

**ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
10.00 MEDIATION AND HEARINGS**

10.01 IMPARTIAL DUE PROCESS HEARING PROCEDURES

10.01.1 Purpose

The purpose of these procedures is to ensure that a hearing is conducted in the manner prescribed by the IDEA, (20 U.S.C. 1400 - 1487) and the corresponding federal regulations at 34 CFR part 300.

10.01.2 Definitions

10.01.2.1 "Day" means a calendar day unless otherwise indicated as business day or school day.

10.01.2.2 "Business day" means Monday through Friday, except for federal and state holidays, unless holidays are specifically included in the designation of business day, as in 34 CFR 300.403(d)(1)(ii).

10.01.2.3 "School day" means any day, including a partial day, that children are in attendance at school for instructional purposes.

10.01.2.4 "Department" means the Arkansas Department of Education.

10.01.2.5 "He" or "his" means both the male and female gender.

10.01.2.6 "Joint Exhibit" means an exhibit that the parties agree should be admitted into evidence.

10.01.2.7 "Party" means a parent or a public agency responsible for the provision of a free appropriate public education to children with disabilities.

10.01.3 Hearings Generally - Subject Matter

10.01.3.1 A parent or public agency may initiate a hearing of the matters described in 34 CFR 300.503(a)(1) and (2) and § 9.04.1 of these regulations relating to the identification, evaluation or educational placement of a child with a disability, or the provision of a free appropriate public education to the child.

10.01.4 Hearings Generally - Subject Matter For Expedited Hearings

10.01.4.1 If a parent disagrees with a determination that a child's behavior was not a manifestation of the child's disability or with any decision regarding placement of the child during disciplinary removals, the parent may request an expedited hearing as defined in 34 C.F.R. 300.528.

10.01.4.2 A school district may request an expedited hearing when school personnel have reason to believe that it is dangerous for the child to remain in the current placement, as maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

10.01.4.3 If a child has been placed for disciplinary reasons in an interim alternative educational setting (for up to 45 calendar days) and, during that placement, the parent requests a hearing on any matter under the IDEA subject to a due process hearing (including disagreement with a proposed change of placement) -

- A.** The LEA/public agency may request an expedited hearing to continue the child's placement in the interim alternative educational setting if the placement is expiring; and
- B.** The LEA/public agency maintains that it is dangerous for the child to return to the placement he was in prior to removal to the interim alternative education setting while a hearing to determine future educational placement is held.

10.01.5 Hearings Generally - Notification Procedures

10.01.5.1 The following are the procedures to be followed when the parents or public agency officials make it known that they wish to initiate a due process hearing -

- A.** The hearing request is placed in writing by the requesting party. (See forms for request for hearing/expedited hearing.)
- B.** The public agency official completes the Due Process Hearing Information form and notifies the Associate Director, Special Education Unit, or SEA. (See Notification Letter to SEA.)
- C.** The public agency notifies the parent in writing that the request for hearing has been filed with the SEA. (See Notice of Filing a Request For Hearing/Expedited Hearing form.)

The letter will include a copy of "Your Rights Under the IDEA," due process hearing procedures, and a completed copy of the Due Process Hearing Information form. (See Notice of Filing a Request for Hearing/Expedited Hearing form.)

- D.** The public agency sends additional information to the parents, including a written statement explaining why the child's present classification, educational program or recommended change is appropriate, and a list of the alternative programs that were rejected.
- E.** The public agency informs the parents that they may request to examine and copy their child's records. This request shall include reports of testing and evaluation upon which the present or recommended classification or placement was based.
- F.** The Associate Director, Special Education Unit, or designee will make arrangements for the hearing and inform parties of their hearing rights.

10.01.6 Hearings Generally - Parent Notice Of Legal Services

When the parent or public agency initiates a hearing under these procedures, or when a parent requests information regarding representation, the public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area.

10.01.7 Hearings Generally - Parent Responsibilities

10.01.7.1 The parents as a party to a due process hearing shall -

- A.** Assist in completion of the Due Process Hearing Information form.
- B.** Complete the hearing request form established by the Department and shall provide the following information -
 - 1.** The name of the child;
 - 2.** The residential address of the child;
 - 3.** The name of the school district the child is attending;
 - 4.** 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

- 5.** A proposed resolution of the problem to the extent known and available to the parent(s) at the time.
- C.** Not be denied or delayed receipt of any hearing where the hearing request form is not completed or does not contain the information required by § 10.01.7.1 of these procedures.
- D.** Comply with any directive by an assigned impartial due process hearing officer for the provision and disclosure of requested information, materials, documents, etc., in a timely manner.
- E.** Continue sending the child to his current placement unless other arrangements are agreed to by both the public agency and the parent.
- F.** Continue to send the child to school in compliance with State compulsory school attendance laws.

10.01.8 Hearings Generally - Public Agency Responsibilities

10.01.8.1 The public agency as a party to a due process hearing shall -

- A.** Complete the Due Process Hearing Information form.
- B.** Provide access to all education records, reports and files regarding the child to parents and their representative for review and inspection.
- C.** Provide the parents with an opportunity to inspect and copy these records at a reasonable cost.
- D.** Make the arrangements for an independent educational evaluation for the child by an outside evaluator when deemed necessary by agreement with the parents or by order of the hearing officer.
- E.** Compel appropriate educational personnel to provide testimony at the hearing as determined

by the public agency and/or as requested by the parents.

- F. Provide a meeting room for the due process hearing.
- G. Provide evidence and testimony at the hearing to show that the proposed course of action is necessary and appropriate.
- H. Inform parents of any free or low-cost legal and other relevant services available in the area if the parent requests the information; or if the parent or the public agency initiates a hearing.
- I. Supply information to the hearing officer and the Special Education Unit concerning the assignment and appointment of the child's surrogate parent, if applicable. (See Section 15.00 for regulations relative to the appointment of surrogate parents.)

10.01.9 Hearings Generally - State Education Agency Responsibilities

10.01.9.1 It shall be the responsibility of the State education agency to -

- A. Arrange for the date, time and location of the hearing and assign a hearing officer to conduct the hearing. The hearing shall be conducted at a time and place which is reasonably convenient to the parents and child involved.
- B. Provide upon request interpreters for the deaf or interpreters fluent in the primary language spoken in the child's home.

