

Dear Parents:

We, as parents of students with disabilities, invite you to become acquainted with the programs, persons, and organizations available to help you and your child.

This handbook is one of the most effective means the school has of informing you of the new as well as existing laws in special education. It is meant as a starting point for finding programs and services appropriate to the individual student's needs.

Your participation is of vital importance in helping your child reach his or her fullest potential. You know your student better than anyone does.

The Parent Advisory Committee (PAC) works cooperatively with the local and intermediate school districts to help assure the continued high quality special education programs and services in our county. The PAC is composed exclusively of parents of students with disabilities.

Please feel free to contact any committee member with your concerns, questions or comments or call your local school. We welcome you at our meetings. For the date and time of the next meeting, please call the K/RESA special education office.

Sincerely,

Parent Advisory Committee Members

**NOTICE OF  
NONDISCRIMINATION POLICY**

It is the policy of the school district that no person shall, on the basis of race, color, national origin, creed or ancestry, political belief, sex, disability, handicap, religion, age, height, weight, or marital status be excluded from participation in, denied the benefits of, or be subjected to discrimination under any program or activity and in employment.

Any questions concerning Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex, Title VI, which prohibits discrimination on the basis of race, color or national origin, or Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap, should be directed to the director of special education listed on the inside of the cover.

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## **WHAT IS SPECIAL EDUCATION?**

Special Education is specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability.

Michigan's Mandatory Special Education Act (P.A. 451 of 1976) and the Individuals with Disabilities Education Act (IDEA) Amendments of 1997 (P.L. 105-17 of 1997) guarantee all persons with disabilities (ages 0-25) the right to a free and appropriate public education (FAPE).

## **WHAT IS K/RESA?**

Kalamazoo Regional Educational Service Agency is made up of nine school districts and four public school academies, providing a full range of programs and services to meet the needs of children with disabilities.

The county is divided into three service areas for the purpose of coordinating special education services for students. The Eastern Service Area is comprised of the school districts of Climax-Scotts, Comstock, Galesburg-Augusta, Gull Lake and Parchment. The Central Service Area is comprised of the School District of the City of Kalamazoo. The Southern Service Area is comprised of the school districts of Portage, Schoolcraft and Vicksburg. The service areas and member districts each employ special education staff and serve the public school districts and non-public schools in their geographic areas.

K/RESA provides programs and services on a county-wide basis which act in support to the school districts in the county.

## **WHO IS A "CHILD WITH A DISABILITY"?**

The definition includes the following qualifications:

- Children from birth through age 25 who have not graduated from high school,
- Children who have the characteristics for a specific disability as defined in the Michigan Administrative Rules for Special Education. (The special education categories are listed in this book.)
- Because of that disability, the child needs special education and related services.

## **WHY DOES MY CHILD NEED AN EVALUATION?**

An evaluation is done to answer these questions:

- Does the child have a particular category of disability?
- How is the child currently performing in school?
- What are the child's educational needs?
- Does the child need special education and related services?
- What additions or modifications, if any, are needed to enable the child to meet annual goals in the Individualized Education Program (IEP) and participate, as appropriate, in the general curriculum?

## **WHAT ARE THE STEPS IN THE EVALUATION PROCESS?**

Before a child is evaluated for the first time, the school must notify the parents. The notice describes any evaluation that the school proposes to conduct. The parents must give their informed consent for the child to be evaluated.

The next step involves gathering and reviewing existing information on the child by an IEP Team. This includes evaluations and information provided by the parents, current classroom-based assessments and observations, and teacher and other service providers' observations. After the information is reviewed, if the questions listed above still need answers, additional tests and evaluations will be given.

## **HOW IS A CHILD EVALUATED FOR THE PRESENCE OF A DISABILITY?**

The testing is done individually, in the child's native language, using nondiscriminatory evaluations. The standardized tests must be used correctly and be administered by trained, knowledgeable personnel.

## **WHO DECIDES IF A CHILD IS ELIGIBLE FOR SERVICES?**

A team of qualified professionals and the parents will decide if the child is eligible for special education.

## **WHAT HAPPENS AFTER A CHILD IS FOUND ELIGIBLE?**

An IEP Team (IEPT) is comprised of the parents, school professionals and the student when appropriate. The team develops an Individualized Education Program (IEP) for the child. The child begins to receive special education and related services designed to meet the child's needs upon agreement by the parents and resident school district.

## **WHAT IS AN IEP?**

An "Individualized Education Program" means a written plan for a child with a disability that spells out the special education and related services to be received. The team that develops the IEP is comprised of the parents, school professionals, and the student when appropriate. This is done at a meeting that is scheduled at a mutually agreeable time. The written document is a record of the IEPT meeting. The IEP is reviewed annually.

