

# Notice of Procedural Safeguards

**Formerly known as the “Parent’s Rights Brochure”  
Interim Notice - designed to be used until final federal regulations  
for IDEA-2004 are in effect**

Dear Parents: Your child has been referred for or is currently receiving special education services to provide for his or her individual educational needs. This Notice of Procedural Safeguards is designed to assist you in understanding the special education process and your rights.

The requirements regarding special education are based on state and federal law. The relevant laws are the following:

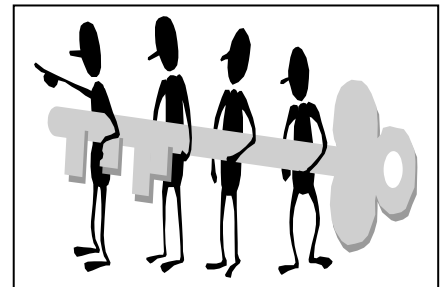
**State Law:** The state special education law, popularly known as “Chapter 766” after the session law number under which it was passed in 1972, is contained in the Massachusetts General Laws (MGL) at Chapter 71B. The regulations implementing the statute are found in the Code of Massachusetts Regulations (CMR) at 603 CMR, Section 28.00.

**Federal Law:** The federal special education law is known as “IDEA” (Individuals with Disabilities Education Act). The statute is located in the United States Code at 20 U.S.C. § 1400. In 2004, Congress reauthorized the IDEA and the amended statute is popularly referred to as “IDEA-2004.” The implementing regulations for IDEA will be found in the Code of Federal Regulations (CFR) at Chapter 34, Section 300.

**This Notice of Procedural Safeguards is an interim notice that incorporates statutory changes of IDEA-2004. Final implementing regulations for IDEA-2004 have not yet been issued by the U.S. Department of Education and are expected to be completed in December 2005. After that time, the Massachusetts Department of Education will publish a new version of this Notice.**

The federal and state special education laws are grounded upon six basic principles:

1. Parent & Student Participation
2. Free and Appropriate Public Education (FAPE)
3. Appropriate Evaluation
4. Individualized Education Program (IEP)
5. Least Restrictive Environment
6. Procedural Safeguards



In the following section of this document, each of the principles is described:

**1. Parent & Student Participation** – The law provides for many opportunities for parents to be involved in the planning and discussions concerning their child’s special education needs, including as an integral member of the Team that discusses eligibility, services, and placement of the student. You are entitled to have Team meetings held at a time and place mutually convenient to you and to other members of the Team. If you are unable to participate in a Team meeting, the school district is required to use other methods (such as phone conversations or other meeting opportunities, including virtual meetings, if you agree to use other methods of participation) to ensure that you have the opportunity to participate in the discussion even if you cannot attend the meeting in person. Also, IDEA-2004 provides flexibility in Team participation requirements. Parents may agree in writing to excuse a member of the Team from attending a Team meeting. The school district cannot excuse Team members without your written permission, however.

As the student grows older, he or she begins to have rights to participate in the Team process and in planning for transition to adult life. If transition is a topic of the Team meeting, the district must invite your child to attend. Also, you may invite your child to attend any Team meeting if you think it is in your child’s best interests. Additionally, the law entitles students of any age who are receiving special education to participate in the general education program of the school, including participation in school-wide or statewide assessment programs.

The law does not speak directly to your responsibilities as a parent, but the opportunities that the law provides for your participation are intended to promote a dialogue between you and the school district on behalf of your child. You are expected to share information with the school district about your child, and the school district is expected to attend to the information you provide and the concerns you present. It is important to emphasize that special education is most successful when it is viewed as an ongoing partnership with all parties having a strong interest in providing the best possible education for the student. Although as a parent you have many rights, it is important to remember that the relationship you build with

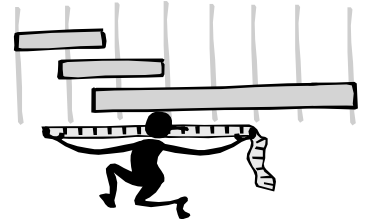
the school district may endure for many years and a positive, cooperative relationship on the part of both parents and school district personnel is most likely to result in maximum benefit to your child.

