



Volume III
Procedural Safeguards, Dispute Resolution,
Confidentiality



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Using this Document

This multi-volume document of *Procedures for State Board Policy Chapter 74, Rule 19* is intended to assist Public Agencies in the implementation of the State Board of Education Policy Chapter 74, Rule 19: *Individuals with Disabilities Education Improvement Act*. This document contains information about the requirements of IDEA and State Board of Education Policy Chapter 74, Rule 19, recommendations from the Mississippi Department of Education, Office of Special Education, and guidance on Best Practices, including " *should* or *may* in the statements. In addition, all days listed in the document refer to calendar days, unless otherwise noted. The forms in the Procedures documents are not required forms. The included forms are suggested or recommended forms designed to assist Local Education Agencies (LEA) in having the appropriate documentation to use in implementing the requirements of State Board of Education Policy Chapter 74, Rule 19. The only required forms in the Procedures Document are the Individualized Education Program (IEP) and the Extended School Year (ESY) Fact Sheet. A public agency may modify these forms or use their own forms as long as they meet the requirements of State Board of Education Policy Chapter 74, Rule 19.

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CHAPTER 7:

Procedural Safeguards

Public Agency in this document refers to agencies responsible for providing education to children with disabilities including the Mississippi Department of Education (MDE), Local Education Agencies (LEA), Public Charter Schools, and State Special Schools.

Procedural Safeguards

Procedural Safeguards refer to formal protections, or safeguards, for the rights of children with disabilities and their parents according to the Individuals with Disabilities Education Act (IDEA), Federal regulations, and State laws and policies. According to the U.S. Supreme Court's interpretation of IDEA, the core principle of the IDEA is the cooperative process between parents and public agencies and the importance of parental involvement in all decisions made for children with disabilities. This includes all decisions regarding the identification, evaluation, placement, and provision of special education and related services. In addition, IDEA upholds a parent's right to disagree with decisions and provides multiple avenues to resolve those disputes. Further protections address privacy of and the limited access to a child's educational records.

Procedural Safeguards Notice

Each public agency must ensure a copy of the Procedural Safeguards Notice is provided to each parent of a child with a disability at least once a year and in the following specific situations:

- After an initial request for an evaluation is sent to the Multidisciplinary Evaluation Team (MET) (See *Volume I: Chapter 2: Evaluation and Eligibility*);
- After a request for a reevaluation
- After the initial meeting of the Individualized Education Program (IEP) Committee;
- Upon receipt of the first Formal State Complaint or Due Process Complaint in a school year;
- Upon a change of placement due to a disciplinary action; or
- After a request for a Procedural Safeguards Notice by the parent.

The public agency may place a current copy of the Procedural Safeguards Notice on its internet website. The parent may also elect to receive a digital copy of the notice.

The contents of the Procedural Safeguards Notice must include a full explanation of the Procedural Safeguards and State dispute resolution procedures relating to:

- Notifications given to the parent prior to an action or refusal of an action, including the formal Prior Written Notice;
- The requirement for informed parental consent for evaluation;
- The right to an Independent Educational Evaluation (IEE) and when it must be provided at public expense;
- The requirement to ensure the confidentiality of and access to educational records;

- An explanation of and the procedures for making a Formal State Complaint or Due Process Complaint;
- The options for dispute resolution, including mediation, resolution sessions, hearings, and civil actions and payment of attorney fees;
- The procedures for addressing discipline issues for children with disabilities including those that result in changes of placement to alternative educational settings; and
- The requirements when making unilateral placements by parents of children in private schools at public expense.

The Procedural Safeguards Notice must be provided using language understandable to the general public. In addition, the Procedural Safeguards Notice must be provided to the parent in his/her native language or mode of communication to ensure the parent can understand the content of the notice. If the parent's native language or mode of communication is a written language or can be provided in a print format (E.g., Braille), the Procedural Safeguards Notice must be provided in this form, unless it is not feasible to do so. If the parent's native language or mode of communication is not a written language (e.g., oral and manual communication methods), The Procedural Safeguards Notice must be translated orally or by other means in the native language to ensure the parent understands the content of the notice, and the public agency must keep written documentation of how they met the requirements for the provision of the Procedural Safeguards Notice.

Invitation to Meetings

Parents have the right to participate in all meetings where decisions are made for their child including any decisions regarding whether to conduct an evaluation or reevaluation, the determination of eligibility status and of the disability category, and the development and revision of the child's Individualized Education Program (IEP). Parents are members of both the Multidisciplinary Evaluation Team (MET) and the IEP Committee and must be invited to participate in all MET or IEP Committee meetings. When convening an IEP Committee meeting for the development or revision of the child's IEP, the parent must be given a Notice of Invitation to Committee Meeting, or a similar form that includes:

- A list of who will be in attendance by name and position;
- A statement that the parent or public agency may invite other individuals who have knowledge or special expertise regarding the child; and
- The time, location, and a description of the purpose of the meeting.

