

Section 7 - PROCEDURAL SAFEGUARDS SECTION
Table of Contents

I.	Procedural Safeguards Notice.....	702
	Copy Provided to Parent – Distribution.....	702
	Internet.....	702
	Contents of Procedural Safeguards.....	702
	Native Language.....	702
II.	Prior Written Notice.....	703
	Content of Notice.....	703
	Notice of Evaluation.....	703
	Notice of ARD Meeting.....	703
	Notice of Proposal or Refusal.....	703
	Timeline for Notice.....	704
	Purpose, Time, Location, Attendance.....	704
III.	Consent.....	705
	Consent means.....	705
	Consent Required for:	
	a. Initial Evaluation.....	705
	b. Special education services.....	705
	c. Reevaluation.....	706
	d. Consent not required.....	706
	Release of Records.....	706
	Public Insurance.....	706
	Consent for Certain Psychologicals.....	707
	Individual Family Support Plan (IFSP).....	707
	Transfer of Records from other District.....	707
IV.	Parent Participation in Meetings.....	708
	Definition.....	708
	a. Parent Participation.....	708
	b. Parent Participation in Meeting (Opportunity to Examine Records).....	709
	c. Parent Participation in Placement Decision.....	709
	Mandatory Medications.....	710
	Parental Rights Regarding Adult Students.....	710
V.	Confidentiality of Information.....	710
	Definitions.....	710
	Notice to Parents.....	710
	Access Rights.....	710
	Record of Access.....	711
	Records on More Than One Child.....	711
	Types and Locations of Information.....	711
	Fees.....	711
	Amendment of Record at Parent Request.....	712
	Opportunity for Hearing.....	712
	Result of Hearing.....	712
	Hearing Procedure.....	712
	Consent for Disclosure of Records.....	712
	Records to Law Enforcement.....	712
	Safeguards (training staff on confidentiality).....	713
	Destruction of Information.....	713

VI.	Surrogate / Foster Parent	713
	Definition.....	713
	Criteria and Compensation.....	714
	Requirement for Surrogates.....	714
	Training Procedures.....	715
	Foster Parents.....	716
	Assignment Procedures.....	717
	Assurances.....	717
	Documentation of Training for Volunteer as a Surrogate Parent.....	717
	Documentation of Training for Foster Parent as Surrogate Parent.....	718
	Surrogate Training Completed.....	718
VII.	Independent Educational Evaluation (IEE)	718
	(a) General information provided to parent.....	718
	(b) Parent right to evaluation at public expense.....	719
	(c) Parent-initiated evaluations – results considered.....	719
	(d) Requests for evaluations by hearing officers.....	719
	(e) Agency criteria for the IEE.....	719
	Evaluator Requirements.....	719
	Steps for Reimbursement.....	720
	Criteria for Fee Setting.....	720
	Parents Seeking Reimbursement.....	721
	District Consideration of IEE.....	721
VIII.	Complaint Procedures	721
	Filing a Complaint.....	723
	Content of Complaint.....	724
	LEA Prior Written Notice - Response Required.....	725
	Model Forms.....	725
	Resolution Process:.....	725
	a. Resolution Meeting.....	725
	b. Resolution Period.....	725
	c. Written Agreement.....	725
	d. Agreement Review Period.....	726
	Parentally Placed in Private School Due Process Complaint.....	726
IX.	Mediation	726
X.	Due Process Hearing	727
	Hearing Rights.....	728
	Request for Hearing.....	728
	Impartial Hearing Officer.....	729
	Prehearing Procedure.....	729
	Hearing.....	730
	Evaluation Conducted.....	731
	Hearing Decisions.....	732
	Finality of Decision; Appeal.....	732
	Timelines.....	733
	Special Rule for Expedited Due Process Hearing.....	733
	Attorney’s Fees.....	733
XIII.	Civil Action	734
XIV.	Student Status During Proceedings	735

Section 7 - PROCEDURAL SAFEGUARDS SECTION

I. PROCEDURAL SAFEGUARDS NOTICE

§300.504 Procedural safeguards notice.

- (a) **General.** A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents **only 1 time a year**, except that a copy also must be given to the parents--
- (1) Upon initial referral or parent request for evaluation;
 - (2) Upon receipt of the first State complaint under §§300.151 through 300.153 or a due process complaint under §300.507 in that school year; and
 - (3) Upon request by a parent.
- (b) **Internet Web site.** DISD may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.
- (c) **Contents.** The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §§300.500 through 300.536, and §§300.610 through 300.627 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 or State complaint procedures, including--
 - (i) The time period in which to file a complaint;
 - (ii) The opportunity for the agency to resolve the complaint; and
 - (iii) 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 hearings on due process complaints;
 - (8) Procedures for students 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) State-level appeals (if applicable in that State);
 - (12) Civil actions, including the time period in which to file those actions; and
 - (13) Attorneys' fees.
- (d) **Notice in understandable language.** The notice required under paragraph (a) of this section must meet the requirements of §300.503(c). (*found in Section II below*) (Authority: 20 U.S.C. 1415(d)(1) and (2))

§300.29 Native language.

- (a) **Native language**, when used with respect to an individual who is limited English proficient, means the following:
- (1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.
 - (2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.
- (b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication). (Authority: 20 U.S.C. 1401(20))

II. PRIOR WRITTEN NOTICE

§300.503 Prior notice by the Devine Independent School District; content of notice.

- (a) **Notice.** Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before DISD--
- (1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
 - (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- (b) **Content of notice.** The notice required under paragraph (a) of this section must include--
- (1) A description of the action proposed or refused by the agency;
 - (2) An explanation of why the agency proposes or refuses to take the action;
 - (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
 - (4) 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;
 - (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;
 - (6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and
 - (7) A description of other factors that are relevant to the agency's proposal or refusal.
- (c) **Notice in understandable language.**
- (1) The notice required under paragraph (a) of this section must be--
 - (i) Written in language understandable to the general public; and
 - (ii) 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.
 - (2) If the native language or other mode of communication of the parent is not a written language, DISD must take steps to ensure--
 - (i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
 - (ii) That the parent understands the content of the notice; and
 - (iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.
(Authority: 20 U.S.C. 1415(b)(3) and (4), 1415(c)(1), 1414(b)(1))

The regulation below §300.503 is required for all Notices including:

- *Notice of Evaluation,*
- *Notice of ARD, and*
- *Notice of Proposal or Refusal.*

§300.505 Electronic mail.

A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if DISD makes that option available.

(Authority: 20 U.S.C. 1415(n))

TAC §89.1045. Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings.

- (a) DISD shall invite the parents and adult student to participate as members of the admission, review, and dismissal (ARD) committee by providing written notice in accordance with 34 Code of Federal Regulations (CFR), §§300.345, 300.503, and 300.505, and Part 300, Appendix A.
- (b) A parent may request an ARD committee meeting at any mutually agreeable time to address specific concerns about his or her child's special education services. DISD must respond to the parent's request either by holding the requested meeting or by requesting assistance through the Texas Education Agency's mediation process. DISD should inform parents of the functions of the ARD committee and the circumstances or types of problems for which requesting an ARD committee meeting would be appropriate.

Timeline for Notice (Mutually Agreeable Time)

TAC §89.1015. Time Line for All Notices.

"Reasonable time" required for the written notice to parents under 34 Code of Federal Regulations (CFR), §300.503, is defined as at least five school days, unless the parents agree otherwise.

§300.322 Parent Participation.

- (a) **DISD responsibility—general.** The Devine Independent School District must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including--
 - (1) **Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend;**
and
 - (2) **Scheduling the meeting at a mutually agreed on time and place.**

Purpose, Time, Location, Attendance

- (b) **Information provided to parents.**
 - (1) **The notice required under paragraph (a)(1) of this section must--**
 - (i) **Indicate the purpose, time, and location of the meeting and who will be in attendance; and**
 - (ii) **Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child).**
 - (2) **For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--**
 - (i) **Indicate--**
 - (A) **That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and**
 - (B) **That the agency will invite the student; and**
 - (ii) **Identifies any other agency that will be invited to send a representative.**

§300.321 IEP Team Attendance.