10.01.10 Hearings Generally - Notification Of Availability Of Mediation; Mediation Consultation

10.01.10.1 General The State education agency has established and implements the following procedures to allow parties to disputes involving any matter described in 34 CFR 300.503(a)(1) and § 9.04.1.1 to resolve the disputes through a mediation process, (hereafter referred to as the "pre-hearing mediation conference"), that, at a minimum, is available whenever a hearing is requested under 34 CFR 300.507 or 300.520 - 300.528 or §§ 10.01.3.1, 10.01.6, 10.01.10.2, or Section 11.00 of these regulations.

10.01.10.2 When a hearing request is initiated pursuant to these procedures, the public agency shall inform the parent of the availability of mediation described in 34 CFR 300.506 and these regulations.

- A.** The purposes of the pre-hearing mediation conference are -
 - 1.** To resolve, if possible, all disagreement, thus eliminating the need for a due process hearing;
 - 2.** To narrow the range of disagreement to a specific issue or issues in the event that total resolution of the disagreement is not accomplished;
 - 3.** To provide an atmosphere, through the introduction of a mediator, which is conducive to relevant discussions and mutual agreement; and
 - 4.** To acquaint the parties to the dispute with the due process hearing procedures.

10.01.10.3 Requirements The procedures for a pre-hearing mediation conference shall meet the following requirements -

- A.** The procedures ensure that the mediation process -
 - 1.** Is voluntary on the part of the parties;
 - 2.** Is not used to deny or delay a parent's right to a due process hearing under 34 CFR 300.507 and these regulations, or to deny any other rights afforded under Part B of the IDEA; and
 - 3.** Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques, and who does not have a personal or professional conflict of interest.
- B.** Each session in the mediation process is scheduled in a timely manner and is held in a location that is convenient to the parties to the dispute.

- C.** If parties to a dispute elect to participate in a pre-hearing mediation conference, whenever possible the conference will be scheduled within seven (7) calendar days after the written request for a due process hearing has been received by the Associate Director, Special Education Unit.
- D.** Attorneys for parties to the dispute are not permitted to attend the pre-hearing mediation session(s), as the presence of attorneys at the pre-hearing mediation session would have the potential for creating an adversarial atmosphere not conducive to mediation of the dispute. This does not, however, preclude either party from communicating with its attorney to seek advise regarding the terms of a settlement proposal.
- E.** An agreement reached by the parties to the dispute participating in the mediation process must be set forth in a written mediation agreement.
- F.** Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceeding.
- G.** The SEA requires parties to the mediation process to sign a confidentiality pledge prior to the commencement of the process.

10.01.10.4 Meeting to encourage mediation

- A.** The SEA has established procedures to encourage parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who will explain the benefits of the mediation process and will encourage the parents to use the process. The parent's participation in the meeting can be satisfied by a telephone conference call if it is inconvenient for the parent to meet.
- B.** These procedures may not be used by the public agency to deny or delay a parent's right to a due process hearing under 34 CFR 300.507 and these regulations if the parent fails to participate in mediation or in a mediation consultation meeting.

10.01.11 Hearings Generally - Hearing Rights

10.01.11.1 Any party to a hearing under these procedures has the right to -

- A.** Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
- B.** Present evidence and confront, cross-examine, and compel the attendance of witnesses;
- C.** Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing;
- D.** Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and
- E.** Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

10.01.11.2 At least five (5) business days prior to a scheduled hearing conducted under these procedures, and at least two (2) business days prior to a scheduled expedited hearing conducted under these regulations, each party shall 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.

10.01.11.3 A hearing officer may prohibit any party that fails to properly disclose an evaluation and corresponding recommendations from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

10.01.12 Hearings Generally - Parental Rights At Hearings

10.01.12.1 Parents involved in hearings shall have the right to -

- A.** Have the child who is the subject of the hearing present; and
- B.** Open the hearing to the public.

10.01.12.2 The record of the hearing, findings of facts, and decisions of the hearing officer shall be provided at no cost to parents.

10.01.13 Hearings Generally - Publication Of Findings

10.01.13.1 The Department, after deleting any personally identifiable information, shall -

- A.** Transmit the findings and decisions of the hearing officer to the Advisory Council for the Education of Children with Disabilities; and
- B.** Make those findings and decisions available to the public.

10.01.14 Time Lines Of Hearing

10.01.14.1 The Department shall ensure that not later than 45 days after the receipt of a request for a hearing -

- A.** A final decision is reached in the hearing (unless the hearing officer has extended the time line); and
- B.** A copy of the decision is mailed to each of the parties.

10.01.14.2 Each hearing must be conducted at a time and place that is reasonably convenient to the parents and child involved.

10.01.15 Extension Of Time Lines

10.01.15.1 In general, a hearing officer may grant specific extensions of time beyond forty-five (45) days at the request of any party to the hearing. However, specific extensions shall not extend the date of the hearing decision beyond sixty (60) days from the original date of receipt of a hearing request. Extensions of time may be granted for good cause shown.

10.01.15.2 No extension of time shall be granted by a hearing officer to any party to the hearing requesting the extension unless accompanied by a written request detailing the specific need for the extension.

10.01.15.3 Any extension of time granted by the hearing officer shall be noted in a written order, detailing the specific need for the extension, and forwarded by the hearing officer to the Department within two (2) days of the date of the decision to grant an extension of the time lines.

10.01.15.4 Under no circumstance shall a hearing officer permit any party to waive the application of the forty-five (45) day time line.

10.01.16 Time Lines For Expedited Hearings

Not later than twenty-two (22) days after the receipt of a request for an expedited hearing, a final decision shall be rendered by the hearing officer and a copy of the decision mailed to each party by the Department.

10.01.17 Extension Of Time Lines For Expedited Hearings

10.01.17.1 A hearing officer may grant a specific extension of time beyond twenty-two (22) days at the request of any party to the hearing. However, specific extensions shall not extend the date of the hearing decision beyond thirty (30) days from the original date of receipt of the request for an expedited hearing.