## **WHAT IS INCLUDED IN THE IEP?**

The requirements include:

- a statement of the child's present levels of educational performance;
- a statement of measurable annual goals, including short-term objectives relating to:
  - 1) meeting the needs that result from the disability to enable the child's involvement and progress in the general curriculum, and,
  - 2) meeting each of the child's other educational needs that result from the child's disability.
- a statement of special education services and supplementary aids to be provided to the child, and any program modifications or supports for the school personnel;
- an explanation of when the child will not participate with non-disabled children in the regular class and other activities;
- a statement of any modifications the student would need to take the state- or district-wide assessment tests (The IEP may determine that the test is not appropriate for the student and a different assessment will be used.);
- the projected date for initiation of services, duration, anticipated frequency, and location;

- a statement of transition services that focus on the student’s course of study beginning at age 14 and other aspects of adult life at age 16 (involving other agencies when needed);
- A statement of how the child’s progress toward the annual goals will be measured and how the parents will be regularly informed of that progress.

**WHAT IS LEAST RESTRICTIVE ENVIRONMENT (LRE)?**

LRE looks at the setting in which the child receives an education. The law presumes that children with disabilities are most appropriately educated with their non-disabled peers. Attending special classes or separate schools, or removing children with disabilities from the regular classroom, occurs only when the nature or severity of the disability prevents the student from achieving satisfactorily even when supplementary aids and services are used.

**WHAT IS A “FREE APPROPRIATE PUBLIC EDUCATION” (FAPE)?**

It means that needed education and related services are provided at public expense, under public supervision and direction, and without charge. The services provided must meet the standards of the Department of Education for all students and follow the IEP.

**HOW DOES A PARENT PARTICIPATE IN THE DECISION-MAKING PROCESS?**

Parents may be involved in a variety of ways:

- Parents have the opportunity to provide information and participate in decision making at meetings related to identification, evaluation, educational placement, reevaluation, and the appropriate education of the child.
- Parents give consent for initial evaluations and reevaluations.
- Parents will receive regular reports on their child’s progress.
- Parents must notify the school district if they intend to remove their child from the public school or their intent to file a complaint.
- Parents may be involved at the local level through the Parent Advisory Committee (PAC). The Michigan Department of Education involves parents in planning, implementing and reviewing activities.

## **SHOULD THE STUDENT BE INVOLVED IN THE IEP?**

Students have a place at the IEP because they often have accurate insights to their strengths and needs. When they are involved in determining the goals and objectives, they have more commitment to achieving them. Each student should have the option to be a part of the process.

Students are a part of their transition planning starting at age 14. These plans are updated annually.

Students who are age 17 are notified that their rights will be transferred to them upon reaching the age of majority (18).

## **WHAT ARE THE PROCEDURAL SAFEGUARDS?**

They are safeguards that ensure that the rights of children with disabilities and their parents are protected. They provide the information that parents need to make decisions about their child's education. They explain the procedures and mechanisms that are in place to resolve disagreements between parties.

The Procedural Safeguards in this book are from the federal and state laws and regulations. Sometimes they are difficult to understand. If you have any questions regarding them, please contact K/RESA or your local service area office for assistance.



**PROCEDURAL SAFEGUARDS AVAIL-  
ABLE TO PARENTS OF STUDENTS WITH  
DISABILITIES  
(December 1999)**

**INTRODUCTION** - This document provides parents of students with disabilities, from birth to age 26, an overview of their educational rights with respect to special education. This document incorporates all procedural safeguards to parents and students with disabilities afforded under the Individuals with Disabilities Education Act (IDEA) and the IDEA implementing regulations.

**THIS PROCEDURAL SAFEGUARDS NOTICE**

A Procedural Safeguards Notice shall be provided to parents on:

- (1) An initial referral for evaluation.
- (2) Each notification of an individualized education program (IEP) Team meeting.
- (3) Reevaluation of the student.
- (4) Registration of a due process hearing.
- (5) The day on which the decision to take disciplinary action involving a change in placements is made.

**PARENT CONSENT** - "Consent" means that (a) the parent has been fully informed of all information relevant to the activity for which consent is sought in his or her native language or other mode of communication; (b) the parent understands and agrees, in writing, to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (c) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time. However, if a parent revokes consent, that revocation is not retroactive. § 300.500(b)(iii)(B)

Parent consent is not required before reviewing existing data as part of an evaluation or reevaluation or when administering a test or other evaluation that is administered to all students. 34CFR 300.505(a)(3)

The public agency must obtain informed parental consent before conducting a preplacement evaluation, any reevaluation, or initially placing a student with disabilities in a program providing special education and related services. If a parent fails to respond to a request for reevaluation, the educational agency may conduct a re-

evaluation if it can demonstrate that reasonable measures to obtain parental consent have been taken.

To conduct an initial evaluation, the district must seek parental consent and provide notice which includes the follow:

1. The reason(s) and nature for an evaluation.
2. A description of the types of special education programs and services available within the intermediate school district (ISD).
3. A list of organizations, including addresses and telephone numbers, available to assist parents in understanding the special education process.
4. A statement of a parent's right to examine all records and to participate in meetings with respect to identification, evaluation, program, educational placement, and the provision of a Free Appropriate Public Education (FAPE).
5. A statement that a parent may be accompanied at an IEP Team meeting by any person(s) the parent desires.
6. The right to obtain an independent educational evaluation (IEE) if the parent disagrees with any evaluation conducted by the agency.
7. A statement of the opportunity for the parent to provide the multidisciplinary evaluation team (MET) with information about their child's suspected disability and the opportunity to present information at the IEP Team meeting.
8. If parental consent cannot be obtained, the public agency may use the hearing procedures, in Michigan's Revised Administrative Rules for Special Education (Rules), Rules 340.1724 to 340.1724b, to determine if a person may be evaluated to initially provided special education and related services.