- (f) **Initial IEP meeting for child under Part C.** In the case of a child who was previously served under Part C of the Act, an invitation to the initial IEP meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services. (Authority: 20 U.S.C. 1401(30), 1414(d)(1)(A)(7),(B))

III. CONSENT

§300.9 Consent. 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)
 - (1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
 - (2) 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).
(Authority: 20 U.S.C. 1414(a)(1)(D))

§300.300 Parental consent.

(a) Consent for initial evaluation.

- (1)(i) Except as provided in paragraph (a)(2) of this section (regarding consent for wards of the State), the public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under §300.8 must obtain informed consent from the parent of the child before conducting the evaluation.
- (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.
- (2) (i) If the child is a ward of the State and is not residing with the child's parent, DISD must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- (ii) DISD is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if--
 - (A) Despite reasonable efforts to do so, DISD cannot discover the whereabouts of the parent of the child;
 - (B) The rights of the parents of the child have been terminated in accordance with State law; or
 - (C) The rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- (3) If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation under paragraph (a)(1) of this section, or the parent fails to respond to a request to provide consent, DISD may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516), if appropriate, except to the extent inconsistent with State law relating to such parental consent.

(b) Parental consent for services.

- (1) A public agency (DISD) that is responsible for making FAPE available to a child with a disability must seek to obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.
- (2) If the parent of a child fails to respond or refuses to consent to services under paragraph (b)(1) of this section, DISD may not use the procedures in Subpart E of this part (including the mediation procedures under §300.506 or the due process procedures under §§300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child.
- (3) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, DISD--
 - (i) Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which DISD requests consent; and

(ii) **Is not required to convene an IEP meeting or develop an IEP under §§300.320 and 300.324 for the child for the special education and related services for which DISD requests such consent.**

If the DISD campus staff are aware that the parent does not intend on giving consent for services, contact the Special Education Department administrator to assure appropriate documentation is planned and also to determine if mediation should be offered. If campus staff are aware and the parent refuses in the ARD/IEP meeting, contact the Special Education Department administrator after the ARD/IEP meeting to assure all efforts are exhausted.

(c) **Parental consent for reevaluations.**

- (1) **Subject to paragraph (c)(2) of this section, DISD must obtain informed parental consent, in accordance with §300.300(a), prior to conducting any reevaluation of a child with a disability.**
- (2) **The informed parental consent described in paragraph (c)(1) of this section need not be obtained if DISD can demonstrate that--**
 - (i) **It had taken reasonable measures to obtain such consent; and**
 - (ii) **The child's parent has failed to respond.**

(d) **Other consent requirements.**

- (1) **Parental consent is not required before -**
 - (i) **Reviewing existing data as part of an evaluation or a reevaluation; or**
 - (ii) **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.**
- (2) **In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.**
- (3) **DISD may not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d)(2) of this section to deny the parent or child any other service, benefit, or activity of the public agency, except as required by this part. (Authority: 20 U.S.C. 1414(a)(1)(D) and 1414(c))**

For Consent to Release Records, DISD may release records without parent consent based upon Family Educational Rights and Privacy Act (34 CFR § 99.31) to:

- *School officials with legitimate educational interest;*
- *Other schools to which a student is transferring;*

§300.154. Methods of ensuring services. *(see also Section 8 – Administration)*

(d) **Children with disabilities who are covered by public insurance.**

- (1) **DISD may use the Medicaid or other public insurance benefits programs in which a child participates to provide or pay for services required under this part, as permitted under the public insurance program, except as provided in paragraph (d)(2) of this section.**
- (2) **With regard to services required to provide FAPE to an eligible child under this part, DISD--**
 - (iv) **Must obtain parental consent consistent with §300.622.**

TEC §29.0041. Information and Consent for Certain Psychological Examinations or Tests

- (a) **On request of a child's parent, before obtaining the parent's consent under 20 U.S.C. Section 1414 for the administration of any psychological examination or test to the child that is included as part of the evaluation of the child's need for special education, DISD will 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 individualized education program for the child.**
- (b) **If DISD determines that an additional examination or test is required for the evaluation of a child's need for special education after obtaining consent from the child's parent under Subsection (a), DISD shall provide the information described by Subsections (a)(1) and (2) to the child's parent regarding the additional examination or test and shall obtain additional consent for the examination or test.**
- (c) **The time required for DISD to provide information and seek consent under Subsection (b) may not be counted toward the 60 calendar days for completion of an evaluation under Section 29.004. If a**

parent does not give consent under Subsection (b) within 20 calendar days after the date DISD provided to the parent the information required by that subsection, the parent's consent is considered denied.

Individual Family Support Plan (IFSP) - (b)(2)(ii)

§300.323 When IEPs must be in effect.

(b) IEP or IFSP for children aged three through five.

- (1) In the case of a child with a disability aged three through five (or, at the discretion of the SEA, a two-year-old child with a disability who will turn age three during the school year), the IEP Team must consider an IFSP that contains the IFSP content (including the natural environments statement) described in section 636(d) of the Act and its implementing regulations (including an educational component that promotes school readiness and incorporates pre-literacy, language, and numeracy skills for children with IFSPs under this section who are at least three years of age), and that is developed in accordance with the IEP procedures under this part. The IFSP may serve as the IEP of the child, if using the IFSP as the IEP is--
 - (i) Consistent with State policy; and
 - (ii) Agreed to by the agency and the child's parents.
- (2) In implementing the requirements of paragraph (b)(1) of this section, DISD must--
 - (i) Provide to the child's parents a detailed explanation of the differences between an IFSP and an IEP; and
 - (ii) **If the parents choose an IFSP, obtain written informed consent from the parents.**

Transfer of Records from other District

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions:

(34 CFR § 99.31):

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

Parental Consent to Release records will be obtained in all other instances not listed above.

§300.323 When IEPs must be in effect.

(e) Program for children who transfer public agencies.

- (2) To facilitate the transition for a child described in paragraph (e)(1) of this section--
 - (i) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to section 99.31(a)(2) of title 34, Code of Federal Regulations; and
 - (ii) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.(Authority: 20 U.S.C. 1414(d)(2)(A)-(C))

IV. PARENT PARTICIPATION IN MEETINGS *(also in section 4-ARD/IEP)*

§300.30 Parent.

(a) Parent means--

- (1) A natural or adoptive parent of a child;
- (2) A foster parent, unless State law, regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;
- (3) A guardian (but not the State if the child is a ward of the State);
- (4) An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or
- (5) A surrogate parent who has been appointed in accordance with sections 615(b)(2) or 639(a)(5) of the Act.

- (b) (1) Except as provided in paragraph (b)(2) of this section, the natural or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the natural or adoptive parent does not have legal authority to make educational decisions for the child.**
- (2) If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section, except that a public agency that provides education or care for the child may not act as the parent.**
- (Authority: 20 U.S.C. 1401(23))**

§300.44 Ward of the State.

(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--

- (1) A foster child;
- (2) A ward of the State; or
- (3) In the custody of a public child welfare agency.

- (b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30.**
- (Authority: 20 U.S.C. 1401(36))**

§300.322 Parent Participation.

(a) Public agency responsibility—general. The Devine Independent School District must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including--

- (1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- (2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents.

- (1) The notice required under paragraph (a)(1) of this section must--
 - (i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and
 - (ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child).
- (2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--
 - (i) Indicate--
 - (A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §300.320(b); and
 - (B) That the agency will invite the student; and
 - (ii) Identifies any other agency that will be invited to send a representative.

- (c) Other methods to ensure parent participation. If neither parent can attend, DISD must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with §300.328 (related to alternative means of meeting participation).**

- (d) **Conducting an IEP meeting without a parent in attendance.** A meeting may be conducted without a parent in attendance if DISD is unable to convince the parents that they should attend. In this case, DISD must keep a record of its attempts to arrange a mutually agreed on time and place.
- (e) **Parent copy of child's IEP.** DISD must give the parent a copy of the child's IEP at no cost to the parent. (Authority: 20 U.S.C. 1414(d)(1)(B)(i))

§300.501 Parent participation in meetings.

