



Learn Today  
Lead Tomorrow

## **EDUCATIONAL RIGHTS OF THE STUDENT/PARENTS**

Under Provisions of the Individuals with Disabilities Education Improvement Act  
(Special Education – PL 108-446)

Douglas County School District  
Instructional Support Services Department  
620 Wilcox Street  
Castle Rock, CO 80104  
(303) 387-0080  
[www.dcsdk12.org](http://www.dcsdk12.org)

### **INTRODUCTION**

Described in this pamphlet are student and parent educational rights required under federal and state special education rules and regulations. It is important that you understand your rights as a parent, and your child's rights as they relate to special education. *(The italicized language immediately following each topical heading in this pamphlet is a concise summary of that particular section.)*

School staff are available to assist you in understanding these rights and are available on request to provide you with any further explanation. If needed, the school will provide an interpreter or translator to help assure that you understand.

### **PARENT CONSENT**

*Your written permission is required before your child is initially evaluated, reevaluated, and placed in special education. You may later revoke this consent.*

The school must obtain your informed written consent before conducting a preplacement evaluation to determine eligibility for special education services or a reevaluation of your child. Your consent for a preplacement evaluation does not mean that you have also given your consent for the school district to start providing special education and related services to your child. In cases of reevaluation, your consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain your consent and you fail to respond. The school district shall seek to obtain informed consent from you before providing special education and related services to your child.

If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent and the administrative unit does not provide your child with the special education and related services for which it sought your consent, the administrative unit:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; and
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested or which was obtained but revoked.

Following your consent to the initial provision of special education and related services, you may revoke your consent for the continued provision of special education and related services. This revocation must be in writing. Upon the revocation of your consent, the school district must provide you with prior written notice.

If you refuse to give initial consent or if you later revoke your consent, the school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) should be provided to you.

### **FREE APPROPRIATE PUBLIC EDUCATION**

You have a right to participate in meetings with respect to the identification, evaluation, eligibility determination, Individualized Education Program plan (IEP) development, placement, and provision of a free appropriate public education (FAPE) for your child.

An eligible child with a disability has a right to receive a FAPE that is outlined in an IEP. The program is meant to address your child's unique needs.

### **PRIOR NOTICE TO PARENTS**

*The school will notify you if it is proposing to change or refusing to change your child's special education program. The notice must be easily understandable. You must also receive notice of special education meetings about your child within a reasonable time so that you can attend.*

The school district must provide you with prior written notice each time it proposes or refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of a FAPE to your child.

It must provide prior written notice before it proposes to terminate services due to graduation with a regular diploma or due to exceeding the age of eligibility for services.

The school district must provide you with prior written notice before transferring rights regarding educational records when your student turns 18.

The notice must include:

1. a description of the action proposed or refused by the school district;
2. an explanation of why the school district proposes or refuses to take the action;
3. a description of any options the school district considered and the reasons why those options were accepted or rejected;
4. a description of each evaluation procedure, assessment, record or report that the school district used as a basis for the proposal or refusal;
5. a description of any other factors which are relevant to the school's proposal or refusal;
6. a statement that you, as a parent of a child with a disability, have protection under the procedural safeguards of special education law, and the means by which a copy of the procedural safeguards can be obtained, and
7. sources for you to contact to obtain assistance in understanding the procedural safeguards of special education.

If you need assistance in understanding any of the procedural safeguards or anything else relating to your child's education, please contact the Director of Special Education of your local school district.

## **PROCEDURAL SAFEGUARDS**

You will be informed of your rights under state and federal special education law

A copy of the procedural safeguards will be provided to you annually at your child's IEP meeting. A copy will be available to you at a minimum, upon the initial referral or parental request for evaluation and upon registration of a complaint with respect to any matter relating to the identification, evaluation or educational placement of your child, or the provision of a FAPE to your child. You may request a copy of your procedural safeguards at any time. It is also available on the District website at [www.dcsdk12.org](http://www.dcsdk12.org).