**2. FAPE** – Under federal law, students who are eligible for special education are entitled to a FREE, APPROPRIATE, PUBLIC EDUCATION – This concept is known as “FAPE.” The FAPE standard for special education services requires the school district to provide instruction tailored to the individual student’s needs, with sufficient support services to assist the student to make meaningful educational progress. Any special education services identified for the student are required to be provided at public expense with no cost to the parent. All students in the Commonwealth’s public education system, including students with disabilities, are entitled to the opportunity to learn the material that is covered by the academic standards in the Massachusetts curriculum frameworks. Massachusetts also provides an individual right to FAPE for students with disabilities who are enrolled by their parents in private schools, and who seek public special education services.

**3. Appropriate Evaluation** – A student must receive a complete and comprehensive evaluation to determine if the student has a disability and is eligible for special education and, if eligible, to assist in determining appropriate special education and related services that may be necessary. Parents who have a concern about their child’s development or have a suspicion about a possible disability may refer their child for an initial evaluation. Special words need not be used in making a referral for an initial evaluation. Upon receipt of such a request for an initial evaluation, the school district must send notice to the parent and must seek the parent’s consent to conduct an evaluation. (A school district will rarely have occasion to refuse to conduct an initial evaluation and may do so only if the parent or other individual making the referral has no suspicion of a disability or is not concerned about the student’s development.) Where appropriate, the school district may also provide the parent with information concerning other supportive services that may better suit a particular student’s needs. However, a school district may not refuse to evaluate a student who has been referred for an evaluation as described above, even if the student is participating in another academic support program or the school district would like to try other instructional support activities that are unrelated to special education, or for any other reason. Additionally, the law provides for periodic reevaluations to ensure that the student is benefiting from and continues to require special education. The parent’s consent will always be required prior to these reevaluations.

In Massachusetts, in order to be found eligible for special education, a student must demonstrate the presence of a disability (autism; developmental delay; intellectual, sensory, neurological, emotional, communication, physical, or health impairment; or specific learning disability) that prevents the student from making effective progress in education and requires specially designed instruction or related services in order to access the general curriculum. An initial evaluation to determine eligibility will seek sufficient evaluative information about the student to make a fair determination that considers all of these factors.

Although the state testing program, the Massachusetts Comprehensive Assessment System (MCAS), is an evaluation it is not a part of the evaluation conducted to determine if the student requires special education. The special education law provides protections to ensure that every student with disabilities is included in state or district-wide testing to ensure that the educational needs of students with disabilities are considered in a systemic way. Therefore, your permission is not required for your son/daughter to participate in MCAS or any other state or district-wide tests. However, during the Team meeting held to develop your child’s Individualized Education Program (see #4 below on IEP), you and the other Team members will discuss the best way for your child to participate in the MCAS and note this on your child’s IEP.



**4. IEP** – The law provides that the Team develops an Individualized Education Program (IEP) in written form to describe the programs and services that your child needs that will be provided to your child when he or she is determined to be eligible for special education. Your written permission will always be requested before the school district provides any IEP services to your child.

**5. Least Restrictive Environment** – This principle, known as “LRE”, means that, if possible, a student who needs special education services should receive those services in the general education environment with students who do not have special education needs. Further, LRE means that removal from the general education environment should only occur if the nature or severity of the student’s special education needs are such that education in general education classes with the use of supplementary aids and services cannot be achieved satisfactorily. The federal special education law strengthened this principle even more by saying that no child should be removed from the general education classroom just because of needed modifications in the curriculum. This means that the Team must consider how your child can be supported in the general education classroom before even considering serving your child in any other setting.

**6. Procedural Safeguards** – Finally, the law provides a number of procedural safeguards to ensure that parents’ and students’ rights are preserved, that information is provided on a timely basis, and that services are delivered appropriately. Parents have considerable rights to agree or disagree with proposals of the school district, and also have the right to make proposals themselves.