- (a) **Opportunity to examine records.** The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.610 through 300.628, an opportunity to inspect and review all education records with respect to--
 - (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.
- (b) **Parent participation in meetings.**
 - (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--
 - (i) The identification, evaluation, and educational placement of the child; and
 - (ii) The provision of FAPE to the child.
 - (2) DISD must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.
 - (3) A meeting does not include informal or unscheduled conversations involving DISD 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 DISD personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.
- (c) **Parent involvement in placement decisions.**
 - (1) DISD must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
 - (2) In implementing the requirements of paragraph (c)(1) of this section, DISD must use procedures consistent with the procedures described in §300.322(a) through (b)(1).
 - (3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, DISD must use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.
 - (4) A placement decision may be made by a group without the involvement of a parent, if DISD is unable to obtain the parent's participation in the decision. In this case, DISD must have a record of its attempt to ensure their involvement. (Authority: 20 U.S.C. 1414(e), 1415(b)(1))

Mandatory Medications

§300.174 Prohibition on mandatory medication.

- (a) **General.** The SEA must **prohibit State and DISD personnel from requiring parents** to obtain a prescription for substances identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)) for a child as a condition of attending school, receiving an evaluation under §§300.300 through 300.311, or receiving services under this part.
- (b) **Rule of construction.** Nothing in paragraph (a) of this section shall be construed to create a Federal prohibition against teachers and other school personnel consulting or sharing classroom-based observations with parents or guardians regarding a student's academic and functional performance, or behavior in the classroom or school, or regarding the need for evaluation for special education or related services under §300.111 (related to child find). (Authority: 20 U.S.C. 1412(a)(25))

TAC §89.1049. Parental Rights Regarding Adult Students. [See ARD Section 4](#)

TEC §29.017. Transfer of Parental Rights at Age of Majority [See ARD Section 4](#)

V. CONFIDENTIALITY OF STUDENT INFORMATION

§300.610 Confidentiality.

The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§300.611 through 300.628. (Authority: 20 U.S.C. 1417(c))

§300.611 Definitions.

As used in §§300.610 through 300.628--

- (a) **Destruction** means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- (b) **Education records** means the type of records covered under the definition of "education records" in 34 CFR part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- (c) **Participating agency** means any agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the Act.
(Authority: 20 U.S.C. 1221e-3, 1412(a)(8), 1417(c))

§300.32 Personally identifiable. **Personally identifiable** means information that contains--

- (a) The name of the child, the child's parent, or other family member;
- (b) The address of the child;
- (c) A personal identifier, such as the child's social security number or student number; or
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.
(Authority: 20 U.S.C. 1415(a))

§300.612 Notice to parents.

- (a) The SEA must give notice that is adequate to fully inform parents about the requirements of §300.121, including--
 - (1) A description of the extent that the notice is given in the native languages of the various population groups in the State;
 - (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
 - (3) A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and
 - (4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.
- (b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.613 Access rights.

- (a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to §300.507 or §§300.530 through 300.532, or resolution session pursuant to §300.510, and in no case more than 45 days after the request has been made.
- (b) The right to inspect and review education records under this section includes--
 - (1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records;

- (2) 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
 - (3) The right to have a representative of the parent inspect and review the records.
- (c) An agency may presume that the parent has authority to inspect and review records relating to his or her child unless the agency has been advised that the parent does not have the authority under applicable State law governing such matters as guardianship, separation, and divorce.
(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.614 Record of access.

Each participating agency must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the Act (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

1. *DISD will maintain a record, kept with the eligibility file of each student, that indicates all individuals, agencies or organizations that have requested or obtained access to a student's educational records collected, maintained or used under IDEA-Part B (except access by parents and authorized employees of DISD).
The records shall include:
 - a. at least the name of the person or agency that made the request,
 - b. the date access was given, and
 - c. the purpose for which the person or agency is authorized to use the records.
If parts of the student eligibility folder are maintained in classrooms, access records are required if the folder contains information such as an ARD/IEP report, modification sheet(s), or any assessment reports.
2. *The record of access will be maintained as long as DISD maintains the student's education record. The record of access shall be available only to parents, school officials responsible for custody of the records, and those state and federal officials authorized to audit the operation of the system.*
3. *Access Procedures: The cumulative record and special education legal folder shall be made available to the parent. Records may be reviewed during regular school hours upon request to the appropriate record custodian. The record custodian or designee shall be present to explain the record and to answer questions. The confidential nature of the student's records shall be maintained at all times, and the records shall be restricted to use only in the offices of the Superintendent, a principal, a counselor, or Special Education as designated by the appropriate record custodian. The original copy of the record or any document contained in the cumulative record shall not be removed from the school or the Special Education office.*

§300.615 Records on more than one child.

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 child or to be informed of that specific information. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.616 List of types and locations of information.

Each participating agency must provide parents on request a list of the types and locations of education records collected, maintained, or used by the agency. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.617 Fees.

- (a) Each participating agency may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
- (b) A participating agency may not charge a fee to search for or to retrieve information under this part.
(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

No fee may be charged to search for or to retrieve the education record of a student. A fee of \$0.10 (10¢) per page may be charged for copies of education records that are made for the parents or students under this procedure, provided that the fee does not effectively prevent them from exercising their right to inspect and review those records. A waiver of fee should be requested in writing. No fee will be charged to search for or to retrieve information.

§300.618 Amendment of records at parent's request.

- (a) A parent who believes that information in the education records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child may request the participating agency that maintains the information to amend the information.
- (b) The agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
- (c) If the agency decides to refuse to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing under §300.619.
(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.619 Opportunity for a hearing.

The agency must, on request, provide an opportunity for a hearing to challenge information in education records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.620 Result of hearing.

- (a) If, as a result of the hearing, the agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and so inform the parent in writing.
- (b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
- (c) Any explanation placed in the records of the child under this section must--
 - (1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and
 - (2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.621 Hearing procedures.

A hearing held under §300.619 must be conducted according to the procedures under 34 CFR 99.22. (FERPA) (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.622 Consent.

- (a) Except as to disclosures addressed in §300.535(b) below for which parental consent is not required by 34 CFR part 99, parental consent must be obtained before personally identifiable information is--
 - (1) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; or
 - (2) Used for any purpose other than meeting a requirement of this part.
- (b) An educational agency or institution subject to 34 CFR part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under 34 CFR part 99.
- (c) The SEA must provide policies and procedures that are used in the event that a parent refuses to provide consent under this section. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

§300.535 Referral to and action by law enforcement and judicial authorities.

- (a) **Rule of construction.** Nothing in this part prohibits an agency from reporting a crime committed by a

child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

(b) **Transmittal of records.**

- (1) An agency reporting a crime committed by a child with a disability must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime.
- (2) An agency reporting a crime under this section may transmit 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. (Authority: 20 U.S.C. 1415(k)(6))

§300.623 Safeguards.

(a) Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

(b) **One official at each participating agency** must assume responsibility for ensuring the confidentiality of any personally identifiable information.

Custodian of Records: Unless otherwise specified in board policy, the principal is custodian of all records for currently enrolled students at the assigned school. The superintendent is the custodian of records for students who have withdrawn or graduated. The special education director is custodian of all special education records.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.121 and 34 CFR part 99.

Campus Principal will annually train all new and returning campus staff on personally identifiable information. As new staff are employed throughout the school year, the training will be provided. The special education director is responsible for training all central office special education staff. Documentation of the date and persons attending training will be maintained by the campus principal and the special education director.

(d) Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information. (Authority: 20 U.S.C. 1412(a)(8); 1417(c))

Each local campus will have a listing of all personnel trained and those who have access to the student records.

§300.624 Destruction of information.

(a) DISD must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child.

(b) The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

(Authority: 20 U.S.C. 1412(a)(8); 1417(c))

VI. SURROGATE / FOSTER PARENT

§300.44 Ward of the State.

(a) **General.** Subject to paragraph (b) of this section, **ward of the State** means a child who, as determined by the State where the child resides, is--

- (1) A foster child;
- (2) A ward of the State; or
- (3) In the custody of a public child welfare agency.