The procedural safeguards notice must be written in your native language or other mode of communication, unless it is clearly not feasible to do so, and written in an easily understandable manner. If your native language or other mode of communication is not a written language, the school must take steps to ensure that a) the notice is translated to you orally or by other means in your native language or other mode of communication, b) that you understand the content of the notice, and c) that there is written evidence that these requirements have been met.

### **INDEPENDENT EDUCATIONAL EVALUATION**

If you disagree with the school's evaluation of your child, you can request an independent educational evaluation, conducted by someone not employed by your school district.

You may have the right to obtain an independent educational evaluation (IEE) of your child at public expense if you disagree with an evaluation obtained by your school district. An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district. The school district will provide, upon your request, information about where an IEE may be obtained. However, your school district may initiate a due process hearing to show that its evaluation is appropriate. If it is determined that the school district's evaluation is appropriate you still have the right to an IEE, but not at public expense. If you obtain an IEE either at public or private expense, the results of that evaluation must be considered by the IEP team in any decision made with respect to the provision of a FAPE to your child, and may be presented as evidence at a due process hearing regarding your child.

If a hearing officer requests an IEE as part of a hearing, the cost of the evaluation must be at public expense.

Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualification of the examiner, must be the same as the criteria that the school district uses when it initiates an evaluation.

### **STUDENT RECORDS**

You have the right to see or request copies of your child's school records. If you disagree with the items in the records, you can ask if they can be changed or removed.

#### **Access to Records**

Your school district must permit you to inspect and review your child's education records. The school district must comply with your request without unnecessary delay and before any meeting regarding an IEP or any hearing relating to your child.

While the federal law permits a longer period of time to respond to a request for review, the Colorado Public Records Act sets forth a three-day time line which must be followed in most circumstances.

Your right to inspect and review education records under this section includes:

1. the right to a response from the school district to reasonable requests for explanations and interpretations of the records;
2. your right to have your representative inspect and review the records; and
3. your right to request that the school district provide copies of the records if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school district presumes that you have authority to inspect and review records relating to your child unless the school district has been advised that you do not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

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

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

#### Fees for Searching, Retrieving and Copying Records

The school district may not charge a fee to search for or retrieve information but may charge a fee for copies of records which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. Production by the school district of copies of education records usually will take a period of time longer than the three days required for their review and inspection.

#### Record of Access

The school district keeps a record of the parties who obtain access to education records collected, maintained, or used (except access by parents or parent representative and authorized employees of the school district), including the name of the party, the date access was given, and the purpose for which the party was authorized to use the records.

#### Amendment of Records at Parent's Request

If you believe that information in the education records of your student is inaccurate or misleading or violates the privacy rights or other rights of your child, you may request that the school district amend the information.

The school district must decide whether to amend the information in accordance with your request within a reasonable period of time after receiving the request. If the school district refuses to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

The school district shall, 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.

If, as a result of the hearing, the school district decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform you of the right to place in the records it maintains for your child a statement commenting on the disputed information or setting forth any reasons for disagreeing with the decision of the school. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of the child as long as the record or contested portion is maintained by the school. If the records of the child or the contested portion is disclosed by the school district to any party, the statement must also be disclosed to the party.

#### ***Record Retention***

***If not previously destroyed in accordance with Board of Education policy JRA/JRC, like all District education records except a permanent record, special education records are destroyed, pursuant to District guidelines, five years after a student no longer receives special education services from the District.***

***Students who turn 18 have these same rights regarding their own education records.***

#### **DISCIPLINE**

***Before your child is suspended or expelled for a period longer than ten consecutive school days, the IEP Team, including the parent, must meet to determine whether the misconduct is a manifestation of your child's disability. If your child is suspended or expelled in excess of ten school days, the school must provide appropriate special education services beginning on the eleventh school day.***

Discipline procedures relating to students with disabilities are extensive. Additional information can be obtained from your school administrator or IEP Team. Appropriate special education services must be

made available to all eligible children with disabilities who have been suspended or expelled (removed from their current educational placement) from the school for more than ten school days.