If the hearing officer upholds the agency, the agency may evaluate or initially provide special education and related services to the student without the parent's consent, subject to the parent's rights under Rule 340.1725 (administrative appeal) and Rule 340.1725a (civil action), and to have the student remain in his or her present placement during the pendency of any administrative or judicial proceeding.

**PRIOR NOTICE TO PARENTS** – The public agency must provide prior written notice to the parents of a student with disabilities each time it proposes or refuses to initiate or change the identification, evaluation, or edu-

cational placement of the student or the provision of a FAPE to the student.

The notice must include:

1. A full explanation of all of the procedural safeguards available to the parents under Part B of the IDEA.
2. A description of where a parent can obtain a copy of the Procedural Safeguards document.
3. A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected.
4. A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal.
5. A description of any other factors which are relevant to the agency's proposal or refusal.
6. A list of sources that parents may contact to obtain assistance in understanding the content of the prior notice.

The notice must be written in language understandable to the general public, and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the educational agency shall have the notice translated orally or by other means to the parent in his or her native language or other mode of communication so that the parent understands the content of the notice. The district must maintain written evidence that these requirements have been met.

**PARENT INVOLVEMENT** - Parents must be given an opportunity to participate in meetings with respect to the identification, evaluation, educational placement, and the provision of a FAPE.

**EVALUATION PROCEDURES** - "Evaluation" means procedures used in accordance with Section 1414 of the IDEA. An evaluation will determine whether a student is a student with a disability, the nature and extent of the special education and related services that the student needs, and provide information relating to the student's involvement and progress in the general curriculum. Preschool children must also be assessed to determine participation in appropriate activities. The term also

means procedures used selectively with an individual student and does not include basic tests administered to or procedures used with all students in a school, grade, or class. The parent has the right to:

1. Have an interpreter/translator present if the primary language is not English, or if the student is deaf/hearing impaired or visually impaired, unless it is clearly not feasible to do so.
2. Be assured that testing does not discriminate on the basis of race, language or cultural background;
3. Be assured that materials and procedures used to assess a student with limited English proficiency are selected and administered to ensure that they measure the extent to which the student has a disability and needs special education, rather than measuring the student's English language skills. 34 CFR §300.532(a)(2)
4. Have evaluation instruments validated for the specific purpose(s) for which they were intended and administered by trained personnel in conformance with the instructions provided by their producer.
5. Have the child assess in all areas of suspected disability using instruments that assess specific areas of educational need and do not produce merely a single intelligent quotient (IQ) score. No single procedure is to be used as the sole criterion for determining an appropriate special education program for the student.
6. Be assured that if a test is administered to a student with impaired sensory, physical, or speaking skills, the test results accurately reflect what the test intends to measure rather than the student's disability.
7. Have the evaluation made by a MET which includes a teacher or person knowledgeable in the areas of the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, and motor ability. The evaluation shall be sufficiently comprehensive to identify all of the student's special education and related services needs, whether or not commonly linked to the disability category in which the student has been classified. 34CFR §300.532(h)
8. Provide the MET with information about the student's suspected disability, along with any evaluation the parent may have obtained for the student.
9. Be assured that a variety of assessment tools and strategies are used to gather relevant functional and developmental information about the student, including information provided by the parent and in-

formation related to enabling the student to be involved in and progress in the general curriculum. 34 CFR300.532(a)(2)(b)

10. Have the initial evaluation conducted by a MET within 30 school days after the school has received the written permission to evaluate.
11. Expect a reevaluation every three years.
12. Request reevaluations more frequently than three years if it appears appropriate.
13. Be notified of each evaluation procedure, test, record, or report the IEP Team used in determining eligibility, and the need for special education programs or services.
14. Have a vocational evaluation if the student is to receive vocational education. The vocational evaluation must include an assessment of:
  - a. the student's personal adjustment skills;
  - b. the student's aptitudes;
  - c. the student's interest; and
  - d. the student's academic achievement.

#### **INDEPENDENT EDUCATIONAL EVALUATION**

"IEE" means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the student in question. "IEE at 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 not cost to the parent.

The parent of a student with a disability or suspected disability has the right to obtain an IEE of the student, as defined in Rule 340.1701a(a) and 34 CFR §300.52.

A parent has the right to an IEE at public expense if the parent disagrees with any evaluation obtained by the public agency. However, the public agency may initiate a due process hearing under Rule 340.1724 to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. If the parent obtains an IEE at his/her own expense, the results of the evaluation must be considered by the public agency in any decision made with respect to the provision of a FAPE to the student, and may be presented as evidence at a due process hearing regarding the student.