(b) **Exception.** Ward of the State does not include a foster child who has a foster parent who meets the definition of a **parent** in §300.30.

(Authority: 20 U.S.C. 1401(36))

§300.519 Surrogate parents.

- (a) **General.** The Devine Independent School District must ensure that the rights of a child are protected when--
- (1) No parent (as defined in §300.30) can be identified;
 - (2) DISD, after reasonable efforts, cannot locate a parent;
 - (3) The child is a ward of the State under the laws of that State; or
 - (4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).
- (b) **Duties of public agency.** The duties of DISD under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method--
- (1) For determining whether a child needs a surrogate parent; and
 - (2) For assigning a surrogate parent to the child.
- (c) **Wards of the State.** In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (d)(2)(i) and (e) of this section.
- (d) **Criteria for selection of surrogate parents.**
- (1) DISD may select a surrogate parent in any way permitted under State law.
 - (2) DISD must ensure that a person selected as a surrogate parent--
 - (i) Is not an employee of the SEA, DISD, or any other agency that is involved in the education or care of the child;
 - (ii) Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
 - (iii) Has knowledge and skills that ensure adequate representation of the child.
- (e) **Non-employee requirement; compensation.** A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
It will be up to the discretion of the Special Education Director is compensation should be made to any person acting as a surrogate.
- (f) **Unaccompanied homeless youth.** In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.
- (g) **Surrogate parent responsibilities.** The surrogate parent may represent the child in all matters relating to--
- (1) The identification, evaluation, and educational placement of the child; and
 - (2) The provision of FAPE to the child.
- (h) **SEA responsibility.** The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after DISD determines that the child needs a surrogate.
(Authority: 20 U.S.C. 1415(b)(2))

Requirements of Surrogate

TEC Sec. 29.001. Statewide Plan

The agency shall also develop and implement a statewide plan with programmatic content that includes procedures designed to:

- (10) ensure that an individual assigned to act as a surrogate parent for a child with a disability, as provided by 20 U.S.C. Section 1415(b) and its subsequent amendments, is required to:
 - (A) complete a training program that complies with minimum standards established by agency rule;
 - (B) visit the child and the child's school;

- (C) consult with persons involved in the child's education, including teachers, caseworkers, court-appointed volunteers, guardians ad litem, attorneys ad litem, foster parents, and caretakers;
- (D) review the child's educational records;
- (E) attend meetings of the child's admission, review, and dismissal committee;
- (F) exercise independent judgment in pursuing the child's interests; and
- (G) exercise the child's due process rights under applicable state and federal law.

TAC §89.1047. Procedures for Surrogate and Foster Parents.

- (a) An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.515, relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), §29.001(10).
 - (1) Pursuant to TEC, §29.001(10)(A), an individual assigned to act as a surrogate parent must complete a **training program** in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:
 - (A) the identification of a student with a disability;
 - (B) the collection of evaluation and re-evaluation data relating to a student with a disability;
 - (C) the admission, review, and dismissal (ARD) committee process;
 - (D) the development of an individualized education program (IEP) and, for a student who is at least 16 years of age, an individual transition plan (ITP);
 - (E) the determination of least restrictive environment;
 - (F) the implementation of an IEP;
 - (G) the procedural rights and safeguards available under 34 CFR, §§300.403, 300.500-300.529, 300.560-300.577, and 300.660-300.662, relating to the issues described in 34 CFR, §300.504(b); and
 - (H) the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.
 - (2) The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.
 - (3) The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the effective date of this rule or the date of initial assignment as a surrogate parent, whichever comes later. Once an individual has completed a training program conducted or provided by or through the Texas Department of Protective and Regulatory Services (PRS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. DISD may provide ongoing or additional training to surrogate parents and/or parents; however, DISD cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a surrogate parent on the grounds that the individual has not been trained.
 - (4) DISD shall provide, or arrange for the provision of, the training program described in subsection (a)(1) of this section, within 90 calendar days after the effective date of this rule for individuals serving as surrogate parents as of the effective date of this rule. Thereafter, DISD will provide or arrange for the provision of the training program described in subsection (a)(1) prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.
- (b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.20, relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b),

relating to foster parents, including the completion of the training program described in subsection(a)(1) of this section.

- (1) The foster parent must complete the **training program** described in subsection (a)(1) of this section within **90 calendar days** after the effective date of this rule or the date of initial assignment as the parent, whichever comes later. Once a foster parent has completed a training program conducted or provided by the PRS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained.
 - (2) DISD shall provide, or arrange for the provision of, the training program described in subsection (a)(1) of this section, within 90 calendar days after the effective date of this rule for foster parents who are serving as parents as of the effective date of this rule. Thereafter, DISD should provide or arrange for the provision of the training program described in subsection (a)(1) prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.
- (c) Each school district or shared services arrangement shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the PRS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to PRS.
- (d) If DISD **denies a foster parent** the right to serve as a surrogate parent or parent, DISD must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:
- (1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and
 - (2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.660–300.662, relating to complaint procedures.

TEC §29.015. Foster Parents.

- (a) DISD shall give preferential consideration to a foster parent of a child with a disability when assigning a surrogate parent for the child.
- (b) A foster parent may act as a parent of a child with a disability, as authorized under 20 U.S.C. Section 1415(b) and its subsequent amendments, if:
 - (1) the Department of Protective and Regulatory Services is appointed as the temporary or permanent managing conservator of the child;
 - (2) the child has been placed with the foster parent for at least **60 days**;
 - (3) the foster parent agrees to:
 - (A) participate in making educational decisions on the child's behalf; and
 - (B) complete a training program for surrogate parents that complies with minimum standards established by agency rule; and
 - (4) the foster parent has no interest that conflicts with the child's interests.
- (c) A foster parent who is denied the right to act as a surrogate parent or a parent under this section by t may file a complaint with the agency in accordance with federal law and regulations.

Staff Training: Method to determine whether a child needs a surrogate parent.

Annually, the local campus principals, counselors and staff, along with the special education staff are trained on the situations in §300.519 in which a student would need a surrogate or the foster parent require training. The Special Education Director or designee will maintain the list and schedule training.

Surrogate Parent Assignment Procedures

The principal or other person makes the request for a surrogate parent for an eligible DISD child. Procedures for requesting a surrogate parent are as follows:

- a. Principal or other assigned staff person notifies the Special Education Director of need and of potential surrogate parents if they are aware of any potential volunteers.
- b. The Special Education Director schedules and conducts the training using application form to document assurances below.
- c. The Special Education Director notifies campus Administration of completed training and the names of new surrogate parents.
- d. The Special Education Director, Principal or designee notifies/contacts the student's assigned surrogate parent when appropriate.

Assurances

Assurances must be made by the individual selected to serve as a surrogate or foster parent. These assurances are reviewed at the training and documented on the application form signed by the surrogate / foster parent.

- The individual may have no personal or professional interest which conflicts with the interest of the child the surrogate parent represents;
- The individual may not be an employee of DISD or of any other public agency responsible for or involved in the education or care of the child the surrogate parent represents;
- The individual must have knowledge and skills that insure adequate representation of the child;
- The individual must be a resident of the member school district where the student attends, and
- DISD may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards above.

*A foster parent in a home which is verified by the PRS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to PRS.

Documentation of Training for Volunteer as Surrogate Parent:

- (a.) The individual assigned to act as a surrogate parent must complete the training program within 90 calendar days after the effective date of initial assignment as a surrogate parent.
- (b.) Once the individual has completed a training program conducted or provided by or through the Texas Department of Protective and Regulatory Services (PRS), a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual shall not be required by any school to complete the additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities.
- (c.) DISD may provide additional training to surrogates parents and/or parents; however, DISD cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.