1. Short term suspensions from the current placement may be imposed for discipline infractions for not more than 10 consecutive school days, for each infraction. Suspensions will be considered a “change of placement” if 1) the removal is for more than 10 consecutive school days or 2) a series of removals that are each less than 10 consecutive school days constitutes a pattern because the days of removal cumulate to more than 10 school days in a school year, and because of factors such as the length of each removal, the total amount of time of the removal, and the proximity of the removals to one another.
2. Disciplinary actions that constitute a change of placement require the IEP Team, including the parent, to hold an IEP meeting to determine if the child is receiving a FAPE and to conduct a manifestation determination. This process will determine if there is a causal relationship between your child’s behavior and disability. If behavior was a manifestation of your child’s disability, your child may not be expelled. Your child will receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur, or may have a current behavior plan reviewed and modified.
3. If the result of the IEP team’s review is that your child’s behavior was not a manifestation of your child’s disability, then your child may be disciplined in the same manner as a child without a disability would be disciplined, except that the school district must continue to provide appropriate special education services for your child while serving a suspension or expulsion that has resulted in a removal of longer than 10 days from the current placement.. If you disagree with the determination that your child’s behavior was not a manifestation of your child’s disability or with a decision regarding placement, you may request a hearing.
4. A child with a disability can be placed in an interim alternative setting for up to 45 school days if the child brings a weapon to school or a school function, is in possession of or using illegal drugs, and/or sells or solicits the sale of a controlled substance while at school or a school function, or has inflicted serious bodily injury upon another person while on school premises or at a school function. The alternative educational setting in which a child is to be

placed is determined by the IEP Team, including the parent. The child will receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur or may have a current behavior plan reviewed and modified.

5. A hearing officer can order a change in placement to an interim alternative educational setting for up to 45 school days if it can be determined that the child is substantially likely to injure him/herself or others in their current placement.
6. School personnel may consider unique circumstances on a case by case basis when considering discipline for a student with disabilities

## **RESOLVING DISAGREEMENTS ABOUT THE EDUCATION OF YOUR CHILD**

*Your child has a right to a free appropriate public education if she/he is eligible for special education. At times, you may disagree with the School District’s identification, evaluation or proposed placement of your child or how it delivers services to your child. Attempts should be made to resolve these differences as soon as they arise.*

If you are not satisfied, you may do any of the following:

## **ADMINISTRATIVE APPEAL**

**You have the right to appeal the decision of the IEP team convened by the School District with regard to the classification, placement or programming of your child to the (1) Director of Special Education and (2) Superintendent of Schools or his designee.**

### **MEDIATION**

On occasion, you might disagree with the special education testing, services or placement for your child. You can try to resolve your disagreements by requesting mediation, which is a free service. A mediator is a neutral person, not employed by the school district, who assists you and the school in resolving differences. You may also request a due process hearing. Please have the school explain the processes before you make a final decision.

There might be times when you and the school district disagree on important issues regarding your child's education. If agreement cannot be reached, you and the Douglas County School District jointly have the right to request an impartial mediator to help reach a mutually agreeable solution. It is important for you to know that mediation is voluntary and is conducted by a qualified, impartial mediator at no cost to you. Mediation cannot be used to delay or deny your right to a due process hearing or deny any other rights afforded under special education law. Each session in the mediation process shall be scheduled in a timely manner and shall be held at a location that is convenient to the parties in the dispute. An agreement reached by the parties in the dispute in the mediation process shall be set forth in a legally binding written mediation agreement. Discussions during mediation are confidential and may not be used as evidence in subsequent due process hearings or civil proceedings. Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins. If you elect not to use the mediation process, you may be asked to attend a meeting with a disinterested party, who would explain the benefits of the mediation process to you.

### **STATE COMPLAINT PROCEDURES**

***If you feel the school district/agency is violating special education requirements for your child, you can file a written complaint with the Colorado Department of Education to resolve the problem.***

You have a right to file a written complaint with the Colorado Department of Education if you feel the school district or agency has violated a specific requirement of federal special education law or regulations. The complaint must be written, signed and filed with the Department explaining the alleged violations.