The remainder of this Notice of Procedural Safeguards is designed to provide specific detail on the various procedural safeguards of the law.

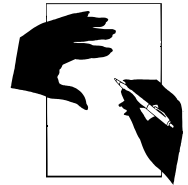
You are not obligated to read this material, nor are you obligated to exercise one or more of these rights. However, it may be helpful for you to understand the scope of the protections available to you under the law. It is our hope that you will use this Notice of Procedural Safeguards to help you understand the law, your rights, your responsibilities, and the responsibilities of the school district. No exercise of procedural safeguards, however, substitutes for a positive partnership with the school district.

### Right to Receive Written Notice

You have a right to receive written notice within a reasonable time before the school district proposes or refuses to initiate or change the identification, evaluation or educational placement of your child or the provision of FAPE to your child.

This means that written notice must be provided in the following specific circumstances:

- ◆ When the school district proposes to conduct an initial evaluation or reevaluation.
- ◆ In rare cases, when the school district refuses to conduct an initial evaluation or a reevaluation.
- ◆ When the school district proposes a new or amended IEP.
- ◆ When the school district proposes a change in placement.
- ◆ When a student is suspended for more than ten consecutive days in any school year.
- ◆ When the school district proposes termination of special education services, except if your child is no longer eligible for special education because he or she is graduating with a regular high school diploma or is turning 22 years of age. In those two circumstances, your child is entitled to receive a written summary report of his or her academic achievement and functional performance, which includes recommendations on attaining his or her desired postsecondary goals, such as employment or independent living.
- ◆ When the school district refuses to change a previously accepted IEP or placement.
- ◆ When the school district makes a finding of no eligibility for special education services.
- ◆ When the school district refuses to conduct an assessment at your request.
- ◆ When the school district refuses to provide a service you have requested that is not in your child's IEP, or otherwise refuses a request you have made related to the provision of special education to your child.



#### The written notice must include:

A description of the action proposed or refused by the school district which includes:

1. an explanation of why the action is proposed or refused;
2. a description of any options the school district considered and an explanation of why those options were rejected;
3. a description of each evaluation procedure, test or record used as a basis for the action proposed or refused; and
4. a description of any other factors relevant to the school district's decision.

The notice must be written in simple and commonly understood words and must be in both English and the primary language of the home. Any interpreter used must be fluent in the primary language of the home. When you or your child are unable to read in any language or are blind or deaf, the notice must be made orally, in Braille, in sign language or in writing, whichever is appropriate. If the school district provides you notice orally or in some other mode of communication that is not written language (such as sign language), the school district must keep written documentation that it has provided you notice in such a manner; of the content of such notice; and of the steps taken to ensure that you understand the content of the notice.

### Providing Your Written Consent

The school district must obtain your written consent before evaluating your child or before providing your child with special education and related services according to an IEP. Specifically, this means that your consent is required before the school district may conduct an initial evaluation or reevaluation of your child and prior to the initial provision of special education and related services to your child and for any subsequent IEP and placement. Once you have consented to an initial placement in a special education program, if you refuse to provide consent to any subsequent actions related to special education, the school district cannot use your refusal to consent as a basis to deny you or your child any other service, benefit or activity to which you or your child may be entitled. "Consent" means that:

- (a) You have been fully informed of all information relevant to the activity for which consent is sought in your native language or other mode of communication; and
- (b) You understand and agree in writing to the carrying out of the activity for which your consent is sought; and

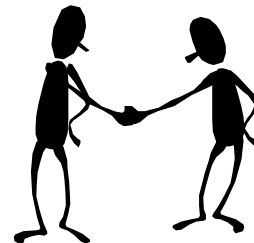
- (c) The consent form used by the district describes the activity for which consent is sought and lists the records (if any) which will be released and to whom; and
- (d) You understand that it is your voluntary choice to give consent and you may revoke your consent at any time. If you revoke your consent, from that point forward the district must cease the activity to which you had previously consented.