If a hearing office requests an IEE as part of a hearing, the cost of the evaluation must be at public expense. Each public agency shall provide to parents, on request,

information about where an IEE may be obtained. When an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria which the public agency uses when it initiates an evaluation. The associated costs shall be reasonably in accord with those identified by the public agency. Rule 340.1723(c)(6)

### **MEDIATION**

Mediation is available to all parties whenever a hearing is requested. The IDEA mediation requirements are:

1. Mediation is free and voluntary.
2. Mediation cannot be used to deny a parent's right to a due process hearing.
3. Mediation must be conducted by a qualified and impartial mediator.
4. The state must maintain a list of individuals who are qualified mediators and knowledgeable about the laws and regulations on special education.
5. Mediation shall be scheduled in a timely manner in a convenient location.
6. Mediators are subject to mutual agreement by all parties.
7. An agreement reached by the parties must be set forth in a written mediation agreement.
8. Discussions occurring during mediation must be confidential and may not be used as evidence in subsequent due process or civil proceedings.
9. Parties to mediation may be required to sign a confidentiality pledge before the mediation process begins.

### **IMPARTIAL DUE PROCESS HEARING**

A parent or a public agency may initiate a hearing regarding the public agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student, or the provision of a FAPE to the student. When a due process hearing is initiated, the public agency shall inform the parents of the availability of mediation as described in 34 CFR §300.506.

Parents must give notice to the public agency, as appropriate, when filing a request for a due process hearing.

The notice request must contain the following information:

1. The name of the student, address of residence of the student, and the name of the school the student attends.

2. A description of the nature of the problem, including related facts.
3. A proposed resolution of the problem, to the extent known and available to parents at that time.

This notice must remain confidential.

A model form is available at the ISD to assist parents in filing due process hearing requests.

A hearing will be conducted by the public agency directly responsible for the education of the student.

The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if the parent requests the information or the parent or the agency initiates a due process hearing.

A due process hearing may not be conducted by a person who is an employee of a public agency which is involved in the education or care of the student, or by any person having a personal or professional interest which would conflict with his or her objectivity in the due process hearing. A person who otherwise qualifies to conduct a due process hearing is not an employee of the agency solely because he or she is paid by the agency to serve as hearing officer.

Each public agency shall keep a current list of persons who serve as hearing officers; this list is developed and distributed by the Michigan Department of Education (MDE). This list shall be provided to the parent upon any request for a hearing. This list must include a statement of the qualifications of each of those persons.

The public agency shall ensure that a final hearing decision is reached and mailed to the parties within 45 calendar days after the receipt of a request for a hearing, unless the hearing officer grants a specific extension 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 below.

### **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 students with disabilities.

2. Present evidence and confront, cross examine, and compel the attendance of witnesses.

3. Prohibit the introduction of any evidence, including evaluations, at the hearing that has not been disclosed to that party at least five calendar days before the hearing.

34 CFR §300.509(b)(1)

4. Obtain a written or electronic verbatim record of the hearing or obtain alternate forms of the verbatim record to be provided in the parent's native language at no cost to the parents. 34 CFR §300.509(c)(2)

5. Obtain written or electronic findings of fact and decisions at no cost to the parents. 34 CFR §300.509(c)(2)  
After deleting any personally identifiable information, the public agency shall transmit those findings and decisions to the state advisory panel and make them available to the public.

Parents involved in hearings must be given the right to have the student who is the subject of the hearing present, and to open the hearing to the public.

Each hearing must be conducted at a time and place which is reasonably convenient to the parents and student involved.

#### **ADMINISTRATIVE APPEAL: IMPARITAL REVIEW**

Any party aggrieved by the findings and decision in the hearing may appeal to the MDE. If there is an appeal, the MDE shall conduct 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 requirements 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.
6. Give a copy of written or electronic findings of fact and the decision to the parties. 34 CFR §300.510(b)(2)(vi)
7. Conduct reviews involving oral arguments at a time and place which is reasonably convenient to the parents and student involved.



## **CIVIL ACTION**

Any party aggrieved by the findings and decision made in an administrative review has the right to bring a civil action in state or federal court.

## **STUDENT'S STATUS DURING PROCEEDINGS**

During the pendency of any administrative hearing or judicial proceedings, the student involved in the hearing must remain in his or her present educational placement, unless the public agency and the parents of the student agree otherwise.

If the hearing involves an application for initial admission to public school, the student, with the consent of the parents, shall be placed in the public school program until the completion of all the proceedings.

Subsequent to a disciplinary action taken by the public agency, a parent may request a hearing to challenge an interim alternative educational setting. The student shall remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the student's assignment to the interim setting.

If a parent chooses to challenge a proposed change in placement (after the expiration of an interim alternative placement), the student shall remain in the current placement (the placement prior to the interim alternative educational setting). A student shall remain in this placement during the hearing process unless a hearing officer orders another placement.

## **AWARD OF ATTORNEY FEES (34 CFR § 300.513)**

A court may award attorney's fees to the parent of a student with a disability who prevails in court or a due process hearing. The fees must be consistent with those for similar legal services in the community.