The complaint must include a statement that the school district has violated IDEIA and the facts on which the statement is based. The complaint must allege a violation that occurred not more than one year prior to the date the complaint is filed, unless a longer period is reasonable because the violation is continuing or you are requesting compensatory services for a violation that occurred not more than three years prior to the filing of the complaint. The Department will have 60 calendar days after the complaint is filed to:

1. give the school district or agency an opportunity to respond to the allegations;
2. give the parent an opportunity to submit additional information about the allegations;
3. carry out an impartial investigation,
4. review all relevant information and make an independent determination of whether a violation has occurred;
5. issue a written decision to the school district or agency and the parents, including findings, conclusions, remedial actions, if applicable, and reasons for the final decision. If it has violated the law, the school district is obligated to implement the final decision in an efficient and timely manner.

To file a written complaint, send to Federal Complaints Officer, Colorado Department of Education, 201 East Colfax, Denver, Colorado 80203.

## IMPARTIAL DUE PROCESS HEARING

*If an agreement cannot be reached between you and the school district, you may request a due process hearing. The hearing will be conducted by an impartial hearing officer. As a parent involved in the hearing you must be given certain rights, including the right to an appeal.*

**You or the school district may initiate a hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a FAPE. The alleged violation shall have occurred not more than two years before the date that you or the school district knew or should have known about the alleged actions that form the basis of the complaint. This time limit does not apply if the school district misrepresented that the problem forming the basis of the complaint was resolved or information required to be provided to the parent was withheld.**

Before a hearing is initiated, you or your attorney must provide a written complaint for due process to the school district involved, providing the following information:

1. name of your child;
2. address of residence of your child;
3. name of school your child is attending;
4. description of the problem(s), relating to the proposed or refused initiation or change, including related facts; and
5. a proposed resolution to the problem to the extent known and available to you at that time.

In the case of a homeless student, the complaint shall contain available contact information for the child and the name of the school the child is attending in addition to items 4 and 5 above

The school district will have a form available for you to use to file the written complaint for due process.

The written complaint shall be sent to the Director of Special Education of your school district.

The hearing will be arranged by your school district and conducted by an impartial hearing officer obtained through the Colorado Department of Education (CDE).

The hearing cannot be conducted by an employee of the state education agency or school district involved with the education or care of your child, or by any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

The school district must inform you of any free or low-cost legal or other relevant services available in the area if you request the information or if you or the school initiate a due process hearing.

Within fifteen days of receiving a request for due process from a parent, the school district must convene a meeting between the parents and relevant IEP team members to provide an opportunity to resolve the issue, unless the parties agree in writing to waive the resolution meeting or agree to use the mediation process. Any agreement reached at the resolution meeting shall be in writing and be legally binding. If the matter is not resolved within 30 days of the hearing request, the due process hearing may occur and the applicable timelines for a hearing shall commence.

At least five business days before a hearing, each party must disclose to other parties all evaluations completed by that date and recommendations based on the evaluations that party intends to introduce at the hearing. A hearing officer may bar any party that fails to comply with this disclosure rule from introducing the relevant evaluation or recommendation at the hearing without consent from the other party.

The hearing officer shall decide the case on substantive grounds based on a determination of whether the student received a free appropriate public education, unless procedural inadequacies impeded the student's right to a free appropriate public education or significantly impeded the parents' opportunity to participate in the decision making process around the student's educational program.

A final hearing decision is reached and mailed to the parties within 45 days after completion of the thirty day resolution period unless the hearing officer grants a specific extension of time, beyond the time lines above, at the request of either party.

The decision made in a due process hearing is final unless a party to the hearing appeals the decision under the procedures for impartial administrative appeal described later in this document.

### **Due Process Hearing Rights**

Any party to a hearing 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 electronic verbatim record of the hearing;
5. obtain a copy of written or electronic findings of fact and decisions. (After deleting any personally identifiable information, the school district will transmit those findings and decision to the State advisory panel and make them available to the public.

As parents involved in the hearings, you must be given the right to have your child present, and to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

### **Administrative Appeal/Impartial Review**

Any party aggrieved by the findings and decision in the hearing may appeal to CDE within thirty days of receiving the decision.