10.01.17.2 No extension of time shall be granted by the hearing officer to any party to the hearing requesting an extension unless accompanied by a written request detailing the specific need for the extension.

10.01.17.3 Any extension of time granted by the hearing officer in an expedited hearing shall be noted in a written order, detailing the specific need for the extension, and forwarded to the Department within two (2) days of the decision to grant an extension of the time lines.

10.01.17.4 Under no circumstance shall a hearing officer permit any party to waive the application of the twenty-two (22) day time line in an expedited hearing.

10.01.18 Impartial Hearing Officer

10.01.18.1 The term "hearing officer" shall refer to an impartial, trained individual assigned by the Department, Special Education Unit, for the purpose of presiding at a due process hearing or expedited due process hearing.

10.01.18.2 A hearing may not be conducted -

- A.** By a person who is an employee of the State agency or of the local education agency that is involved in the education or care of the child; or
- B.** By any person having a personal or professional interest that would conflict with his objectivity in the hearing.

10.01.18.3 A person who otherwise qualifies to conduct a hearing under this part is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

10.01.18.4 Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each hearing officer.

10.01.19 Authority Of Hearing Officer

10.01.19.1 A hearing officer has jurisdiction to rule on any matter that pertains to the identification, evaluation or educational placement of a child with a disability, and the provision of a free appropriate public education to the child within the meaning of the IDEA and Ark. Code Ann. 6-41-202, et seq.

10.01.19.2 The hearing officer shall dismiss a hearing if -

A. During the opening remarks, the hearing officer determines that a hearing has been initiated for reasons other than those under the hearing officer's jurisdiction or authority relative to the IDEA. The hearing officer must adjourn the proceeding and dismiss the hearing. It shall be the hearing officer's responsibility, within five (5) days following the adjournment, to issue an Order of Dismissal, noting the reason for the adjournment and dismissal of the hearing.

B. During the course of the hearing, the hearing officer determines that the issues being put forth are not under the jurisdiction or authority of the hearing officer relative to the IDEA. The hearing officer must adjourn the proceeding and dismiss the hearing. The hearing officer must inform the State education agency during the five (5) day period, in the manner noted in § 10.01.19.2A.

C. The parties inform the hearing officer that the case has been settled or that the parties request an extension of time in order to reach a settlement agreement. The hearing officer shall not continue a case for the purpose of allowing the parties additional time to reach a negotiated settlement. The hearing officer shall forthwith dismiss the case without prejudice to the rights of the parties to file a new request for a hearing. A written Order of Dismissal shall be rendered within five (5) days following the dismissal of the hearing.

10.01.19.3 In the event that a party to a hearing becomes disruptive, disorderly, abusive, or disrespectful to the hearing officer or to any other party to the hearing, the hearing officer shall use reasonable means available,

including dismissal, to maintain order in the conduct of the hearing.

10.01.19.4 In the event that the child is represented by a surrogate parent, the hearing officer shall require that information concerning the surrogate parent's assignment and training shall be introduced into the record following the opening remarks. It shall not be the responsibility of the hearing officer to determine the fitness of a surrogate parent during the hearing.

10.01.19.5 In a hearing conducted pursuant to these procedures, a hearing officer may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) days if the hearing officer, in an expedited due process hearing -

- A.** Determines that the public agency has demonstrated by substantial evidence (beyond a preponderance of the evidence) that maintaining the current placement of the child is substantially likely to result in injury to the child or to others;
- B.** Considers the appropriateness of the child's current placement;
- C.** Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and
- D.** Determines that the interim alternative educational setting that is proposed by LEA/ public agency personnel who have consulted with the child's special education teacher, is -
 - 1.** Selected so as to enable the child to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student's current IEP, that will enable the child to meet the goals set out in that IEP; and
 - 2.** Designed to include services and modifications to address the behavior and to prevent the behavior from recurring.

10.01.19.6 The hearing officer shall have the power under Ark. Code Ann. 6-41-216 to issue subpoenas and to bring before him as a witness any person in this state.

- A.** The hearing officer shall issue a subpoena upon the request of a party to a pending proceeding over which the hearing officer is assigned and actually presiding.
- B.** The subpoena shall be directed to the sheriff of the county where the witness resides or may be found.
- C.** The subpoena may require the witness to bring with him any book, writing, or other thing under his control which he is required by law to produce.
- D.** Service of the subpoena shall be in the manner provided for the service of subpoenas in civil cases under the Arkansas Rules of Civil Procedure.
- E.** The hearing officer shall have jurisdiction to issue a subpoena to compel the attendance of witnesses only in hearings over which he is actually presiding.
- F.** In the event a witness shall have been served with a subpoena as herein provided for and fails to attend the hearing in obedience to the subpoena or otherwise comply with it, the hearing officer may apply to the circuit court of the county wherein the hearing officer is holding the hearing for an order commanding the arrest of the witness and directing that the witness be brought before the court.

10.01.19.7 The hearing officer shall have the authority to sequester witnesses on his own motion or on that of any party to the proceeding.

10.01.19.8 The hearing officer shall have the authority to restrict the number of witnesses and limit the length of their testimony.

10.01.19.9 The hearing officer shall be without authority to retain jurisdiction over a case once a final order is entered and shall not attempt to reopen a case once the final order is entered.

10.01.20 Disclosure By The Hearing Officer

- 10.01.20.1** The hearing officer shall disclose all personal or professional activities or relationships involving any party to the hearing. The hearing officer also shall disclose personal or professional activities or relationships with the public agency, the officer's representation of students of the local educational agency not the subject of the hearing or representation of the local education agency or other business related thereto.
- 10.01.20.2** If any party to the hearing objects to the assigned hearing officer, the objection shall be presented to the hearing officer in writing not less than five (5) days prior to the date of the hearing.
- 10.01.20.3** If any party to the hearing objects to the participation of the assigned hearing officer after disclosure, the hearing officer shall use discretion in determining whether to disqualify himself from the proceedings.
- 10.01.20.4** Not later than two (2) days prior to the date of the hearing, the hearing officer shall issue a written ruling on any objection to the hearing officer's participation.
- 10.01.20.5** The written objection of any party to the participation of the hearing officer and the subsequent written ruling by the hearing officer shall preserve the issue for appellate review. No objection to the participation of a hearing officer shall be raised at the hearing itself.