In hearings and in court, reimbursement of attorney's fees are prohibited if:

1. The district makes a written offer of settlement more than ten days before the proceeding begins; and
2. The offer is not accepted within ten days; and
3. The relief granted to the parent in a hearing or by the court is not more favorable than the offer of settlement.

If the court finds that the parent was substantially justified in rejecting a settlement offer and the parent prevails in the hearing or court case, then attorney's fees may be awarded.

The court may reduce attorney's fees if it finds that:

1. The parent has unreasonably delayed the final resolution of the controversy; or
2. The attorney's fees exceed the prevailing hourly rate in the community for similar services; or
3. The time spent and legal services furnished were excessive considering the nature of the case; or
4. The attorney representing the parent did not provide the district the appropriate information in a due process hearing.

The reduction of attorney's fees listed above do not apply if the court finds that the state or school district:

1. Unreasonably delayed the final resolution of the dispute; or
2. Otherwise violated the procedural safeguards of the parent.

Attorney's fees will not be awarded to the parent for any meeting of the IEP Team unless:

1. The meeting is directed by the court or by an administrative proceeding; or
2. At the discretion of the state, the meeting is for mediation conducted prior to the filing for a request for a due process hearing.

#### **DISCIPLINE (34 CFR §§300.519-300.529)**

#### **REMOVALS THAT ARE NOT A CHANGE OF PLACEMENT**

School personnel may order a removal of a student with a disability, just as it would for students who are nondisabled, for not more than ten school days for violations of school rules. Additional separate removals are permissible for ten school days, or less, in the same school year for incidents of misconduct as long as these removals do not constitute a change of placement.

#### **CHANGE OF PLACEMENT**

A change of placement occurs if a pattern of removals

cumulate to more than ten school days in a school year. Factors in determining a pattern may include the length of each removal, the total amount of time removed, and the proximity of the removals to each other (see General Change of Placement below).

After ten accumulated school days of removals in a school year, the school must provide services that allow the student to progress in the general curriculum, as well as advance in the goals of the IEP. The services are determined by the school personnel in consultation with the student's special education teacher.

### **FUNCTIONAL ASSESSMENT AND BEHAVIOR INTERVENTION PLAN**

Not later than ten business days after first removing the student for the 11<sup>th</sup> accumulated school day in a school year, the school must do the following:

1. If the local school district has not already conducted a functional behavioral assessment and implemented a behavior implementation plan, the IEP Team shall meet to develop an assessment plan to address the problem behavior. The assessment plan shall be conducted as soon as practicable and presented at an IEP Team meeting to determine an appropriate behavioral intervention plan to address the behavior.
2. If the student already has a behavioral intervention plan, the IEP Team shall meet to review the plan and modify it, as necessary, to address the problem behavior.
3. If the student is subject to further removals during the school year, the school shall contact the IEP Team to determine if another IEP Team meeting is needed to review the plan. If any member of the IEP Team requests a review, the IEP Team shall meet to review the behavior intervention plan.

### **GENERAL CHANGE OF PLACEMENT**

For the purposes of this document, a general change of placement is:

1. A pattern of removals that are a change of placement as described above.
2. A single removal longer than ten consecutive school days (except for removals under Change of Placement: Drugs and Dangerous Weapons or Change of Placement: Other Dangerous Situations described in following sections.)

For removals that are a general change in placement, all

of the following must occur:

1. On the day on which the decision is made to remove the student, the parents shall be notified of the decision and of all procedural safeguards.
2. Manifestation determination review. Immediately, but no later than ten school days after the day on which the decision is made to remove the student, an IEP Team must meet to determine the relationship between the student's disability and the behavior subject to discipline. All relevant information must be considered, including:
  - a. evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the student; and
  - b. observations of the student; and
  - c. the student's IEP and placement.

It may be determined that the behavior was not a manifestation of the disability only if the IEP Team determines that all of the following are true:

- a. in relation to the behavior subject to disciplinary action, the IEP and placement were appropriate, and the special education services, supplementary aids and services, and the student's behavior intervention strategies were provided consistent with the IEP and placement; or
  - b. The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to discipline; or
  - c. the student's disability did not impair the ability of the student to control the behavior subject to discipline.
3. For a general change of placement, within ten business days from the day on which the decision is made to remove the student, the IEP Team must also develop or review, as appropriate, a behavior intervention plan (see Functional Assessment and Behavior Intervention Plan #1. Through #3.).
  4. If the IEP Team determines that the behavior subject to discipline was not a manifestation of the disability, the relevant disciplinary procedures applicable to students without disabilities may be applied in the same manner to the student, except that programs and/or services must be continued as determined by the IEP Team. The programs and services shall allow the student to progress in the general curriculum and advance in the goals of the IEP.
  5. If the IEP Team determines that the behavior subject to discipline is a manifestation of the disability, then the removal is terminated and the IEP Team must take immediate steps to remedy any deficiencies in the IEP or

placement found during the manifestation determination review.

6. If the student's parent disagrees with the determination that the student's behavior was not a manifestation of the disability, the parent may request an expedited hearing from the MDE. During the appeal, the student's placement is in the setting given in the last uncontested IEP.