If there is an appeal, CDE shall initiate an impartial review of the hearing. The official conducting the review shall:

1. Examine the entire hearing record;
2. Ensure that the procedures at the hearing were consistent with the requirement of due process;
3. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above apply;
4. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
5. Make an independent decision on completion of the review; and
6. Give a copy of written or electronic findings and the decision to the parties. (After deleting any personally identifiable information, the State educational agency will transmit those findings and decisions to the State advisory panel and make them available to the public.

Each review involving oral arguments must be conducted at a time and place which is reasonably convenient to you and your child.

CDE shall ensure that a final decision is reached in an administrative review and mailed to the parties within 30 days after the receipt of a request for a review, unless the reviewing official grants a specific extension at the request of either party. The decision made by the reviewing official is final, unless a party brings a civil action under the procedures described below.

### **Civil Action**

Any party aggrieved by the findings and decision made in a hearing, who does not have the right to appeal, and any party aggrieved by the decision of a reviewing officer has the right to bring a civil action in State or Federal Court. The party bringing the action shall have 90 days from the date of the decision being appealed to bring a civil action.

### **Child's Status During Proceedings**

During the pendency of an expedited hearing or an appeal regarding disciplinary action to challenge an interim alternative educational setting or a manifestation determination, unless you and the school district agree otherwise, your child must remain in the interim alternative educational setting or in the disciplinary placement until the hearing officer's decision or for the time period determined appropriate, whichever occurs first.

If the school personnel maintain that it is dangerous for your child to be in the current placement, the school district may request an expedited due process hearing. The hearing officer may then place your child in an alternative setting for 45 school days if it is determined that the child is substantially likely to hurt himself or others.

During the pendency all other administrative or judicial proceedings regarding a complaint, unless you and the school district agree otherwise, your child must remain in his or her present educational placement.

If the decision of the ALJ in an administrative appeal of a hearing officer decision agrees with you that a change in placement is appropriate, that decision will be treated as an agreement between the state and you and the placement of your child shall change according to that agreement.

If a hearing involves an application for initial admission to public school, your child, with your consent, must be placed in the public school program until the completion of all the proceedings.

#### **AWARD OF ATTORNEYS' FEES**

In any action or proceedings discussed above, **only a Court**, in its discretion, may award reasonable attorneys' fees as part of the cost to the parents or guardians of a child with a disability who is the prevailing party; however hearing officers and complaint investigators may not award attorneys' fees.

Attorney fees may not be awarded relating to any meeting of the IEP Team unless such a meeting is convened as a result of an administrative proceeding or judicial action, or at the discretion of the state, for a mediation that is conducted prior to the filing of a complaint.

A school district may recover attorney's fees against a parent's attorney or a parent for certain frivolous unreasonable, groundless or harassing actions.

#### **PRIVATE SCHOOL PLACEMENT**

*Parents who place their child in a private school without the school's endorsement, could be awarded reimbursement for private school educational costs if a court or hearing officer determines that the local school was not providing a FAPE .*

If the parents of a child with a disability, who previously received special education and related services from the local school district, enroll their child in a private school without the consent of, or referral from the school district, a court or due process hearing officer may require the school district to reimburse the parents for the cost of that enrollment if a court or hearing officer determines:

1. that the local school was not providing a FAPE, or
2. that the school district did not provide the child a FAPE in a timely manner, and
3. that the private placement is appropriate.

Reimbursement may or may not be denied:

- If the parents or guardians, at the last IEP meeting that they attended, failed to tell the IEP Team that they were rejecting the placement proposal by the school district. The parents/guardians, in rejecting the proposed placement, must tell the IEP Team of their concerns and their intent to enroll their child in a private school at public expense; or
- If the parents/guardians failed to give the school district written notice, at least 10 business days before removing the child from school, of their decision to unilaterally enroll their child at a private school at public expense, or
- If, prior to removal from the public school, the school district gave the parents/guardians written notice of its intention to evaluate (including a statement of the purpose of the evaluation that was reasonable and appropriate) and the parents/guardians did not make the child available for evaluation, or
- If a judicial officer determines that the parent/guardian acted unreasonably.