10.01.21 Conflict of Interest

The hearing officer shall disqualify himself from presiding over any case in which he has a personal or professional interest and which might conflict with the hearing officer's objectivity in the hearing. The Department shall appoint a replacement hearing officer pursuant to the IDEA and these procedures.

10.01.22 Disqualification Of Hearing Officer - Impartiality At Issue

- 10.01.22.1** It shall be the responsibility of the State education agency to ensure that the hearing officer assigned to a particular hearing is unbiased. The public agency, the parent(s), or their respective counsel/representative may challenge the assignment of a particular hearing officer only on the basis of alleged bias. Such a challenge must be stated in writing and must be accompanied by written evidence to support the allegation that the hearing officer is biased and, therefore, is not impartial. In the event that the allegation of bias is substantiated, it shall be the responsibility of the State education agency to assign a different hearing officer to the case.

10.01.22.2 Any challenge to the impartiality of an assigned hearing officer must occur within seven (7) days after notification to the parties to the hearing of the assignment of a hearing officer.

10.01.23 Impartiality; Ex Parte Communications

10.01.23.1 The hearing officer shall conduct the hearing in a manner that demonstrates fairness to all parties.

10.01.23.2 No hearing officer shall engage in *ex parte* communications with any party during any stage of the hearing process.

10.01.24 Discovery

Pre-hearing discovery shall be limited to the production of documentary evidence and the disclosure of the names, addresses and telephone numbers of witnesses. The hearing officer shall not grant any request for depositions or interrogatories by the parties.

10.01.25 Pre-Hearing Conference

10.01.25.1 The hearing officer may order a pre-hearing conference to determine the relevant issues to the hearing and to address evidentiary matters including, but not limited to -

- A.** The relevance of documentary evidence;
- B.** The relevance of testimonial evidence; or
- C.** The limitation of repetitive evidence, including the testimony of witnesses.

10.01.25.2 The hearing officer may, at his discretion, limit the number of witnesses, the length of direct and cross-examination, and the number and type of documents used as evidence in the hearing.

10.01.25.3 Within five (5) days of the date a request for hearing is filed, any party to a hearing may request a pre-hearing conference to determine the relevant issues and to address evidentiary matters.

10.01.25.4 The hearing officer shall inform the parties of their responsibility to provide notice to the hearing officer at least 24 hours before the case is set for hearing as to the status of the case. Failure to contact the hearing officer as required may result in dismissal of the case without prejudice. In the event a change of status occurs thereafter, the parties shall forthwith notify the hearing officer of the change.

10.01.26 Pre-Hearing Briefs

The hearing officer may require the parties to a hearing to submit pre-hearing briefs stating the issues to be addressed and the arguments to be presented in the hearing. Pre-hearing briefs shall be submitted to the hearing officer not less than three (3) days prior to the date of the hearing.

10.01.27 Conduct Of The Hearing - Issues To Be Addressed

10.01.27.1 Pursuant to the information contained in the hearing request and obtained from the parties at a pre-hearing conference and from pre-hearing briefs, the hearing officer may narrow the scope of the hearing at the outset of the hearing. If it is determined by the hearing officer that there are no issues that may be addressed through an impartial due process hearing pursuant to the IDEA, the hearing officer shall dismiss the hearing.

10.01.27.2 If it is determined by the hearing officer that an issue raised by a party is not subject to the jurisdiction of the hearing officer, the party raising the issue may preserve the issue for appeal by presenting a written objection and proffer of evidence to the hearing officer prior to the issuance of the hearing officer's final written order.

10.01.28 Conduct Of The Hearing - Burden Of Proof; Opening Statements

10.01.28.1 At the beginning of the hearing, the hearing officer shall determine which party bears the burden of proof in regard to the particular issues raised.

10.01.28.2 The party bearing the burden of proof (hereinafter called the petitioner) may be allowed to present a succinct opening statement, no more than twenty (20) minutes in length, outlining the issues to be addressed in the hearing and the party's arguments.

10.01.28.3 At the conclusion of the opening statement of the petitioner, the other party (hereinafter called the respondent) shall be allowed to present a succinct opening statement, no more than twenty (20) minutes in length, outlining the issues to be addressed in the hearing and the party's arguments.

10.01.28.4 The decision to allow opening statements is at the discretion of the hearing officer.

10.01.29 Conduct Of The Hearing - Length Of Presentation

A hearing officer may limit the length of any presentation in order to proceed with the hearing in an expeditious manner. In general, a hearing should last no longer than three (3) days.

10.01.30 Conduct Of The Hearing - Closing Arguments; Post-Hearing Briefs

10.01.30.1 At the conclusion of the presentation of the evidence, the hearing officer may allow each party to the hearing to present closing arguments. Closing arguments by any party shall not exceed thirty (30) minutes in length.

10.01.30.2 In lieu of closing arguments or in addition thereto, at the discretion of the hearing officer, the hearing officer may require each party to simultaneously submit a post-hearing brief, summarizing the party's arguments. In the event that a post-hearing brief is required, the brief shall be submitted to the hearing officer not more than seven (7) days following the adjournment of the hearing.

10.01.31 Conduct Of The Hearing - Recipient Of Transcripts

The hearing officer shall require each party to designate on the record at the close of the hearing the recipient of that party's hearing transcript.

10.01.32 Conduct Of The Hearing - Evidence Generally

10.01.32.1 The Arkansas Rules of Evidence shall not be strictly applied to impartial due process hearings except as otherwise noted herein.

10.01.32.2 Evidence and testimony shall be excluded if -

- A.** It is documentary evidence and it has not been included in the documentary evidence volume;
- B.** It is documentary evidence and it has not been disclosed to the opposing party at least five (5) business days before the hearing or two (2) business days prior to an expedited hearing;
- C.** It is cumulative or not relevant;
- D.** It represents the legal conclusion of a witness; or
- E.** It is speculation on the part of the witness.