### **If you refuse your consent:**

In most cases your refusal to consent will be fully honored. However, to protect the rights of your child the law requires the school district to consider the effect of your refusal on the education of your child. At any point after your child is first placed in a special education program, if a school district believes your refusal to consent would deny your child a free appropriate public education (FAPE), the school district must take steps to ensure that FAPE is provided. Such steps may include mediation and/or initiation of a due process hearing as described later in this Notice of Procedural Safeguards to resolve the dispute. The school district cannot request a hearing to dispute your refusal to consent to the initial evaluation or initial placement of your child in special education.

### **Rights associated with consent:**

- You have a right to accept or refuse any proposal to evaluate your child. The only exception to this is that the school district is not required to ask for your consent to have your child participate in testing that is not related to your child's special education program, such as the MCAS tests or classroom tests that are part of the general education program.
- You have a right to accept or reject a proposed IEP in whole or in part, or to meet with school representatives to discuss the IEP during a thirty-day period following your receipt of the proposed IEP.
- If you accept part of the proposed IEP, the part you accept must be implemented immediately.
- You have a right to accept or reject the placement proposed to deliver the services on the IEP.
- At least a year in advance of the time when your child would graduate from high school, you have a right to discuss your child's proposed high school graduation and the anticipated termination of your child's special education services with school officials. In addition, you have a right to request mediation or a hearing before the Bureau of Special Education Appeals (BSEA) on the issue of graduation.
- If, at the time that your child is scheduled for a reevaluation (usually every three years), the school district recommends that additional evaluation is unnecessary and asks for your consent to that recommendation, you may refuse that recommendation and request a full or partial reevaluation.
- If the school district recommends that one or more members of the Team be excused from participating in a Team meeting and asks for your written consent to that excusal, you have the right to agree in writing or to disagree and not to provide your written consent. If you do not agree to the excusal, the school district may not excuse the Team member(s).



## **Your Responsibility to Provide Notice to the School District If You Place Your Child in a Private School**

Under some circumstances, you may decide that the public school district is not providing an appropriate education for your child (see organizing principle #2 FAPE, above) and you may decide to remove your child from the public school program and place him or her in a private school. If you choose to do this and want the public school district to pay the private school tuition, you are required to notify the school district before you remove your child. You must give this notice either at a Team meeting or in written form at least 10 business days before you remove your child from the public school program. You must tell the public school why you disagree with the IEP and program that the public school has proposed or provided for your child, and you must state your intention to remove your child and enroll him or her in a private school. If the school asks to evaluate your child prior to removing him or her from the public school program, you must make your child available for such evaluation.

Giving notice to the school district is only the first step in receiving public funding for a private school program if you remove your child from the public school program. Following such removal, you must prove at a due process hearing that the public school district's program failed or is unable to provide your child with FAPE in a timely manner and that the private school can provide your child with an appropriate education. If you complete both steps and are successful in proving your case, the Bureau of Special Education Appeals hearing officer may require the school district to use public funds to pay for your child's private school placement.

## Right to Independent Education Evaluation (IEE)



### **When you pay for an IEE:**

If you disagree with the school district's evaluation of your child, you have a right to seek an IEE. An IEE is an evaluation conducted by a qualified examiner who is not employed by the school district. Parents may seek an IEE at private expense at any time. Or, the district may be required to pay for an IEE. Upon your request, the public school district must provide you with a list of persons who conduct IEEs in your area of Massachusetts, although you are not limited to using evaluators from that list.

### **Circumstances under which the school district is required to pay for some or all of the costs**

#### **of the evaluation:**

The state regulations require school districts to finance IEEs for low-income families and to share the costs of IEEs for middle-income families. If your child is eligible for free or reduced cost lunch, then, at your request, the school district will pay for an IEE that is equivalent to the types of assessments done by the school district. If your child does not qualify for a reduced cost lunch, he or she may still be eligible for school district funding, either in whole or in part, depending on your family income. The school district will ask for income information and some validating documentation. Sharing financial information with the school district is completely voluntary on your part. If you choose to share such information, the school district must tell you promptly whether or not you are eligible for full or partial funding of an IEE. Your right to a publicly funded IEE through this income eligibility process will extend for 16 months from the date of the school district's evaluation with which you disagree.