- (d.) *Prior to assigning an individual to act as a surrogate parent, training should be provided.*
- (e.) *Individuals already serving as surrogate parents identified as not receiving previous training will receive training within 90 calendar days of identification.*
- (f.) *DISD shall keep records of those individuals who have received training and each person trained by our DISD will be given a certificate to take should they move to another school and need evidence of training.*

Documentation of Training for Assignment of a Foster Parents as Surrogate Parents

- (a.) *A foster parent may act as parent of a child with a disability, in accordance with §300.20 relating to the definition of parent, if he/she complies with the requirements of TEC §29.015(b), relating to foster parents, including the completion of the training programs described in this section.*
- (b.) *The foster parent must complete the training within 90 calendar days after the effective date of this rule or the date of initial assignment as the parent, whichever comes later.*
- (c.) *Once the individual has completed a training program conducted or provided by or through the Texas Department of Protective and Regulatory Services (PRS), a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the individual will not be required by any school to complete the additional training in order to continue serving as the student’s surrogate parent or to serve as the surrogate parent for other students with disabilities.*
- (d.) *DISD may provide additional training to surrogates parents and/or parents; however, DISD cannot deny an individual who has received the training from serving as a surrogate parent on the grounds that the individual has not been trained.*
- (e.) *Prior to assigning a foster parent to act as a surrogate parent, training should be provided.*
- (f.) *Individuals already serving as surrogate parents identified as not receiving previous training will receive training within 90 calendar days of identification if there is no evidence training was previously provided by (PRS).*
- (g.) *DISD shall keep records of those individuals who have received training and each person trained by our DISD will be given a certificate to take should they move to another school and need evidence of training.*
- (h.) *If the foster parent does not meet the criteria to serve as parent, DISD will appoint a surrogate parent. DISD will give preferential consideration to a foster parent of a student with a disability when assigning a surrogate parent for the child.*

Surrogate Training Completed

When the applicant successfully completes the Surrogate Parent Training, a copy of those individuals trained as Surrogate Parents will be filed in the office of the Special Education Director.

VII. INDEPENDENT EDUCATIONAL EVALUATION (IEE)

§300.502 Independent educational evaluation.

(a) General.

- (1) **The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.**
 - (2) **DISD must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.**
- Information on where an IEE may be obtained will be provided to parents on request. A list of individuals who can provide an IEE is available from the Special Education Office. The district criteria (State/Federal requirements) applicable for all evaluations must also be followed for the IEE. See Evaluator Requirements found below.*

- (3) For the purposes of this subpart--
- (i) **Independent educational evaluation** means an evaluation conducted by a qualified examiner who is not employed by DISD responsible for the education of the child in question; and
 - (ii) **Public expense** means that DISD either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.
- (b) **Parent right to evaluation at public expense.**
- (1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by DISD, subject to the conditions in paragraphs (b)(2) through (4) of this section.
 - (2) If a parent requests an independent educational evaluation at public expense, the Devine Independent School District must, without unnecessary delay, either--
 - (i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - (ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

If the parent requests an IEE from any staff member or campus Principal, the parent will be provided the name and phone number of the Special Education Director and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The Special Education Director, in consultation with appropriate DISD staff, will determine whether to pay for the IEE or file for a due process hearing.
 - (3) If DISD files a due process complaint notice to request a hearing and the final decision is that the DISD's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
 - (4) If a parent requests an independent educational evaluation, DISD may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and DISD may not unreasonably delay either providing the independent educational evaluation at public expense or requesting a due process hearing to defend the public evaluation.

If the parent requests an IEE during an ARD/IEP meeting, the minutes will document that the parent was asked to provide reasons why they object to the DISD evaluation. If the parent does not provide any specific reason, that also will be documented in the minutes.
- (c) **Parent-initiated evaluations.** If the parent obtains an independent educational evaluation at private expense, the results of the evaluation--
- (1) Must be considered by DISD, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
 - (2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child.
- (d) **Requests for evaluations by hearing officers.** If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.
- (e) **Agency criteria.**
- (1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that DISD uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.
 - (2) Except for the criteria described in paragraph (e)(1) of this section, DISD may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.
(Authority: 20 U.S.C. 1415(b)(1) and (d)(2)(A))

EVALUATOR REQUIREMENTS

- *The independent examiner will have the same qualifications as DISD assessment personnel (e.g., psychologist, associate psychologist, or educational diagnostician) and as required by Texas law and also described in Section 8)*
- *The evaluation will be conducted in the school building to which the student is assigned, unless clearly not feasible.*

- *The independent examiner will have access to the student's cumulative folder and special education folders in gathering information about the student.*
- *The independent examiner may meet with the school ARD committee to gather information about a student prior to the assessment and to share information following the assessment.*
- *The independent examiner will follow federal and state assessment regulations and rules, reporting requirements and established eligibility criteria for the diagnosis of students with disabilities.*
- *The independent evaluation may be restricted to one assessment area upon mutual agreement by DISD and parent.*
- *The evaluator must be located within an 80 mile radius of DISD. This will allow the evaluator access to the public school for observation of the student and access to ARD/IEP meetings.*
- *The evaluator must provide information in the same timely manner as required by DISD personnel including an original typed report to DISD within 30 calendar days from the date that an IEE is approved by DISD and 5 days prior to the ARD meeting. The report must address DISD format (which will be provided to the evaluator) for assessment and eligibility. Protocols must be available for review and the report must include an original signature and title of all assessment personnel involved in the evaluation. The report must comply with all requirements of state and federal regulations.*

Steps to Follow for Parent to Request an IEE at Public Expense:

1. *Parent should request an ARD meeting to discuss evaluation concerns and allow for possible resolution during the ARD.*
2. *Make request to the ARD Committee for action.*
3. *Request IEE as soon as possible but no later than six months following the DISD evaluation in question.*
4. *Specify areas of disagreement with DISD's evaluation and list assessment questions to be addressed by IEE.*
5. *Provide name of evaluator to allow DISD to:*
 - a. *check certification/license of evaluator and*
 - b. *contract directly with the evaluator.*
6. *Review all Evaluator Requirements listed above.*
7. *If the parent requests an IEE from any staff member or campus Principal outside of an ARD meeting, the parent will be provided the name and phone number of the Special Education Director and asked to notify that administrator immediately so that proper steps may be taken to address their request for an IEE. The Special Education Director, in consultation with appropriate district staff, will determine whether to pay for the IEE or file for a due process hearing.*

Reimbursement or Payment

Reimbursement/payment will be made directly to evaluator upon receipt of IEE which meets all of DISD's assessment criteria. Parents obtaining an IEE without following these procedures will risk non-payment. Whenever an IEE is at public expense, the criteria under which the IEE is obtained, must be the same as the criteria which the school uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's rights to an IEE.

Criteria For Fee Setting

- *The Devine Independent School District will pay a fee for the IEE which allows a parent to choose from among the qualified professionals in the area.*

- *DISD will not pay unreasonably excessive fees. An unreasonably excessive fee is one which is 10% above the prevailing fees in the area (or 20% above the Medicaid rate) for the specific test being considered.*
- *Upon receipt of a request for payment of an unreasonably excessive fee, DISD may request a hearing to challenge the right of parents to be reimbursed.*
- *Parents will be allowed the opportunity to demonstrate to an ARD committee that unique circumstances justify an IEE that does not fall within DISD's criteria.*
- *When service providers have a sliding scale fee based on parent income, DISD will pay the amount charged to the parent.*
- *In the event that a parent pursues an IEE independently, an original billing form must be submitted to DISD prior to payment. Before reimbursement or direct payment is authorized, criteria must be met and the written report received.*
- *Travel costs for examiner and/or parents will not exceed DISD rates for travel as established by state guidelines.*

Parents Seeking Reimbursement For A Unilaterally Obtained IEE

- *DISD will not consider a parent request for payment for a unilaterally parent-initiated IEE unless the request is made within a reasonable time after receipt of the results of the evaluation. A reasonable time is defined as 90 calendar days.*
- *The request will be presented to the ARD Committee for action.*
- *DISD can request a due process hearing to prove its own evaluation is appropriate. This can occur before an IEE is conducted or, after the parent has obtained one and is seeking reimbursement.*
- *DISD will deny payment of an IEE conducted by an evaluator who does not meet minimum qualifications.*
- *DISD will deny payment of an IEE which does not meet minimum Texas Education Agency criteria for the specific disability identified.*
- *DISD will deny payment of an IEE which does not meet all state and federal requirements.*

Consideration of Parent Initiated IEE

The results of a parent-initiated IEE obtained at private expense will be considered by the ARD committee in any decision made with respect to the provision of a free appropriate public education to the student (if the IEE meets TEA criteria). Such consideration does not make DISD liable for payment of the evaluation.