Recording the Meeting

The parent and the public agency have the right to participate in the development of the IEP and to indicate their intent to make an audio recording of the proceedings of the IEP meetings. The parent or guardian or public agency shall notify the members of the IEP Committee of their intent to record the meeting at least **twenty-four (24)** hours prior to the meeting.

NOTE: The Procedural Safeguards Notice only addresses audio recordings – not video recordings. Although there is no provision prohibiting the use of video recording, parents

do not have a specific right to make a video recording of a meeting. Any use of video recording would need to be agreed upon by all parties involved and may require written releases.

Prior Written Notice

A Prior Written Notice must be provided to a parent, within a reasonable time, prior to the public agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child or to initiate or change the provision of services to provide a free appropriate public education (FAPE) to a child. Unless the parent waives the timeline, proposed actions outlined in the Prior Written Notice must be implemented seven (7) calendar days from the date of the Prior Written Notice.

The Prior Written Notice must be provided using language understandable to the general public. In addition, the Prior Written Notice must be provided to the parent in his/her native language or mode of communication to ensure the parent can understand the content of the notice. If the parent's native language or mode of communication is not a written language (e.g., oral and manual communication methods), the Prior Written Notice must be translated orally or by other means in the native language to ensure the parent understands the content of the notice, and the public agency must keep written documentation of how they met the requirements for the provision of the Prior Written Notice.

Content of the Prior Written Notice

The content of the Prior Written Notice must provide the parent with sufficient information, so he/she is fully able to understand the public agency's proposed or refused action in order to make an informed decision.

The Prior Written Notice must include:

- A description of the action proposed or refused by the public agency;
- An explanation of why the public agency proposes or refuses to take action;
- A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;
- A statement that the parent of a child with a disability has protections described in the Procedural Safeguards Notice provided, if inclusion is required, or the method for the parent to contact to obtain assistance in understanding the provisions of IDEA and his/her rights outlined in the Procedural Safeguards Notice;
- A description of other options that the IEP Committee considered and the reasons why those options were rejected;
- A description of any other factors which are relevant to the agency's proposal or refusal.

When a Prior Written Notice is Required

Public agencies are required to provide a Prior Written Notice to a parent prior to the public agency's proposal or refusal to initiate or change the identification, evaluation, or educational placement of a child or to initiate or change the provision of services to provide a FAPE to a child. The public agency must ensure that the Prior Written Notice is provided to the parent no less than seven (7) calendar days prior to the proposed action unless the parent waives the timeline.

A Prior Written Notice is required under the following conditions:

- If the initial MET determines that an evaluation is warranted (i.e., the MET does suspect the child has a disability) or determines that an evaluation is not warranted (i.e., the MET does not suspect the child has a disability);
- If the public agency refuses to provide an Independent Educational Evaluation (IEE) at public expense and initiates a due process hearing;
- After the IEP Committee has developed or modified an IEP;
- If the IEP Committee proposes to initiate or change the identification evaluation, or educational placement of a child or refuses a parent's request to initiate or change the identification evaluation, or educational placement of a child;
- If the IEP Committee proposes to initiate or change the provision of services to provide a FAPE to a child or refuses a parent's request to initiate or change the provision of services to provide a FAPE to a child;
- If the public agency has removed the child with a disability that results in a change in placement (i.e., for more than ten (10) days, a series of removals that constitute a pattern, or a removal to an interim alternate educational setting (IAES) for more than forty-five (45) school days due to discipline procedures;
- If the public agency intends to stop the provision of special education services due to ineligibility based on the results of a comprehensive reevaluation, due to ineligibility due to graduation with a standard high school diploma, or after receiving the parent's written revocation of consent for special education and related services.

Informed Parental Consent for Evaluation

Informed parental consent occurs when a parent has been made aware of all information pertinent to a proposed action and is able to make an informed decision to give permission for that action. Public agencies must ensure the parent understands:

- What is being proposed or refused; and
- The ramifications of what is being proposed or refused

A parent must be informed of a proposed action in his/her native language or other mode of communication. The parent must understand that parental consent is voluntary and may be revoked at any time. According to Federal guidelines, parental consent by signature is required during the following occurrences:

- Initial assessment for eligibility for special education services;
- Reevaluation of eligibility for special education services.

The public agency has the responsibility to ensure the child is evaluated to determine eligibility and to assist in the provision of a FAPE. The MET and IEP Committee determine the appropriate evaluation and reevaluation procedures, respectively. Qualified examiners must be used to administer all assessments for an evaluation or reevaluation.