#### **Circumstances under which the school district may pay for the costs of evaluation:**

If you request an IEE paid for by the school district and you are not income eligible or do not wish to use the income-eligibility process, you should notify the school district in writing of your request for public payment of an IEE. The school district must respond to your request without undue delay and either agree to pay for the IEE, or initiate a hearing with the Bureau of Special Education Appeals (BSEA) to show that the school district evaluation was comprehensive and appropriate. If the BSEA agrees with the school district, then the district is not obliged to provide public funds for an IEE. Any IEE that is paid for with public funds must abide by state requirements relating to qualifications of the evaluator and the rates charged for the evaluation.

#### **Consideration of results of IEEs:**

If you arrange for an IEE (regardless of whether it is paid for with private funds or public funds) and have the results sent to the school district, the school district must convene a Team meeting within ten school working days of receipt of the evaluation information to consider the evaluation and what, if any, changes should be made to the student's IEP based on the evaluation.

## Complaints, Mediations and Due Process Hearings

### **Complaints or concerns about whether the district is following special education requirements:**

The Department of Education encourages you to first attempt to resolve the matter with local school district officials. Contact your school principal, your Administrator of Special Education, or your superintendent to ask for assistance. In some cases, however, you may feel that you need to go outside the district for help to resolve your complaint or to address your concern. The Massachusetts Department of Education has a "Problem Resolution System" where you can file complaints or ask for a resolution of a dispute about compliance with a law or regulation. You can contact the Department directly at (781) 338-3700 for assistance. The Department will send you written information and will request a written statement of the problem if you wish the Department to intervene. If you send written information requesting a resolution of your problem, the Department will ensure it is investigated and will send you a letter of its determination within 60 calendar days of receiving your written request. The address for the Department of Education Problem Resolution System is within the box:

Program Quality Assurance Services  
Problem Resolution System  
Massachusetts Department of Education  
350 Main Street  
Malden, MA 02148

### **Mediation services or hearings:**

You have a right to request mediation or a due process hearing conducted by the Bureau of Special Education Appeals (BSEA), whenever there is a dispute between you and your child's school district over the identification, evaluation, placement, proposed IEP, the manner of implementation of the IEP, the provision of a free appropriate public education, or the procedural protections of state or federal law for your child. You may obtain a list of free or low-cost attorneys and advocates to assist you by calling the BSEA at (781) 338-6400.

The school district also has a right to request mediation or a hearing held by the BSEA for the same reasons, except that it cannot request a hearing to dispute your refusal to consent to the initial evaluation or placement of your child in special education.

**Information about mediation:**

Mediation may be requested by either the parent or the school district. Mediation is a voluntary, informal process, conducted under the direction of a BSEA mediator, which is designed to assist you and your school district in reaching an agreement regarding the issue in dispute. If you reach an agreement, it will be written down as a mediation agreement and will be enforceable in state or district court. If no agreement is reached, you may still request a hearing. If you wish to schedule a mediation, or wish more information about mediation, you may call a BSEA mediator at (781) 338-6400.

**Information about requesting hearings:**

A parent or school district may make a written request for a hearing by sending such request to the opposing party(ies) and sending a copy of the request to the BSEA at the same time. The address of the BSEA is within the following box:

<p>Bureau of Special Education Appeals 350 Main Street Malden, MA 02148</p>
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A hearing request made by a parent must be sent to the opposing party(ies) and the BSEA no later than two years after the parent knew (or should have known) about the allegations that form the basis of the hearing request. IDEA-2004 requires that the hearing request include the names and addresses of the parents or guardians and child, and the school district's representatives' and any attorneys or advocates involved; a description of the nature of the problem, including all facts and information about the problem; and a proposed resolution of the problem. If the hearing request does not provide all of this information, the opposing party may challenge its sufficiency within 15 days of receiving it. If the BSEA determines that the request doesn't contain sufficient information, the requesting party is allowed to amend the hearing request to include all of the required information. It is important to make sure that the hearing request contains all facts and information about the problem, because the hearing will be limited to those issues identified in the hearing request. No new information or allegations can be introduced during a hearing. Both parties can agree to amend the hearing request to include other issues and information, but then it is treated like a new hearing request and the timelines begin again. In addition, if you have not previously received written notice from the school district explaining its actions in relation to the issue you raise in the hearing request, the school district must provide you with full written notice on the issue for your information and for the information of the hearing officer.