10.01.32.3 The hearing officer shall exclude cumulative, irrelevant or unnecessary testimony or evidence, even in the absence of an objection by any party to the hearing.

10.01.32.4 The hearing officer may exclude, at his discretion, other evidence given a proper basis for exclusion.

10.01.33 Conduct Of The Hearing - Documentary Evidence

10.01.33.1 Prior to the date of the hearing, the parties to the hearing shall meet for the purpose of reviewing the documentary evidence to be submitted by each party at the hearing. The documentary evidence should be assembled for the purpose of the hearing in the following order -

- A.** Joint exhibits or exhibits to which there is no objection;
- B.** Petitioner's exhibits to which the Respondent objects;
- C.** Respondent's exhibits to which the Petitioner objects;
- D.** Petitioner's evidence introduced through a sworn affidavit; and
- E.** Respondent's evidence introduced through a sworn affidavit.

10.01.33.2 Documentary evidence should be assembled in chronological order with each separate document tabbed and numbered consecutively.

10.01.33.3 Separate and complete volumes of the documentary evidence shall be assembled and placed in a three-ring binder(s) and distributed to all parties to the hearing.

10.01.33.4 Documents not contained in the documentary evidence volume shall be excluded from the hearing by the hearing officer, unless its admission is agreed to by all parties.

10.01.33.5 Documentary evidence shall be provided to the hearing officer in the required format no later than the beginning of the hearing, unless directed otherwise by the hearing officer.

- A.** Joint exhibits and testimony presented through a sworn affidavit shall be admitted as evidence when the hearing officer acknowledges receipt

of the documentary evidence volume on the record.

- B.** Objections by any party to documentary evidence pursuant to § 10.01.32.2B of these procedures shall be considered and ruled on at the time the documentary evidence is received by the hearing officer.
- C.** Objections by any party to documentary evidence pursuant to § 10.01.33.1B and C of these procedures shall be considered and ruled on at any appropriate stage in the hearing.

10.01.34 Conduct Of The Hearing - Use Of Sworn Affidavits

- 10.01.34.1** If no party to the hearing objects, the testimony of witnesses, including expert witnesses, may be presented through the use of sworn affidavits.
- 10.01.34.2** A witness, including an expert witness, who has testified by sworn affidavit can be subpoenaed by any party for the purpose of direct or cross-examination.

10.01.35 Conduct Of The Hearing - Proffer Of Evidence

- 10.01.35.1** Any party to a hearing may submit a written proffer of evidence for the purpose of preserving any issue for appeal. A proffer of evidence shall contain -
 - A.** A statement of the evidence and testimony that would have been presented had the hearing officer allowed its admission; and
 - B.** A statement signed by the party or the party's representative asserting that the contents of the proffer are truthful and that the evidence was offered in good faith.
- 10.01.35.2** Any proffer of evidence must be received by the hearing officer prior to the issuance of the final order in the hearing. Any proffer of evidence not received prior to the issuance of the final order in the hearing will not be made part of the hearing record.

10.01.36 Hearing Decisions

- 10.01.36.1** After the presentation of the evidence and, if allowed, closing arguments of the parties, the hearing officer shall rule orally on all issues, if any, for which the hearing officer has reached a decision.

10.01.36.2 Within the time line for regular and expedited hearings (unless extensions have been granted), and after the conclusion of the hearing, the hearing officer shall issue a written judgment containing -

- A.** Findings of fact;
- B.** The decision(s); and
- C.** Any orders resulting from the hearing decision.

10.01.36.3 The findings of fact shall be limited to the facts -

- A.** That were proven by a preponderance of the evidence; and
- B.** Upon which the hearing officer based any portion of the decision.

10.01.36.4 Any orders resulting from the hearing decision shall -

- A.** Be issued in concise language;
- B.** Address any violations noted in the hearing decision; and
- C.** Mandate definite action to remedy any violations.

10.01.36.5 In no event shall a hearing officer retain jurisdiction over the parties to the hearing after the hearing decision has been issued.

10.01.37 Hearing Decisions - Expedited Hearings

10.01.37.1 After the closing arguments of the parties, the hearing officer shall rule orally on all issues properly presented in the expedited hearing.

10.01.37.2 Within seven (7) days after the conclusion of the expedited hearing, the hearing officer shall issue a written decision outlining and supporting the oral decision rendered at the conclusion of the hearing.

10.01.38 Hearing Decisions - Finality Of Decision And Right To Appeal

A decision made in a hearing conducted pursuant to these regulations and 34 CFR 300.507 or 300.520 - 300.528 is final, except that any party aggrieved by the findings and decision has the right to bring a civil action with respect to the complaint presented pursuant to 34 CFR 300.507. The action may be brought in either federal district court or a state court of competent jurisdiction pursuant to the Individuals with

Disabilities Education Act, within three years after the date on which the hearing officer's decision is ordered in the hearing, without regard to the amount in controversy.

10.01.39 Child's Status During Proceedings

10.01.39.1 Status during hearings on any of the matters relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child -

- A.** Except as provided for in 34 CFR 300.526 and § 11.08, during the pendency of any administrative or judicial proceeding regarding a complaint under 34 CFR 300.507 and these regulations, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his 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 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 § 10.01.39.1A of this part.

10.01.39.2 Status during expedited hearings or appeals related to matters of discipline, including parent challenge to the interim alternative educational setting or manifestation determination decision, or LEA/public agency assertion of the child's "dangerousness" as a basis of changing the child's placement or continuing it in the interim alternative educational setting -

- A.** If a parent requests a hearing or an appeal regarding a disciplinary action described in 34 CFR 300.520(a)(2) or 300.521 and §§ 11.02.2 or 11.03, to challenge the interim alternative educational setting or the manifestation determination, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 calendar day time period provided for in 34 CFR 300.520(a)(2) or 300.521 and §§ 11.02.2 or 11.03, whichever occurs first,

unless the parent and the local educational agency/public agency agree otherwise.