### **Change of Placement: Drugs & Dangerous Weapons**

A change of placement for a student with a disability to another educational setting may be made by school personnel for not more than 45 calendar days if the student possesses, uses, sells, or solicits illegal drugs, or possesses or carries a weapon to school or a school function.

An illegal drug means a controlled substance; but does not include a substance that is legally possessed by the student or used under the supervision of a licensed health-care professional.

A dangerous weapon is defined as a weapon, device, instrument, material, or substance (animate or inanimate), that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocketknife with a blade of less than two and one-half inches in length.

For removals involving drugs or weapons, all of the following must occur:

1. On the day on which the decision is made to remove the student because of violations involving weapons or drugs, the parents shall be notified of the decision and of all procedural safeguards.

manifestation determination review must be conducted (see General Change of Placement, #2. Manifestation Determination Review).

3. The IEP Team must develop or review, as appropriate, a behavior intervention plan (see Functional Assessment and Behavior Intervention Plan, #1. through #3.).

4. Programs and services and the interim alternative educational setting are subsequently determined by the IEP Team. The IEP Team must determine what programs/services or modifications are needed to maintain progress in the general curriculum, progress toward IEP goals, and to help prevent recurrence of the behavior subject to discipline.

5. If the behavior subject to discipline is not a manifestation of the disability, the relevant disciplinary proce-

dures applicable to students without disabilities may be applied to the student with a disability, except for continued services described in #4 above.

6. If the IEP Team determines that the behavior subject to discipline is a manifestation of the disability, the removal (up to 45 calendar days) may be completed. The IEP Team must take immediate steps to remedy any deficiencies in the IEP or placement found during the manifestation determination review. Programs and services must be provided to the student as in #4 above.

7. If the parent requests a hearing regarding disciplinary actions for drugs or weapons to challenge the interim alternative educational setting and/or the manifestation determination, the student shall remain in the interim alternative educational setting for up to 45 calendar days as assigned.

8. At the end of the period of removal, the student returns to the placement in effect prior to the interim alternative setting. If the school proposes to change the student's placement after the expiration of the long-term removal for drugs or weapons, and if the parent appeals such a placement, the pendent placement during the appeal is the placement in effect prior to the interim alternative setting.

If school personnel maintain that it is dangerous for the student to return to the placement that was in effect prior to the interim alternative educational setting, the school may request an expedited hearing or seek a court decision. The parent and school may also agree to an extended interim placement.

#### **CHANGE OF PLACEMENT: OTHER DANGEROUS SITUATIONS**

In changes of placement not involving weapons or drugs, the student may be assigned to an interim alternative educational setting (not to exceed 45 calendar days) if either a hearing officer or court:

1. Determines that the school has demonstrated substantial evidence that maintaining the current placement is substantially likely to result in injury to the student or others; and
2. Considers the appropriateness of the current placement; and
3. Considers whether the school has made reasonable efforts to minimize the risk of harm in the current placement, including the use of supplementary aids and services; and

4. Determines that a proposed interim alternative educational placement will meet the standards given in #4 below.

In the discipline procedures involving an order from a court or hearing officer, all of the following must occur.

1. On the day on which the decision is made to remove the student, the parents shall be notified of the decision and of all procedural safeguards
2. A manifestation determination review must be conducted (**see General Change of Placement, #2. Manifestation Determination Review**). Regardless of the outcome of that determination, the removal must be completed as ordered, and the IEP Team must take immediate steps to remedy deficiencies (if any) found in the IEP or placement during the manifestation determination review.
3. Within ten business days from the day on which the decision is made to remove the student, the IEP Team must develop or review, as appropriate, a behavior intervention plan (**see Functional Assessment and Behavior Intervention Plan , #1 - #3**).
4. Programs and services in the interim alternative educational setting are determined by a court or hearing officer in response to proposals by school personnel. The proposal must determine what programs and services or modifications are needed to maintain progress in the general curriculum, progress toward IEP goals, and to help prevent recurrence of the behavior subject to discipline.
5. At the end of the period of removal, the student returns to the placement in effect prior to the interim alternative setting (**see Change of Placement: Drugs & Dangerous Weapons, #8**).

#### **PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES**

A student who has not been determined to be eligible for special education and who has engaged in behavior subject to discipline procedures, may assert any of the protections in these Procedural Safeguards if the school had knowledge that the student was a student with a disability before the disciplinary action occurred.

The school shall be deemed to have prior knowledge that the student is a student with a disability if:

1. The parent has expressed concern in writing ( or

orally if the parent does not know how to write or has a disability that prevents a written statement) to personnel of the appropriate educational agency that the student is in need of special education and related services.

2. The behavior or performance of the student demonstrates the need for these services in accordance with a disability as defined in the Rules.

3. The teacher of the student, or other personnel of the school, has expressed concern about the behavior or performance of the student to the director of special education or other personnel in accordance with the school's established Child Find or special education referral system.