A hearing request form that includes all the required elements will be sent to you if you call the BSEA. The form can also be found on the BSEA website at: <http://www.doe.mass.edu/bsea/>. However, it is not necessary to use this form in order to make your hearing request. Also, when you request a hearing, the BSEA will provide you with a list of free or low-cost attorneys and advocates. The BSEA will also send detailed information about your rights and responsibilities in regard to the requested hearing, including providing a hearing date.

**Information about a newly required informal resolution process:**

When a parent requests a hearing, the school district must convene a meeting with the parents and relevant Team members within 15 days. The purpose of the meeting, known as a "resolution session," is to try to resolve the matter. If you and the school district reach an agreement on resolving the matter, you and the school district will write down your agreement and sign it. After 3 business days (to allow you or the district to change your mind if you wish to) the written agreement will become binding and can be enforced in state or federal district court. If you decline to participate in the informal resolution session the due process hearing may be delayed. You and the district can agree to waive – or not to have – the resolution session, or you and the school district can agree to go to mediation. If the parties don't resolve the matter within 30 days the due process hearing will move forward.

**Information about the conduct of the hearing:**

Hearings are more formal than mediations, and the parties are allowed to introduce evidence and to have recorded testimony by witnesses. Following the hearing, the BSEA hearing officer will issue a written decision, determining the appropriate educational program or services for the child. That decision is binding on parents, the student, and the school district, and must be implemented by the school district.

**Disagreements with the decision of a hearing officer:**

If you or the school district disagrees with the BSEA hearing officer's decision, it may be appealed to state or federal court. Federal law requires a party to file an appeal of a BSEA hearing officer's decision in state or federal court within 90 days from the date of the decision.

**The cost of attorneys and other hearing costs:**

The BSEA does not have authority to reimburse you for attorney's fees and/or costs, even if you prevail at the hearing. However, if you prevail, and the BSEA makes a finding against the school district, a court of competent jurisdiction may subsequently award you attorney's fees and associated costs. The court may also limit or refuse your request for such an award depending

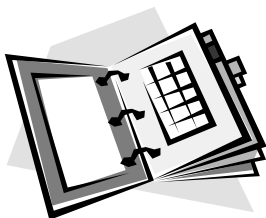


on the basis for your claim. IDEA-2004 also authorizes a court to allow a school district to recover attorneys' fees from a parent's attorney who requests a hearing or starts an action in court that is "frivolous, unreasonable, or without foundation," or who continues to litigate after the litigation clearly became "frivolous, unreasonable, or without foundation." Also, the court may allow a school district to recover attorneys' fees from either the parent's attorney or the parent if the parent's request for hearing or later action in court on the same matter "was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation."

### **The child's placement during an appeal:**

During the time that a hearing request is pending before the BSEA or if the decision of the hearing officer has been appealed to court, your child will remain in his or her then current educational placement, unless you are requesting initial placement for your child in the public school, in which case your child will be placed in the public school. This right to remain in the current placement is called "stay put." Any changes to your child's educational placement or program during this time must be fully agreed to by you and the school district or ordered by a court.

## **Student Records – Access Rights and Confidentiality**



### **General information about the student record:**

The student record consists of your child's transcript and temporary record and includes, among other things, records pertaining to your child's special education eligibility or program. You have several rights relating to your child's student record. You and, under certain circumstances your child, have a right to inspect and review any and all records relating to your child which are collected, maintained or used by the school district. If your child's record includes information regarding another child you have a right to inspect and review only the information relating to your child. The school district will only limit your access to the student record if the school district has received a legal document that limits your authority in this

regard (for example, a divorce or custody decree that limits your access to information about your child). All of the rights associated with the student record are contained in the Massachusetts Student Record Regulations. Those regulations can be found at 603 C.M.R. 23.00 or by requesting a copy of the regulations from the Department of Education. The following summary of information is provided to assist you in attaining a general understanding of the Student Record Regulations.

