for the evaluation from the parents. *20 U.S.C. 1414(a)(1)(D), (E); 34 CFR 300.304(a)*

CONSENT TO SERVICES

The District shall seek informed consent from the parent before providing special education and related services to a child. [See EHBAA] *20 U.S.C. 1414(a)(1)(D)*

CONSENT TO REEVALUATION

The District shall obtain informed parental consent before conducting any reevaluation of a child with a disability, except that such informed parental consent need not be obtained if the District can demonstrate that it has taken reasonable measures to obtain such consent and the parent has failed to respond. *20 U.S.C. 1414(c)(3)*

PSYCHOLOGICAL EXAMINATIONS AND TESTS

On request of a child's parent, before obtaining the parent's consent for the administration of any psychological examination or test to the child as part of the evaluation of the child's need for special education, the District shall provide to the child's parent:

1. The name and type of the examination or test; and

2. An explanation of how the examination or test will be used to develop an appropriate IEP for the child.

If the District determines that an additional examination or test is required for the evaluation of a child's need for special education, the District shall provide the information above to the parent

regarding the additional examination or test and shall obtain additional consent for the examination of test.

Education Code 29.0041(a), (b)

COMPLAINT PROCEDURES

Whenever a due process complaint has been received by the District, the parent shall have an opportunity for an impartial due process hearing, which shall be conducted by TEA. [For TEA rules on due process hearings, see 19 TAC 89.1151–.1191.]

TIME LIMIT

Such due process complaint must set forth an alleged violation that occurred not more than one year before the date the parent or District knew or should have known about the alleged action that forms the basis of the complaint.

20 U.S.C. 1415(f)(1)(A); 19 TAC 89.1151(c)

EXCEPTION

This timeline shall not apply if the parent was prevented from requesting a hearing due to:

1. A specific misrepresentation by the District that it had resolved the problem forming the basis of the complaint; or
2. The District's withholding of information from the parent that the District was required by the IDEA to provide.

20 U.S.C. 1415(f)(3)(D); 34 CFR 300.511(f)

'STAY PUT'

During the pendency of any proceeding conducted under IDEA part B (except proceedings to challenge a disciplinary change of placement or manifestation determination), the child shall remain in the then-current educational placement unless the District and the parent agree otherwise. If the child is applying for initial admission to a public school, the child shall, with the consent of the parents, be placed in the public school program until all proceedings have been completed. *20 U.S.C. 1415(j); 34 CFR 300.518, .533*

EXCEPTION

When a due process hearing has been requested by a parent or district concerning a disciplinary change of placement or manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the child's assignment to the alternative setting, or the 45-day timeline, if applicable, whichever occurs first, unless the parent and district agree otherwise. *20 U.S.C. 1415(k)(3)(A), 1415(k)(4)(A); 34 CFR 300.533* [See FOF]

RESOLUTION PROCESS

Within 15 days of receiving notice of a parent's due process complaint, and before initiating a due process hearing, the District shall convene a meeting with the parent and the relevant member or members of the ARD committee. The purpose of the meeting is for the parent to discuss the due process complaint and the facts that

form the basis of the due process complaint, so that the District has the opportunity to resolve the dispute.

The meeting need not be held if the parent and the District agree in writing to waive the meeting, or the parent and the district agree to use the mediation process.

If the District has not resolved the due process complaint to the satisfaction of the parent within 30 days of the receipt of the complaint, the due process hearing may occur. If the District is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made, the District may, at the conclusion of the 30-day period, request that a hearing officer dismiss the parent's due process complaint.

34 CFR 300.510

TRANSFER OF RIGHTS TO ADULT STUDENTS

When a student reaches the age of 18, the District shall notify the student and the parents of the transfer of parental rights, as described in the following paragraph. This notice is separate and distinct from the requirement that, beginning at least one year before the student reaches the age of 18, the student's IEP include a statement regarding transfer of parental rights.

A student with a disability who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Chapter 31, Family Code, shall have the same right to make educational decisions as a student without a disability. All other rights accorded to parents under Chapter 29, Subchapter A of the Education Code or 20 U.S.C. 1415 transfer to the student.

34 CFR 300.520; Education Code 29.017(a), (c); 19 TAC 89.1049(c)