- B.** If a child is placed in an interim alternative educational setting pursuant to 34 CFR 300.520(a)(2) or 300.521, and §§ 11.02.2 or 11.03, and school/public agency personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement the child must remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in §§ 10.01.39.2C and D of this part.
- C.** A school district may request an expedited hearing when school personnel maintain that it is dangerous for the child to remain in the current placement, as maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
- D.** If a child has been placed for disciplinary reasons in an interim alternative educational setting (for up to 45 calendar days) and, during that placement, the parent requests a hearing on any matter under the IDEA subject to a due process hearing (including disagreement with a proposed change of placement), then -
 - 1.** The LEA/public agency may request an expedited hearing to continue the child's placement in the interim alternative educational setting if the placement is expiring; and
 - 2.** The LEA/public agency may request an expedited hearing if it maintains that it is dangerous for the child to return to the placement he was in prior to removal to the interim alternative education setting while a hearing to determine future educational placement is held.

**ARKANSAS DEPARTMENT OF EDUCATION
SPECIAL EDUCATION AND RELATED SERVICES
YOUR RIGHTS UNDER THE IDEA**

The following information is a detailed statement of parental rights under the Individuals with Disabilities Education Act (IDEA). In the interest of simplicity, some of the rights have been paraphrased.

NOTICE

As a parent you have a right to -

...be notified in writing a reasonable time before the public agency -

1. proposes to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child; or
2. refuses to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child.

...a description of the action proposed or refused by the public agency with an explanation of why it is recommended, what other options were considered and why those options were ruled out.

...a description of each evaluation procedure, test, record or report the public agency used as the basis for any decision regarding your child.

...be informed of any other relevant factors that the public agency considered in its decision.

...receive a notice that is written in language understandable to the general public.

...be provided notice in your native language or other mode of communication used by you, unless it is clearly not feasible to do so.

...be informed of sources to contact to obtain assistance in understanding your rights.

If there are parents whose native language or other mode of communication is not written language, the public agency must see that -

...the notice is explained to them orally or in a mode of communication they understand;

...that they understand the information they have been given; and

...that there is written evidence that these requirements have been met.

The notice you receive must also include a full explanation of all of the procedural safeguards available to you, as contained in this document.

CONSENT

Your written consent is required before the public agency can -

- ...conduct an initial evaluation of your child;
- ...place your child in special education and related services for the first time;
- ...conduct a reevaluation of your child.

Before your consent is given, the public agency must explain in your native language, or other mode of communication, what you are agreeing to.

The public agency must be sure that you understand and agree in writing to carrying out of the activity which requires your consent. The consent form must describe what you are agreeing to, list which of your child's records (if any) will be released and specify who will receive them.

Your consent is to be given freely, and you may withdraw it at any time.

Except for preplacement evaluation and initial placement, consent may not be required as a condition of any benefit to you or your child.

If you refuse to give your consent for the initial evaluation, the public agency may continue to pursue an evaluation through mediation and due process hearing procedures, except to the extent inconsistent with State law relating to parental consent.

Regarding reevaluation, if the public agency can demonstrate that it has taken reasonable measures to obtain your consent and you failed to respond the public agency may move forward with reevaluation of your child.

EVALUATION AND PLACEMENT

Before a child is placed in special education services, a full and individual initial evaluation of the child must be conducted. This evaluation must consist of procedures to determine whether a child is a child with a disability and to determine the educational needs of the child. In this evaluation process your child has a right to:

- ...be tested in such a manner that results are not affected by race or culture;
- ...be tested in his/her native language or other mode of communication, unless it is not clearly feasible to do so;
- ...be tested with validated tests used in a manner consistent with their purpose;
- ...be tested by trained personnel in accordance with test instructions;
- ...be tested with procedures in accordance with any instructions provided by the producer of such tests;
- ...have tests selected and administered in a way that ensures that when a test is given to a child with impaired sensory, manual or speaking skills, it measures the child's ability or what the child has learned and not the degree of impairment (unless, of course, measuring impairment is the purpose of the test);

- ...have his or her educational program determined on the basis of more than one test or procedure;
- ...be evaluated by a group of knowledgeable persons, including at least one teacher or specialist who is knowledgeable about the kind of problem your child is thought to have;
- ...be tested in all areas related to his or her suspected problem;
- ...be evaluated with a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by you, that may assist in determining whether he/she is a child with a disability and in determining his/her educational needs. This includes information related to enabling him/her to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities;
- ...be evaluated with technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

When looking at evaluation results and deciding on the placement for your child, the public agency must:

- ...collect information from many sources;
- ...ensure that this information is documented and carefully considered;
- ...provide you with a copy of the evaluation report and documentation of determination of eligibility;
- ...ensure that the placement decision is made by a group of persons, including you and others who know about your child, who can interpret the evaluation results and who know about placement options;
- ...ensure that your child shall not be determined to be a child with a disability if it is based on a lack of instruction in reading and math or limited English proficiency;
- ...ensure that the placement decision is made in such a way that your child's education will be provided in the least restrictive environment according to established guidelines.

If it is determined that your child is disabled and is in need of special education and related services, an IEP must be developed according to established guidelines.

REEVALUATION

Each public agency shall ensure:

- ...that the individualized education program (IEP) for each child with a disability is reviewed annually according to established guidelines;
- ...that the IEP team and other qualified professionals, as appropriate,;

1. shall review existing evaluation data on your child, including evaluations and information provided by you, current classroom-based assessments and observations, and observations by teacher and related services providers; and
2. on the basis of that review and input from you, identify what additional data, if any, are needed to determine if your child continues to have such a disability; the present levels of performance and educational needs of your child; whether your child continues to need special education and related services; and whether any additions or modifications to the special education and related services are needed to enable your child to meet the measurable annual goals set out in your child's IEP and to participate, as appropriate, in the general curriculum.

INDEPENDENT EDUCATIONAL EVALUATION

If you do not agree with the evaluation provided by the public agency -- that is, if you don't think that the right tests were given or the right conclusions were reached -- you may obtain an independent educational evaluation.

The public agency must provide you, upon your request, information about where an independent educational evaluation may be obtained.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for your child's education.

"Public expense" means that the public agency 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 guidelines on methods and payments for provision of free appropriate public education.

A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency. However, the public agency has a right to initiate a hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, you still have the right to an independent educational evaluation, but not at public expense.