4. The parent of a student has requested an evaluation for special education.

The school would not be deemed to have prior knowledge of a disability if, as a result of receiving information as listed immediately above, the school:

1. Conducted an evaluation; and

2. Found the student to be ineligible for special education; and

3. Provided notice to the parent of this determination.

If a request for an evaluation is made during the time period in which the student is subjected to disciplinary procedures:

1. The evaluation must be completed in an expedited manner.

2. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which may include removal and expulsion without educational services.

3. If the student is found to be a student with a disability, the school shall provide special education and related services.

If the school, according to the provisions of the section, does not have knowledge prior to taking disciplinary actions against the student, the student may be subject to the same disciplinary measures as applied to students without disabilities who engage in comparable behaviors.

### **STUDENTS ENROLLED IN PRIVATE SCHOOLS**

A local educational agency may not be required to pay for the cost of education (including special education and related services) if:

1. The parents do not inform the IEP Team before removing their child from the public school that they are



- rejecting the proposed placement of the IEP Team;
2. If the parents do not make the student available for evaluation; or
  3. The action is determined to be “unreasonable” by the judicial system.

The parents must inform the IEP Team, in writing, of their concerns and intent to enroll their child in a private school at public expense. This notice must be received by the public agency ten business days prior to the removal of the student and enrollment in a private school.

### **TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY**

When a student with a disability reaches the age of majority (age 18 in Michigan if a legal guardian has not been appointed by the court), the public agency shall provide notice to both the individual and the parents that all rights accorded to parents transfer to the student. All rights accorded to parents transfer to students who are incarcerated in an adult or juvenile federal, state, or local correctional institution.

### **SURROGATE PARENTS**

Each public agency shall assign an individual to act as a surrogate for the parent to protect the educational rights of a student when:

1. No parent can be identified.
2. The public agency, after reasonable efforts, cannot discover the whereabouts of a parent.
3. The student is ward of the state under the laws of the state.

The method for determining whether a student needs a surrogate for the parent and for assigning a surrogate for the parent to a student is the responsibility of the public agency.

Public agencies appointing a surrogate for the parent to a student ensures that the person:

1. Has no interest that conflicts with the interests of the student that he/she represents.
2. Has knowledge and skills to adequately represent the student as identified in the Michigan Special Education State Plan.
3. Is not an employee of the public agency which is involved in the education or care of the student.

4. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

The surrogate for the parent may represent the student in all matters relating to:

1. The identification, evaluation, and educational placement of the student.
2. The provision of a FAPE to the student.

### **ACCESS TO RECORDS**

Each public agency shall permit parents to inspect and review all records relating to their student with respect to the identification, evaluation, and educational placement of the student, and the provision of a FAPE to the student, which are collected, maintained, or used by the agency under this part. The district shall comply with a request without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the student, and in no case more than 45 days after the request has been made. Parents requesting records for use at an IEP Team meeting, a hearing, or an appeal shall be given access to the requested records immediately.

The right to inspect and review educational records under this section includes:

1. The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records.
2. The right to have a representative of the parent inspect and review the records.
3. The right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.

A district may presume that the parent has authority to inspect and review records relating to his or her student unless the district has been advised that the parent does not have the authority under applicable state law governing such matters as guardianship, separation, and divorce.

If any educational record includes information on more than one student, the parents of those students shall have the right to inspect and review only the information relating to their child or to be informed of the specific information. Each agency shall provide parents, on re-

quest, a list of the types and locations of educational records collected, maintained, or used by the agency.

**FEES FOR SEARCHING, RETRIEVING AND COPYING RECORDS** - A participating district may not charge a fee to search for or to retrieve information from the student's educational record. An 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.

**RECORD OF ACCESS** - Each public agency shall keep a record of parties obtaining access to education records collected or maintained, except access by parents and authorized employees of the participating agency. Records of access shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

**AMENDMENT OF RECORDS AT PARENT'S REQUEST** - A parent who believes that information in educational records collected, maintained, or used is inaccurate or misleading or violates the privacy or the other rights of their child, may request the participating agency which maintains the information to amend the information.

The agency shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. If the agency decides to refuse to amend the information in accordance with the request, it shall inform the parent of the refusal, and advise the parent of the right to a records hearing under Rule 340.1868.

The agency shall, on request, provide an opportunity for a hearing to challenge information in educational records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student.

If, as a result of the hearing, the agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, it shall amend the information accordingly and so inform the parent in writing.

If, as a result of the hearing, the agency decides that the information is not accurate, misleading, or otherwise in violation of the privacy or other rights of the student, it

shall inform the parent of the right to place in the educational records maintained on the student, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency. Any explanation placed in the records of the student under this section must be maintained by the agency as part of the records of the student as long as the record or contested portion is maintained by the agency. If the records of the student or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

## **COMPLAINTS**

A formal complaint is a specific written and signed allegation that there is an uncorrected violation misinterpretation, or misapplication of the Rules, Public Act 291 or 1995, the IDEA, or the ISD's/public agency's special education plan. The violation must have occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the complaint is received. 34 CFR §300.662(c) The complaint must include the facts on which the allegation is based. Any citizen may file a complaint with the ISD or with the MDE.