VIII. COMPLAINT PROCEDURES

TAC §89.1150. General Provisions.

- (a) From time to time, disputes may arise between a parent and DISD relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE), to a student with a disability.
- (b) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute described in subsection (a) of this section at the lowest level possible and in a prompt, efficient, and effective manner.
- (c) The possible options for resolving disputes include, but are not limited to:
 - (1) meeting of the student's admission, review, and dismissal committee;
 - (2) meeting or conference with the student's teachers;
 - (3) meeting or conference, subject to local DISD policies, with campus administrator(s), the special education director of the district (or the shared services arrangement to which the district may be a party), the superintendent of the district, or the board of trustees of the district;

- (4) requesting mediation through the TEA in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §1415(e), and 34 Code of Federal Regulations (CFR), §300.506;
- (5) filing a complaint with the TEA in accordance with 34 CFR, §§300.600-300.662; or
- (6) requesting a due process hearing through the TEA in accordance with IDEA, 20 USC, §1415(f), and 34 CFR, §§300.507-300.514. Upon the filing of a request for a due process hearing, the parent and the school district shall also be provided with an opportunity to resolve the dispute through the mediation process established by TEA.

If there is a dispute relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE), to a student with a disability, it is the intent of DISD to encourage and support the resolution of any dispute at the lowest level possible and in a prompt, efficient, and effective manner.

DISD should always be sure the parents have a current Procedural Safeguards document if there is disagreement expressed by the parent. If the parents say they do not have the document, provide them with the document, an explanation, and keep documentation that they have received the document. This documentation of receipt of the Procedural Safeguards is kept in the Special Education student eligibility file. The possible options for resolving disputes include, but are not limited to §89.1150(c) found on the following pages below:

Schools should contact the appropriate Special Education Administrator as soon as there is reason to believe any type of complaint will be made.

- A. *Administration may encourage parents to follow local complaint procedures. The following may also be suggested:*
 1. *schedule an ARD Committee meeting to discuss concern,*
 2. *follow 10 day recess procedures to try to reach mutual agreement (see ARD Section),*
 3. *encourage the parents to contact the Special Education Director for a meeting to discuss possible alternatives or mediation.*
- B. *Parents may notify the Texas Education Agency and file a complaint. The TEA will:*
 1. *collect information concerning special education and analyzing the information in conjunction with other information on file with the TEA;*
 2. *respond to inquiries concerning special education services;*
 3. *take appropriate action on substantial complaints;*
 4. *engage in mediation activities; and*
 5. *provide information on the formal procedures available in the impartial hearing process.*

Complaint must include: §300.153 .

State Complaint Procedures

§300.151 Adoption of State complaint procedures.

(a) General. Each SEA must adopt written procedures for--

- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, that meets the requirements of §300.153 by--**
 - (i) Providing for the filing of a complaint with the SEA; and**
 - (ii) At the SEA's discretion, providing for the filing of a complaint with a public agency and the right to have the SEA review the public agency's decision on the complaint; and**

- (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the State procedures under §§300.151 through 300.153.
- (b) **Remedies for denial of appropriate services.** In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address--
 - (1) The failure to provide appropriate services, including corrective action appropriate to address the needs of the child; and
 - (2) Appropriate future provision of services for all children with disabilities. (Authority: 20 U.S.C. 1221e-3)

§300.152 Minimum State complaint procedures.

- (a) **Time limit; minimum procedures.** Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under §300.153 to--
 - (1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;
 - (2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (3) Provide DISD with the opportunity to respond to the complaint, including, at a minimum--
 - (A) At the discretion of DISD, a proposal to resolve the complaint; and
 - (B) With the consent of the parent, an opportunity for DISD to engage the parent in mediation, or alternative means of dispute resolution;
 - (4) Review all relevant information and make an independent determination as to whether DISD is violating a requirement of Part B of the Act or of this part; and
 - (5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--
 - (i) Findings of fact and conclusions; and
 - (ii) The reasons for the SEA's final decision.
- (b) **Time extension; final decision; implementation.** The SEA's procedures described in paragraph (a) of this section also must--
 - (1) Permit an extension of the time limit under paragraph (a) of this section only if--
 - (i) Exceptional circumstances exist with respect to a particular complaint; or
 - (ii) The parent and DISD involved agree to extend the time to conduct the activities pursuant to paragraph (a)(3)(B) of this section; and
 - (2) Include procedures for effective implementation of the SEA's final decision, if needed, including--
 - (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance.
- (c) **Complaints filed under this section and due process hearings under §300.507 and §§300.530 through 300.532.**
 - (1) If a written complaint is received that is also the subject of a due process hearing under §300.507 or §§300.530 through 300.532, the State must set aside the complaint until the conclusion of the procedures in §300.507 or §§300.530 through 300.532.
 - (2) If an issue is raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--
 - (i) The due process hearing decision is binding on that issue; and
 - (ii) The SEA must inform the complainant to that effect.
 (Authority: 20 U.S.C. 1221e-3)

§300.153 Filing a complaint.

- (a) An organization or individual may file a signed written complaint under the procedures described in §§300.151 through 300.152.
- (b) The complaint must include--
 - (1) A statement that a public agency has violated a requirement of Part B of the Act or of this part;
 - (2) The facts on which the statement is based;
 - (3) The signature and contact information for the complainant; and

- (4) If alleging violations against a specific child--
 - (i) The name and address of the residence of the child;
 - (ii) The name of the school the child is attending;
 - (iii) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (iv) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (v) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- (c) Except for complaints covered under §300.507(a)(2), the complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.
- (d) The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA.
(Authority: 20 U.S.C. 1221e-3)

§300.507 Filing a due process complaint.

- (a) **General.**
 - (1) A parent or DISD may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).
 - (2) The due process complaint must allege a violation that occurred not more than two years before the date the parent or DISD knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.
- (b) **Information for parents.** DISD must inform the parent of any free or low-cost legal and other relevant services available in the area if--
 - (1) The parent requests the information; or
 - (2) The parent or the agency requests a hearing under this section.
(Authority: 20 U.S.C. 1415(b)(6))

§300.508 Due process complaint.

- (a) **General.**
 - (1) DISD must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).
 - (2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.
- (b) **Content of complaint.** The due process complaint required in paragraph (a)(1) of this section must include--
 - (1) The name of the child;
 - (2) The address of the residence of the child;
 - (3) The name of the school the child is attending;
 - (4) In the case of a homeless child or youth (within the meaning of section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2)), available contact information for the child, and the name of the school the child is attending;
 - (5) 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
 - (6) A proposed resolution of the problem to the extent known and available to the party at the time.
- (c) **Notice required before a hearing on a due process complaint.** A party may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.
- (d) **Sufficiency of complaint.**
 - (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within

- 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this section.
- (2) Within 5 days of receipt of notification under paragraph (d)(1) of this section, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (b) of this section, and must immediately notify the parties in writing of that determination.
 - (3) A party may amend its due process complaint only if--
 - (i) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510; or
 - (ii) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.
 - (4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.
- (e) **LEA response to a due process complaint.**
- (1) If DISD has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, DISD must, within 10 days of receiving the due process complaint, send to the parent a response that includes--
 - (i) An explanation of why DISD proposed or refused to take the action raised in the due process complaint;
 - (ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;
 - (iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and
 - (iv) A description of the other factors that are relevant to the agency's proposed or refused action.
 - (2) A response by an LEA under paragraph (1) of this section shall not be construed to preclude DISD from asserting that the parent's due process complaint was insufficient, where appropriate.
- (f) **Other party response to a due process complaint.** Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint. (Authority: 20 U.S.C. 1415(b)(7), 1415(c)(2))

§300.509 Model forms.

Each SEA must develop model forms to assist parents in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and in filing a State complaint under §§300.151 through 300.153. (Authority: 20 U.S.C. 1415(b)(8))

§300.510 Resolution process.