If you have an independent educational evaluation conducted at your own expense, the results of this evaluation:

...must be considered by the public agency in any decision regarding your child's education; and

...may be presented as evidence at a formal hearing.

If an independent educational evaluation is requested by a hearing officer as part of a "due process hearing," the evaluation must be at public expense.

Independent educational evaluations conducted at public expense must meet the same criteria (qualifications of examiner, etc.) as those conducted by the public agency.

RECORDS

You have a right to:

- ...examine all records relating to your child and to participate in meetings with respect to the identification, evaluation, and educational placement of your child and the provision of a free appropriate public education to your child, and to obtain an independent educational evaluation of your child. The public agency must comply with your request to review records without unnecessary delay and before any meeting or hearing, within 45 days after the request has been made;
- ...have someone at the public agency explain or interpret any item in your child's records upon reasonable request;
- ...receive copies of the records if this is the only way to ensure that you will be able to review and inspect them;
- ...have a representative inspect and review the records.

The public agency may presume that you have the authority to inspect and review your child's records unless it has been advised that you do not have this right under State law governing such matters as guardianship, separation and divorce.

You have a right to receive, upon request, a list of the types and locations of education records collected, maintained or used by the public agency.

A participating public agency 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.

A participating public agency may not charge a fee to search for or to retrieve the information.

If you feel that any information in your child's education records is wrong or misleading, or violates the privacy or other rights of the child, you may ask the participating public agency to change it.

The participating public agency must either change such statements in a reasonable period of time or formally refuse to do so.

If it refuses, the public agency must inform you of its refusal and advise you of your right to a hearing to challenge information in the child's education record.

If you request such a hearing, the public agency must conduct one on the matter.

If the hearing is decided in your favor, the public agency must change the information and inform you in writing that it has done so.

If, as a request of the hearing, the public agency's information is held to be accurate, you have the right to add a statement to the record commenting on the information or setting forth any reasons for disagreeing with the agency's decision.

Your statement placed in your child's records must:

- ...be kept as long as the contested part of the overall record is kept; and
- ...be disclosed along with the contested portion of the records to any party to whom the agency released the records.

The hearing described herein does not necessarily follow the process described in the "Hearings" section of this explanation of your rights. The hearing may be conducted by any official of the public agency who does not have a direct interest in its outcome, and must be conducted according to procedures under the Family Educational Rights and Privacy Act (FERPA).

CONFIDENTIALITY OF INFORMATION

States are required to have procedures to identify, locate and evaluate children with disabilities and to inform parents of the requirements regarding identification, location and evaluation of children with disabilities, in accordance with Part B of the IDEA. This must include:

- ...information as to the native language(s) in which the notice is available;
- ...a description of the children on whom confidential information is kept, the methods and sources used to gather various types of information and uses to be made of the information;
- ...a description of how this information is kept, disclosed and destroyed;
- ...a description of all of the rights of parents and children regarding this information.

Each participating agency shall keep a record of parties obtaining access to education records collected, maintained, or used under this part (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.

The public agency is responsible for protecting the confidentiality of your child's education records by:

- ...permitting parents to see only that information which relates to their own child when records contain information on more than one child;
- ...requiring your consent before your child's education records are given to anyone not involved in your child's education;
- ...requiring your consent before using your child's records for any purposes other than those related to providing special education and related services;
- ...not releasing information from education records to participating agencies without parental consent unless authorized to do so under federal law and regulation;
- ...adhering to state policies and procedures which apply in the event that you decline to give this consent and that the public agency feels the records should be given to the person who requested them. These procedures could allow the public agency to send copies of the records to the requesting person or agency, under certain circumstances, despite your objection;
- ...protecting the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages;
- ...assigning an individual who is responsible for ensuring the confidentiality of records;

- ...guaranteeing that all persons who collect or use such information receive training in the State's policies and procedures regarding confidentiality;
- ...keeping for public inspection a list of names and positions of those employees who are permitted access to these records;
- ...informing you when confidential information is no longer needed to provide educational services to the child;
- ...destroying the information at your request. 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.

LEAST RESTRICTIVE ENVIRONMENT

The State educational agency shall ensure that each public agency establishes and implements procedures to ensure that your child has a right to:

- ...be educated to the maximum extent appropriate with children who are not disabled;
- ...be in a regular education environment unless the nature or severity of the disability is such that he or she cannot receive a satisfactory education in regular classes using additional aids and services;
- ...have available a variety of placements to meet the needs of children with disabilities for special education and related services;
- ...have a range of placements available, including instruction in regular classes, special classes, special schools, home instruction and instruction in hospitals and institutions;
- ...supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Your child's educational placement must be:

- ...reviewed and decided upon at least annually;
- ...based on the IEP;
- ...as close to home as possible.

This range of placements must include any placement which is needed to implement the child's IEP.

Unless the IEP calls for a different placement, your child should attend the school he or she would attend if not disabled.

In selecting the least restrictive environment for your child, the public agency must consider any possible harmful effects that a particular placement may have on your child or on services your child is to receive.

In providing or arranging for the provision of nonacademic and extracurricular services and activities, the public agency shall ensure that your child with a disability participates with nondisabled children in those services and activities to the maximum extent appropriate to his or her needs.

It is the responsibility of the State educational agency to ensure that the general requirements governing educational placement in the least restrictive environment are implemented by public agencies by:

- ...making arrangements with public and private institutions to ensure that to the maximum extent appropriate, children with disabilities are educated with nondisabled children;
- ...ensuring that teachers and administrators are fully informed about the implications of the concept of the least restrictive environment and receive training and assistance in its application;
- ...ensuring that all participating public agencies in the state are carrying out these requirements. If there is evidence that a public agency is not, the Department of Education is obligated to review the public agency's justification for its actions and to see that any shortcomings are corrected.

HEARINGS

You as the parent, or a public educational agency, may initiate a hearing on any matter relating to the identification, evaluation or educational placement of your child or the provision of a free appropriate public education to your child.

You may request an expedited hearing if you disagree with a determination that your child's behavior was not a manifestation of his/her disability or a decision regarding his/her removal to an interim alternative educational setting following a disciplinary action.