### **Your child's rights of access:**

Students who are 14 years of age or in the ninth grade have all the rights that parents have under the Student Record Regulations. If a student is from 14 through 17 years of age or has entered the ninth grade, both the student and his or her parent, or either one acting alone, may exercise these rights. Once a student turns 18 the rights accorded parents under the Student Records Regulations become those of the student. However, the parent may continue to exercise these rights unless the student makes a written request to the school principal or superintendent of schools to prevent the parent from doing so. Should the child make such a request, the parent will still retain the right to examine his or her child's record.

### **Review of the student record:**

If you ask to review your child's records the school must allow you access to those records as soon as practicable, and in any event, within ten days after your request, unless you agree to a longer period of time. Your right to inspect and review your child's student record includes the right to do so before any meeting regarding an IEP or due process hearing relating to the identification, evaluation or placement of your child. Your right to inspect and review your child's student record includes the right to:

- (a) Obtain copies of any information contained in the student record upon request. The school district may charge a reasonable copying fee, not to exceed the costs of reproduction, as long as the fee does not effectively prevent you from exercising your right to inspect and review the record. The school district may not charge a fee to search for or retrieve information relating to special education.
- (b) Meet with professionally qualified school personnel upon request and have any of the contents of the student record interpreted.
- (c) Have your representative inspect, review and interpret your child's record with your specific, written informed consent.

### **Access to the student record:**

The school district is required to keep a record of parties who have obtained access to your child's student record, in whole or in part. You have the right to review this record log. Unless student record information is to be deleted or released, the log requirement does not apply to school personnel whose teaching, counseling, clerical or administrative responsibilities require access to your child's student record. Upon your request, the school district must inform you about the types and locations of student record information for your child.

**Changing information in the student record:**

You have the right to add information, comments, data or any other relevant written material to the student record. You have the right to make a written request that the school district delete or amend information contained in the student record and/or to have a conference with the principal or designee to make your objection known. You have a right to a written decision on your request within a week of your conference with the principal or from the date the school receives your written objection if there is no conference. You may appeal to the superintendent of schools if the school district does not agree with your position. You also have a right to include in your child's student record a statement commenting on the decision or setting forth your reason for disagreement with the content of the record. Any such statement must be maintained by the school district as part of your child's student record as long as the record or contested portion of the record is kept by the school district.

**Educational Surrogate Parent Program**

If a child is in the custody of a state agency, the Department of Education has a responsibility to ensure there is an adult with no conflicting interests to make special education decisions on behalf of the child. In such circumstances, the Department will determine if it is appropriate to appoint an educational surrogate parent for the child. If appointed, the educational surrogate parent has the same rights and responsibilities as a parent in special educational matters relating to a student, including the right to represent the student as part of the special education processes of identification, evaluation and educational placement and in the provision of a free appropriate public education. The Department of Education appoints Educational Surrogate Parents through its Educational Surrogate Parent Program (ESPP). To contact the ESPP, please call (508) 792-7679.

**Transfer Of Responsibility Upon Reaching the Age Of Majority**

Massachusetts' law recognizes that a child has reached adulthood upon his or her eighteenth (18<sup>th</sup>) birthday. When a student turns age 18, therefore, all of the decision-making rights that you have as a parent transfer to your adult child, unless a court has appointed a legal guardian for your child or your child indicates in writing that he or she wants you to continue to have decision-making authority for his or her educational program. The school district must discuss with you and your child the impact of this transfer of rights at least a year in advance of the student's eighteenth birthday. As the parent of an adult child with a disability, you will continue to receive all the required notices from the school, and you will continue to have access to your son or daughter's educational records, even if your child makes his or her own educational decisions.