(a) **Resolution meeting.**

- (1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, DISD must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--
 - (i) Includes a representative of DISD who has decision-making authority on behalf of that agency; and
 - (ii) May not include an attorney of DISD unless the parent is accompanied by an attorney.
- (2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that DISD has the opportunity to resolve the dispute that is the basis for the due process complaint.
- (3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--
 - (i) The parents and DISD agree in writing to waive the meeting; or
 - (ii) The parents and DISD agree to use the mediation process described in §300.506.
- (4) The parents and DISD determine the relevant members of the IEP Team to attend the meeting.

(b) **Resolution period.**

- (1) If DISD has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.

- (2) The timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.
- (3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.
- (c) **Written settlement agreement.** If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is--
 - (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and
 - (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States.
- (d) **Agreement review period.** If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.
(Authority: 20 U.S.C. 1415(f)(1)(B))

§300.140 Due process complaints and State complaints. *(See also Section 5. of this manual which includes Parentally Placed Students in Private Schools)*

- (a) **Due process not applicable, except for child find.**
 - (1) Except as provided in paragraph (a)(2) of this section, the procedures in §§300.504 through 300.519 do not apply to complaints that an LEA has failed to meet the requirements of §§300.132 through 300.139, including the provision of services indicated on the child's services plan.
 - (2) The procedures in §§300.504 through 300.519 do apply to complaints that an LEA has failed to meet the requirements of §300.131, *(placed by parent in private school)* including the requirements of §§300.300 through 300.311. *(evaluations)*
- (b) **State complaints.** Complaints that an SEA or LEA has failed to meet the requirements of §§300.132 through 300.144 must be filed under the procedures in §§300.151 through 300.153.
(Authority: 20 U.S.C. 1412(a)(10)(A))

IX. MEDIATION

§300.506 Mediation.

- (a) **General.** DISD must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.
- (b) **Requirements.** The procedures must meet the following requirements:
 - (1) The procedures must ensure that the mediation process--
 - (i) Is voluntary on the part of the parties;
 - (ii) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the Act; and
 - (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
 - (2) DISD may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party--
 - (i) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the State established under section 671 or 672 of the Act; and
 - (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.
 - (3)
 - (i) The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.
 - (ii) The SEA must select mediators on a random, rotational, or other impartial basis.
 - (4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.

- (5) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.
- (6) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that--
 - (i) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding arising from that dispute; and
 - (ii) Is signed by both the parent and a representative of the agency who has the authority to bind such agency.
- (7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.
- (8) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceedings arising from that dispute.
- (9) The parties to mediation may be required to sign a confidentiality pledge prior to the commencement of the mediation to ensure that all discussions that occur during mediation remain confidential.
- (c) **Impartiality of mediator.**
 - (1) An individual who serves as a mediator under this part--
 - (i) May not be an employee of the SEA or DISD that is involved in the education or care of the child; and
 - (ii) Must not have a personal or professional interest that conflicts with the person's objectivity.
 - (2) A person who otherwise qualifies as a mediator is not an employee of an DISD or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator. (Authority: 20 U.S.C. 1415(e))

X. DUE PROCESS HEARING

§300.511 Impartial due process hearing.

- (a) **General.** Whenever a **due process complaint** is filed under §300.507, the parents or DISD involved in the dispute must have an opportunity for an **impartial due process hearing**, consistent with the procedures in §§300.507 through 300.508, and §300.510.
- (b) **Agency responsible for conducting the due process hearing.** The hearing described in paragraph (a) of this section must be conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.
- (c) **Impartial hearing officer.**
 - (1) At a minimum, a hearing officer--
 - (i) Must not be--
 - (A) An employee of the SEA or DISD that is involved in the education or care of the child; or
 - (B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;
 - (ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;
 - (iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
 - (iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
 - (2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.
 - (3) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.
- (d) **Subject matter of due process hearings.** The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.

- (e) **Timeline for requesting a hearing.** A parent or agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.
- (f) **Exceptions to the timeline.** The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to--
 - (1) Specific misrepresentations by DISD that it had resolved the problem forming the basis of the due process complaint; or
 - (2) DISD's withholding of information from the parent that was required under this part to be provided to the parent.
 (Authority: 20 U.S.C. 1415(f)(1)(A), 1415(f)(3)(A)–(D))

Hearing Rights

§300.512 Hearing rights.

- (a) **General.** Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to--
 - (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of 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 five business days before the hearing;
 - (4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
 - (5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.
- (b) **Additional disclosure of information.**
 - (1) At least five business days prior to a hearing conducted pursuant to §300.511(a), each party must 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 the hearing.
 - (2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- (c) **Parental rights at hearings.** Parents involved in hearings must be given the right to--
 - (1) Have the child who is the subject of the hearing present;
 - (2) Open the hearing to the public; and
 - (3) Have the record of the hearing and the findings of fact and decisions described in paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.
 (Authority: 20 U.S.C. 1415(f)(2), 1415(h))

TAC §89.1151. Due Process Hearings.

- (a) A parent or public education agency may initiate a due process hearing as provided in the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 United States Code (USC), §§1401 et seq., and the applicable federal regulations, 34 Code of Federal Regulations (CFR), §§300.1 et seq.
- (b) The Texas Education (TEA) shall implement a one-tier system of due process hearings under the IDEA. The proceedings in due process hearings shall be governed by the provisions of 34 CFR, §§300.507-300.514, and 34 CFR, §300.528, if applicable, and §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185 and 89.1191 of this subchapter.
- (c) Effective with requests for due process hearings filed on or after August 1, 2002, a parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.

TAC §89.1165. Request for Hearing.

- (a) A request for a due process hearing must be in writing and must be filed with the Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701. The request for a due process hearing may be filed by mail, hand-delivery, or facsimile and shall be deemed filed only when actually received by

the office responsible for legal services at the Texas Education Agency (TEA). The TEA has developed a model form which may be used by a parent to initiate a due process hearing. The form is available on request from TEA, all regional education service centers, and all school districts. The form is also available on TEA's website.

- (b) If the request for a due process hearing does not specify the issues to be heard and the relief requested, the hearing officer shall require the complaining party to supplement the request, orally or in writing, to clarify the issues to be heard at the hearing and the relief sought by the complaining party.

TAC §89.1170. Impartial Hearing Officer.

- (a) Each due process hearing shall be conducted by an impartial hearing officer selected by the Texas Education Agency (TEA).
- (b) The hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.
- (c) If the hearing officer is removed, dies, becomes disabled, or withdraws from an appeal before the completion of duties, the TEA may designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

TAC §89.1180. Prehearing Procedures.

- (a) Promptly upon being assigned to a hearing, the hearing officer will schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.
- (b) The hearing officer shall ensure that a written, or, at the option of either party, an electronic, verbatim record of the prehearing conference is made.
- (c) The purpose of the prehearing conference shall be to consider any of the following:
 - (1) specifying and simplifying issues;
 - (2) admitting certain assertions of fact or stipulations;
 - (3) establishing any limitation of the number of witnesses and the time allotted for presenting each party's case; and/or
 - (4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.
- (d) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties, or their legal representatives, a written prehearing order which identifies:
 - (1) the time, place, and date of the hearing;
 - (2) the issues to be resolved at the hearing;
 - (3) the relief being sought at the hearing;
 - (4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");
 - (5) the date by which the final decision of the hearing officer shall be issued; and
 - (6) other information determined to be relevant by the hearing officer.
- (e) No pleadings, other than the request for hearing, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a due process hearing shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies shall be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means. An affirmative statement that a

copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this rule.

- (f) Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency.
- (g) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled due process hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) which the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) which the party anticipates calling to testify at the hearing.
- (h) A party may request a dismissal or nonsuit of a due process hearing to the same extent that a plaintiff may dismiss or nonsuit a case under Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a due process hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent due process hearing involving the same or substantially similar issues as those alleged in the hearing which was dismissed or nonsuited, then, absent good cause or unless the parties agree otherwise, the Disclosure Deadline for the subsequent due process hearing shall be the same date as was established for the hearing that was dismissed or nonsuited.