The public educational agency may request an expedited hearing when the agency maintains that it is dangerous for your child to be in the current placement (placement prior to an interim alternative education setting) during the pendency of the due process proceedings.

All hearings must be conducted by the State educational agency in accordance with state law and regulation.

HEARING OFFICERS

An impartial hearing officer will be assigned to preside over any hearing and arrive at a decision. To ensure impartiality, a hearing officer may not be:

- ...an employee of the State education agency or a public agency (school system, institution, etc.) which is involved in the education or care of your child;
- ...anyone who has a personal or professional interest which would conflict with objectivity in the hearing.

A person who otherwise qualifies to conduct a hearing in accordance with previously stated guidelines is not considered to be an employee of the agency simply because he or she is paid by the agency to be a hearing officer.

Each public agency must keep a list of persons who serve as hearing officers and a statement of their qualifications.

MEDIATION

Parties have the right to participate in a mediation process in an attempt to resolve disputes regarding any matters previously described in the section titled "Hearings."

The mediation process is voluntary on the part of the parties and cannot be used to deny or delay your right to a hearing or any other rights under the IDEA. The mediation process is conducted by a trained, qualified and impartial mediator.

The State maintains a list of individuals who are qualified mediators.

The State bears the cost of the mediation process.

Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement.

Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and, in accordance with State regulations, the parties to the mediation process will be required to sign a confidentiality pledge prior to the commencement of the mediation session(s).

HEARING RIGHTS

During the conduct of a hearing you, as a parent, have a right to:

- ...be accompanied and advised by counsel and by persons with special knowledge or training with respect to the problems of children with disabilities;
- ...present evidence, confront, cross-examine and compel the attendance of witnesses;
- ...prohibit the introduction of evidence, including all evaluations completed by the final date of disclosure and recommendations based on the offering party's evaluations that the party intends to use at the hearing that had not been revealed to either party at least five (5) business days before the hearing;
- ...obtain a written, or at your option, electronic verbatim record of the hearing;
- ...obtain a written, or at your option, electronic verbatim record of findings of fact and the decisions.

You also have the right to:

- ...have your child who is the subject of the hearing attend the hearing if you wish;
- ...open the hearing to the public if you wish;

...be told by the public agency where free or low-cost legal and other relevant services are available in the area:

1. if you request such information, or
2. whenever you or the public agency initiate a hearing.

...have the hearing conducted at a time and place reasonably convenient to you and your child.

The decision of the hearing officer is final unless either you or the public agency chooses to appeal the decision to the appropriate court of law in accordance with the State educational agency policy and procedures and State statute.

The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing, or in the case of a request for an expedited hearing not later than 20 days:

...a final decision is reached in the hearing; and

...a copy of the decision is mailed to each of the parties.

The hearing officer may grant an extension to the time period at the request of either party to the hearing.

APPEALS

Any party aggrieved by the findings and decision made in a hearing has the right to bring a civil action in either Federal district court under section 615 (I)(2) of the Individuals with Disabilities Education Act or in a state court of competent jurisdiction in accordance with Arkansas Code Annotated 6-41-216, within three (3) years after the date on which the hearing officer's final decision is rendered in the hearing, without regard to the amount in controversy.

Except for hearings related to disciplinary matters, during the time that the hearing and appeals process is taking place, your child is to remain in his or her present educational placement, unless you and the public agency agree otherwise.

If the dispute concerns the initial admission of your child to public school, then he or she, with your consent, will be placed in a public school program until the completion of the proceedings.

When you request a hearing regarding a disciplinary action which will change your child's placement or to challenge the interim alternative educational setting or manifestation determination decision, your child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the 45 day time period, whichever occurs first, unless you and the public agency agree otherwise.

SURROGATE PARENTS

Each public agency must ensure that the rights of a child are protected when:

...the parents of the child are not known;

...the agency, after reasonable efforts, cannot locate the parent; or

...the child is a ward of the state.

A surrogate parent must be appointed when any of the above situations exists, however, a person assigned to act as a surrogate for the parents may not be an employee of the State education agency, the local education agency, or any other agency that is involved in the education or care of the child.

It is the public agency's duty to assign an individual to act as a surrogate (stand-in) for the parents.

This must include:

...a method for determining whether a child needs a surrogate parent; and

...a method for assigning a surrogate parent to the child.

The public agency may select a surrogate parent in any way permitted under State law.

The public agency shall ensure that a person selected as a surrogate:

...does not have a conflict of interest; and

...is qualified to represent the child.

A person assigned as a surrogate may not be an employee of a public agency which is involved in the education or care of the child.

A person who otherwise qualifies to be a surrogate parent in accordance with previously stated guidelines is not an employee of the agency simply because he or she may be compensated by the agency to serve as a surrogate parent.

The surrogate may represent the child in all matters relating to identification, evaluation, placement and the provision of a free appropriate public education.

ATTORNEY'S FEES

In any action or proceeding, the court, in its discretion, may award reasonable attorney's fees as part of the costs to the parents or guardians of a child or youth with a disability who is the prevailing party.

COMPLAINT PROCEDURES OF THE STATE

Each public agency shall provide to parents a copy of the "Complaint Procedures of the State" in compliance with Part B of the IDEA.

TRANSFER OF PARENTAL RIGHTS TO THE STUDENT AT AGE OF MAJORITY

When your child with a disability reaches the age of majority under State law (which is 18 in Arkansas), unless your child has been determined to be incompetent under State law:

...all rights, other than the right to receive notice, accorded to you under the IDEA transfer to your child;

...the public agency shall provide notice to both you and your child of the transfer of rights; however;

...you will continue to be provided any notice required under the IDEA.

All rights accorded to parents under Part B transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.

PLACEMENT OF CHILDREN IN PRIVATE SCHOOLS BY PARENTS

Upon notification by you, as the parent of a child with a disability, of your intent to place your child in a private school, the public agency shall provide you with written information regarding payment for education of children enrolled in private school without consent of or referral by the public agency. This information contains limitations on your reimbursement for private school placement which may apply if you, as the parent of a child with a disability, elect to place your child in a private school, without prior notice to the school.