Should the parent suspect a violation, the parent should contact the ISD's director of special education or the superintendent's designee. This person may attempt to resolve the concerns informally, but the parent must be told of his/her right to file a formal complaint. The parent must also be given a copy of the Rules dealing with complaints (Part 8 of the Rules), and a copy of the Complaint Procedures for Special Education. The complainant may request assistance in writing a formal complaint.

If a parent files a formal complaint, the ISD must investigate the complaint and give the parent a copy of the findings within 21 calendar days. If, after reviewing the agency's report, the parent disagrees with the findings, the parent may appeal to the MDE. If the ISD does not act in a timely manner to investigate the parent's concerns, the parent may request the MDE to investigate the concerns. A written report shall be completed within 60 calendar days from the ISD's or the MDE's receipt of the complaint, unless the time line is extended for exceptional circumstances relative to the complaint.

## **RULE OF CONSTRUCTION**

Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.

## **SCHOOL-BASED MEDICAID SERVICES**

**Note:** Federal law permits the public agency to bill Medicaid for some school-based health services provided to Medicaid-eligible children. Personnel who are employed or contracted by the school district to process information for such billing are authorized employees who will access confidential records to document that reimbursable services are provided. Services such as, but not limited to, evaluation, physical and occupational therapy, speech services, school psychological services, social work services and transportation may be covered under this program.

## SPECIAL EDUCATION CATEGORIES

Autistic Impaired (AI) – Children who have a significant impairment in social and communication skills.

Emotionally Impaired (EI) – Children whose behaviors interfere with their learning.

Hearing Impaired (HI) – Children who are deaf or hard of hearing.

Learning Disabled (LD) – Children who have disorders in the process of learning.

Mentally Impaired (MI) – Children who are delayed in their mental development.

Physically and Otherwise Health Impaired (POHI) – Children who have physical or other health impairments that interfere with learning.

Preprimary Impaired (PPI) – Children through age five whose impairment cannot be identified under any other category.

Severely Multiply Impaired (SXI) – Children who have mental and physical impairments.

Speech and Language Impaired (SLI) – Children who have not developed appropriate speech and language.

Visually Impaired (VI) – Children who are blind or partially sighted.

## Description of Programs and Services

Autistic Impaired	The Autistic Impaired (AI) Programs/ Services are designed to develop language and communication, academic accommodations and personal adjustment.
Educable Mentally Impaired	The Educable Mentally Impaired (EMI) Programs/Services are designed to develop academic and personal-adjustment skills for students whose mental development and overall functioning level is approximately three-fourths to one-half the normal rate.
Emotionally Impaired	The Emotionally Impaired (EI) Programs/ Services are designed to develop academic and social skills for students who are unable to learn in a regular classroom due to inappropriate behavior patterns and emotional responses.
Hearing Impaired	The Hearing Impaired (HI) Programs/ Services are designed to provide a regular academic program for students who require specialized teaching techniques and/ or adaptive equipment due to a hearing impairment.
Learning Disabled	Learning Disabled (LD) Programs/ Services provide students with instruction utilizing specialized teaching techniques when there is a significant difference between ability and actual achievement in the academic areas.
Homebound & Hospitalized Services	A minimum of two hours of instruction per week may be provided to a special education student who is confined to the home, subject to certain requirements.
Physically/Otherwise Health Impaired	The Physically or Otherwise Health Impaired (POHI) Programs/Services are designed to provide a regular academic program for students who require special teaching techniques and /or adaptive equipment due to a physical/health impairment.
Pre-primary Impaired	Pre-primary Programs/Services are designed to bring family and school together to develop basic learning skills for children from birth through five years of age, with mental, physical, health, hearing, visual or emotional impairments.

**Description of Programs and Services  
(Continued)**

Resource Room	Resource Room Programs are designed to develop academic support and remediation for students who require specialized teaching techniques for less than half of a school day.
Severely Mentally Impaired	The Severely Mentally Impaired (SMI) Programs/Services are designed to improve self-care and communication skills for students whose mental development and overall functioning level is approximately one fourth of the normal rate.
Severely Multiply Impaired	The Severely Multiply Impaired (SMI) Programs/Services are designed to improve self-care and communication skills for students who are cognitively impaired and have at least one or two other impairments. Program emphasis will relate to the multiple handicaps.
Speech and Language Impaired Services	Speech and Language Impaired Support Services provide specialized teaching techniques for students whose impairment interferes with communication and/or comprehension, formation and use of functional language.
Trainable Mentally Impaired	The Trainable Mentally Impaired (TMI) Programs/Services are designed to develop cognitive, social, motor, communication, functional life and vocational skills for students whose mental development and functioning level is approximately one-half the normal rate.
Visually Impaired Support Services	Visually Impaired (VI) Support Services provide students with instruction in the use of adaptive equipment as well as specialized teaching techniques.
Ancillary/Related Services	These services include transportation and other developmental, corrective and support services (e.g.: psychological and social work services, speech therapy, counseling services, orientation and mobility services, homebound, etc.).
Transition Services	Transition Services are a coordinated set of activities, often with other agencies, that promotes movement from school to post-school activities, including postsecondary education, vocational training, employment, continuing and adult education, adult services, independent living or community participation.