

# Parent and Child Rights in Special Education

## Procedural Safeguards Notice

An Explanation of Procedural Safeguards Available Under Provisions of the Individuals with Disabilities Education Act (IDEA) and the Colorado Rules for the Administration of the Exceptional Children's Educational Act (ECEA)

### **APPEALS**

#### **FINALITY OF DECISION; APPEAL; IMPARTIAL REVIEW**

34 CFR §300.514

##### **Finality of hearing decision**

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the administrative unit) may appeal the decision to the Colorado Department of Personnel and Administration, Office of Administrative Courts.

##### **Appeal of decisions; impartial review**

If a party (you or the administrative unit) is aggrieved by the findings and decision in the hearing, an appeal may be brought to the Colorado Department of Personnel and Administration, Office of Administrative Courts.

If there is an appeal, the Office of Administrative Courts must conduct an impartial review of the findings and decision appealed. The official conducting the review must:

1. Examine the entire hearing record;
2. Ensure that the procedures at the hearing were consistent with the requirements of due process;
3. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above under the heading **Hearing Rights** apply;
4. Give 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 you and the administrative unit a copy of the written, or, at your option, electronic findings of fact and decisions.

## **Findings and decision to advisory panel and general public**

The Colorado Department of Education, after deleting any personally identifiable information, must:

1. Provide the findings and decisions of the appeal to the Colorado Special Education Advisory Committee; **and**
2. Make those findings and decisions available to the public.

## **Finality of review decision**

The decision made by the reviewing official is final unless you or the administrative unit brings a civil action, as described below.

## **TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS**

34 CFR §300.515

The administrative unit must ensure that not later than 45 calendar days after the expiration of the 30- calendar-day period for resolution meetings or, as described under the sub-heading **Adjustments to the 30-calendar-day resolution period**, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to you and the administrative unit.

The Colorado Department of Education must ensure that not later than 30 calendar 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 you and the administrative unit.

A hearing or reviewing officer may grant specific extensions of time beyond the periods described above (45 calendar days for a hearing decision and 30 calendar days for a review decision) if you or the administrative unit make a request for a specific extension of the timeline.

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

## **CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS**

34 CFR §300.516

### **General**

Any party (you or the administrative unit) who does not agree with the findings and decision in the State- level review has the right to bring a civil action with respect to the matter that was the subject of the due process hearing (including a hearing relating to disciplinary procedures). The action may be brought in a State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

### **Time limitation**

The party (you or the administrative unit) bringing the action shall have 90 calendar days from the date of the decision of the Administrative Law Judge to file a civil action.

### **Additional procedures**

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the administrative unit's request; **and**
3. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

### **Jurisdiction of district courts**

The district courts of the United States have authority to rule on actions brought under Part B of the IDEA without regard to the amount in dispute.

### **Rule of construction**

Nothing in Part B of the IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504), 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 Part B of the IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

### **ATTORNEYS' FEES**

34 CFR §300.517

#### **General**

In any action or proceeding brought under Part B of the IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing administrative unit, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; or (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**

In any action or proceeding brought under Part B of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to a prevailing administrative unit, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay, or

to unnecessarily increase the cost of the action or proceeding.

Award of fees A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates prevailing in the community in which the action or hearing arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of the IDEA for services performed after a written offer of settlement to you 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 a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
  - b. The offer is not accepted within 10 calendar days; **and**
  - c. The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement.

Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer.

3. Fees may not be awarded relating to any meeting of the individualized education program (IEP) Team unless the meeting is held as a result of an administrative proceeding or court action. Fees also may not be awarded for a mediation as described under the heading **Mediation**.

A resolution meeting, as described under the heading **Resolution meeting**, is not considered a meeting convened as a result of an administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under Part B of the IDEA, if the court finds that:

1. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. 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 similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; **or**
4. The attorney representing you did not provide to the administrative unit the appropriate information in the due process request notice as described under the heading **Due Process Complaint**.

However, the court may not reduce fees if the court finds that the State or administrative unit unreasonably delayed the final resolution of the action or proceeding