**Discipline**

In general, if your child has violated the school's disciplinary code, the school may suspend or remove your child from his or her current educational placement for no more than 10 consecutive school days in any school year. If your child possesses, uses, sells or solicits illegal drugs on school grounds or at a school-sponsored event; carries a weapon to school or a school function; or inflicts serious bodily injury upon another person at school or a school-sponsored event, the school district may place your child in an interim alternative educational setting for up to 45 school days. If your child has been placed in an interim alternative education setting as a result of a disciplinary action, your child may remain in the interim setting for a period not to exceed 45 school days. Thereafter, your child will return to the previously agreed-upon educational placement unless you or the district have initiated a hearing on the disciplinary action that the district took and a hearing officer orders another placement, or you and the school agree to another placement.

Any time the school wishes to remove your child from his or her current educational placement for more than 10 consecutive school days in any school year, or if a student is removed for disciplinary reasons for more than a total of 10 days in any school year when a pattern of removal is occurring, this is a "change of placement." A change of placement invokes certain procedural protections under federal special education law. These include the following:

- (a) Prior to any removal that constitutes a change in placement, the school district must convene a Team meeting to develop a plan for conducting a functional behavioral assessment that will be used as the basis for developing specific

strategies to address your child's the problematic behavior. If a behavioral intervention plan has been previously developed, the Team will review it to make sure it is being implemented appropriately, and will modify it if necessary.

(b) Prior to any disciplinary removal that constitutes a change in placement, the school district must inform you that the law requires that the school district consider whether or not the behavior that forms the basis for your child's disciplinary removal is related to his or her disability. This is called a "manifestation determination." Remember that you, as the parent, always have the right to participate as a member of the group of people making this determination.

**Consideration of whether the behavior is a manifestation of the student's disability:**

The law provides that the school district and the parent, along with relevant Team members, must consider all evaluation information, observational information, the student's IEP and placement; and must determine whether your child's behavior that prompted disciplinary removal was a manifestation of his or her disability. The behavior is considered a manifestation of your child's disability if the conduct in question was caused by, or had a direct and substantial relationship to your child's disability, or was a direct result of the school district's failure to implement his or her IEP.

If the manifestation determination decision is that the disciplinary behavior was related to your child's disability then your child may not be removed from the current educational placement (except in the case of weapon or drug possession or use, or serious bodily injury to another) until the IEP Team develops a new IEP and decides upon a new placement and you consent to that new IEP and placement, or a Hearing Officer orders a removal from the current educational placement to another placement.

If the manifestation determination is that the behavior was not related to your child's disability, then the school may suspend or otherwise discipline your child according to the school's code of student conduct, except that for any period of removal exceeding 10 days the school district must provide your child with educational services that allow your child to continue to make educational progress. The school district must determine the educational services necessary and the manner and location for providing those services.

**In the case of a disagreement with the Team's determination:**

If you disagree with the Team's decision on the "manifestation determination" or with the decision relating to placement of your child in an interim alternative education setting or any other disciplinary action, you have the right to appeal the Team's decision by requesting an expedited due process hearing from the Bureau of Special Education Appeals (BSEA).

**OTHER OPPORTUNITIES TO CONSIDER THIS INFORMATION**

This Notice of Procedural Safeguards will be made available to parents upon initial referral for evaluation. After your child is receiving special education services, you will receive an additional copy of this Notice once each year, at any time upon request, and whenever you make a hearing request. Additionally, every public school district is required to provide training to parents in the district at least once each year to help parents in understanding the special education requirements. If you have questions about your rights or the rights of your child after reading this Notice of Procedural Safeguards, we encourage you to contact the special education office of your local school district, or the Massachusetts Department of Education or any of the special education related organizations in the state. Special education is a highly complex and regulated area of education law. Do not expect to be an expert. The detail in the law is intended to protect your child and to help ensure that he or she receives the best educational experience. Please work as much as possible in partnership with the public school district that serves your child. We hope this Notice of Procedural Safeguards will be of assistance to you as you take an active role in your child's educational experience.