TAC §89.1185. Hearing.

- (a) The hearing officer shall afford the parties an opportunity for hearing after reasonable notice of not less than ten days, unless the parties agree otherwise.
- (b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.
- (c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.
- (d) Except as modified or limited by the provisions of 34 Code of Federal Regulations (CFR), §§300.507-300.514, 300.521, or 300.528, or the provisions of §§89.1151-89.1191 of this subchapter, the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.
- (e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information must be redacted from the exhibit.
- (f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.
- (g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.
- (h) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.
- (i) Hearings conducted under this subchapter shall be closed to the public, unless the parent requests that the hearing be open.
- (j) The hearing shall be recorded and transcribed by a reporter, who shall immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties. The hearing officer shall instruct the reporter to delete all personally identifiable information from the transcription of the hearing.
- (k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer and only upon a finding by the hearing officer that the legal issues involved in the hearing are novel or unsettled in the

State of Texas or the Fifth Circuit. Any post-hearing briefs permitted by the hearing officer shall be limited to the legal issues specified by the hearing officer.

- (l) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after a request for hearing is received by the Texas Education Agency, unless the deadline for a final decision has been extended by the hearing officer as provided in subsection (o) of this section. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.
- (m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:
 - (1) whether the parent or DISD unreasonably protracted the final resolution of the issues in controversy in the hearing; and
 - (2) if the parent was represented by an attorney, whether the parent's attorney provided DISD the appropriate information in the due process complaint in accordance with 34 CFR, §300.507(c).
- (n) In making a finding regarding the issue described in subsection (m)(1) of this section, the hearing officer shall consider the extent to which each party had notice of, or the opportunity to resolve, the issues presented at the due process hearing prior to the date on which the due process hearing was requested. If, after the date on which a request for a due process hearing is filed, either the parent or the school district requests that a meeting of the admission, review, and dismissal (ARD) committee of the student who is the subject of the due process hearing be convened to discuss the issues raised in the request for a due process hearing, the hearing officer shall also consider the extent to which each party participated in the ARD committee meeting in a good faith attempt to resolve the issue(s) in dispute prior to proceeding to a due process hearing.
- (o) A hearing officer may grant extensions of time for good cause beyond the 45-day period specified in subsection (l) of this section at the request of either party. Any such extension shall be granted to a specific date and shall be stated in writing by the hearing officer to each of the parties.
- (p) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code (USC), §1415(i)(2), and 34 CFR, §300.512.
- (q) In accordance with 34 CFR, §300.514(c), DISD shall implement any decision of the hearing officer that is, at least in part, adverse to the school district in a timely manner within ten school days after the date the decision was rendered. DISD must provide services ordered by the hearing officer, but may withhold reimbursement during the pendency of appeals.

TEC §29.016. Evaluation Conducted Pursuant to a Special Education Due Process Hearing.

A special education hearing officer in an impartial due process hearing brought under 20 U.S.C. Section 1415 may issue an order or decision that authorizes one or more evaluations of a student who is eligible for, or who is suspected as being eligible for, special education services. Such an order or decision authorizes the evaluation of the student without parental consent as if it were a court order for purposes of any state or federal law providing for consent by order of a court.

TEC §29.0161. Contract with State Office of Administrative Hearings for Special Education Due Process Hearings.

Not later than December 1, 2003, the agency and the State Office of Administrative Hearings shall jointly determine whether it would be cost-effective for the agency to enter an interagency contract with the office under which the office would conduct all or part of the agency's special education due process hearings under 20 U.S.C. Section 1415 and its subsequent amendments.

§300.513 Hearing decisions.

(a) Decision of hearing officer.

- (1) Subject to paragraph (a)(2) of this section, a hearing officer must make a decision on substantive grounds based on a determination of whether the child received a FAPE.
- (2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--
 - (i) Impeded the child's right to a FAPE;
 - (ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
 - (iii) Caused a deprivation of educational benefit.
- (3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §§300.500 through 300.536.

(b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.

(c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public. DISD, after deleting any personally identifiable information, must--

- (1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and
- (2) Make those findings and decisions available to the public.
(Authority: 20 U.S.C. 1415(f)(3)(E) and (F), 1415(h)(4), 1415(o))

§300.514 Finality of decision; appeal; impartial review.

(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.

(b) Appeal of decisions; impartial review.

- (1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.
- (2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--
 - (i) Examine the entire hearing record;
 - (ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;
 - (iii) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in §300.512 apply;
 - (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
 - (v) Make an independent decision on completion of the review; and
 - (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must--

- (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and
- (2) Make those findings and decisions available to the public.
- (d) **Finality of review decision.** The decision made by the reviewing official is final unless a party brings a civil action under §300.516.
(Authority: 20 U.S.C. 1415(g) and (h)(4), 1415(i)(1)(A), 1415(i)(2))

§300.515 Timelines and convenience of hearings and reviews.

- (a) **DISD must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b)-**
-
 - (1) A final decision is reached in the hearing; and
 - (2) A copy of the decision is mailed to each of the parties.
- (b) **The SEA must ensure that not later than 30 days after the receipt of a request for a review--**
 - (1) A final decision is reached in the review; and
 - (2) A copy of the decision is mailed to each of the parties.
- (c) **A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section at the request of either party.**
- (d) **Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.**
(Authority: 20 U.S.C. 1415(f)(1)(B)(ii), 1415(g), 1415(i)(1))

TAC §89.1191. Special Rule for Expedited Due Process Hearings.

An expedited due process hearing requested by a party under 34 Code of Federal Regulations (CFR), §300.528, shall be governed by the same rules as are applicable to due process hearings generally, except that the final decision of the hearing officer must be issued and mailed to each of the parties no later than 45 days after the date the request for the expedited hearing is received by the Texas Education Agency, without exceptions or extensions.

§300.517 Attorneys' fees.

- (a) **In general.**
 - (1) **In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to--**
 - (i) **The prevailing party who is the parent of a child with a disability;**
 - (ii) **To a prevailing party who is an SEA or LEA against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or**
 - (iii) **To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.**
 - (2) **Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.**
- (b) **Prohibition on use of funds.**
 - (1) **Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part.**
 - (2) **Paragraph (b)(1) of this section does not preclude DISD from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.**
- (c) **Award of fees.** A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following:
 - (1) **Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.**

- (2) (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if--
 - (A) The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins;
 - (B) The offer is not accepted within 10 days; and
 - (C) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.
- (ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless the meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the State, for a mediation described in §300.506 that is conducted prior to the filing of a request for due process under §§300.507 through 300.513 or §§300.530 through 300.534.
- (iii) A meeting conducted pursuant to §300.510 shall not be considered--
 - (A) A meeting convened as a result of an administrative hearing or judicial action; or
 - (B) An administrative hearing or judicial action for purposes of this section.
- (3) Notwithstanding paragraph (c)(2) of this section, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.
- (4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--
 - (i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
 - (ii) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;
 - (iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
 - (iv) The attorney representing the parent did not provide to DISD the appropriate information in the due process request notice in accordance with §300.508.
- (5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.
(Authority: 20 U.S.C. 1415(i)(3)(B)–(G))

X. CIVIL ACTION

§300.516 Civil action.

- (a) **General.** Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the request for a due process hearing under §300.507 or §§300.530 through 300.532. The action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.
- (b) **Time limitation.** The party bringing the action shall have 90 days from the date of the decision of the hearing officer to file a civil action, or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.
- (c) **Additional requirements.** In any action brought under paragraph (a) of this section, the court—
 - (1) Receives the records of the administrative proceedings;
 - (2) Hears additional evidence at the request of a party; and
 - (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.
- (d) **Jurisdiction of district courts.** The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.

- (e) **Rule of construction.** Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under section 615 of the Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.
(Authority: 20 U.S.C. 1415(i)(2) and (3)(A), 1415(l))

XI. STUDENT STATUS DURING PROCEEDINGS

§300.518 Child's status during proceedings.

- (a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a request for a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
- (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
- (c) If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.
(Authority: 20 U.S.C. 1415(j))