Parental consent is required before the collection of any individual assessment data not collected through mass screenings or other allowed educational assessments. The parent has the right to provide or not to provide consent. If the parent refuses to provide consent, the public agency may but is not required to use due process procedures to

override the parent's refusal; however, a parent refusal to the provision of special education services may not be overridden.

Independent Educational Evaluation (IEE)

If a parent makes a request, the public agency must, without delay:

- Provide an IEE at public expense -OR-
- File a request for a due process hearing to demonstrate that the public agency's evaluation of the child is appropriate.

If the public agency requests a Due Process hearing and the final decision is that the public agency's evaluation is appropriate, the parent has a right to an IEE, but not at public expense.

The IEP Committee must consider the results.

- If the hearing officer requests an IEE as part of an impartial due Process hearing, the cost of the evaluation will be at the expense of the public agency.
- If a parent requests the IEE, the public agency may ask the reason why he/she objects to the public agency's evaluation. The parent is not required to provide explanation, and the public agency shall not delay providing the IEE at public expense or file a request for a Due Process hearing to defend its evaluation.
- A parent is entitled to only one (1) IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees.

Public Agency's Responsibilities Following an IEE Request

Following a request for an IEE, the public agency will:

1. File a request for Due Process hearing to show that its evaluation is appropriate, or
2. Provide the parent information about where an IEE can be obtained and the criteria applicable for the IEE. The criteria for an IEE must include the following:
 - a. Location of the evaluation
 - b. Qualifications of the examiner
3. The public agency may not impose conditions or timelines related to obtaining an IEE at public expense beyond the criteria utilized by the public agency.

Informed Parental Consent for Services

Informed parental consent occurs when a parent has been made aware of all information pertinent to a proposed action and is able to make an informed decision to give permission for that action. Public agencies must ensure that the parent understands:

- What is being proposed or refused; and
- The ramifications of what is being proposed or refused.

A parent must be informed of a proposed action in his/her native language or other mode of communication. The parent must understand that parental consent by signature is required

during the following occurrences:

- Initial assessment for eligibility for special education services;
- Consent for initial service;

- Reevaluation of eligibility for special education services.

The public agency has a responsibility to ensure the provision of a FAPE. The IEP Committee determines the services that constitute FAPE for the student. In the event of disagreement over appropriate services among the IEP Committee members, the agency representative has responsibility to ensure development of an appropriate IEP that confers FAPE. Parental consent is required before the initial provision of special education and related services. This consent is for the provision of special education, not for a specific service(s). If a parent disagrees with the provision of a specific special education or related service, and the parent and public agency agree that the child would still be provided a FAPE without that service, the public agency should remove that service from the IEP. If, however, the parent and public agency disagree about whether the child would be provided FAPE if the service was removed, the parent may use the dispute resolution procedures to resolve the dispute. Students with disabilities cannot receive a related service listed on the IEP if the parent refuses special education services as the related service listed is a supportive service required to assist a child with a disability to benefit from special education.

Parental Consent for Services Not Provided

If the parent fails to respond to the public agency's efforts to obtain consent or if the parent refuses to provide consent for special education and related services, the public agency is not considered to be in violation of the requirement to provide the child with a FAPE. The public agency may not use dispute resolution procedures (e.g., mediation or Due Process) to obtain consent nor is the public agency required to convene an IEP Committee meeting or develop an IEP.

The parent may choose not to sign the IEP at the IEP Committee meeting due to a desire to reflect on the IEP or a disagreement over the disability category (but not disability status). This *does not* mean the parent is refusing services altogether or the child should no longer be considered a child with a disability.

If the parent participates in the IEP Committee meeting to develop the IEP but is unsure about the content of the IEP document, the parent may take as much time as he/she wishes to decide if he/she is comfortable moving forward. As soon as the parent provides the public agency with written consent, the public agency must implement the IEP immediately.

Revocation of Parental Consent for Services

After written parental consent is obtained following initial eligibility, consent for special education services is presumed unless a parent notifies the public agency in writing that they would like to revoke all special education and related services. A parent cannot revoke an individual service. Once the parent revokes special education and related services, public agencies must provide a Prior Written Notice before stopping special education and related services. Dispute resolution procedures including mediation and Due Process procedures may not be used to challenge the parent's right to terminate the services. This will not be considered a violation of the public agency's obligation to provide a FAPE for the child. Once revoked, special education and related services

cannot be reinstated at parent request. The public agency is not required to amend the student's educational records to remove any references to the student's receipt of special education and related services because of the revocation of consent.

Access to Records

Public agencies shall permit parents to inspect and review any educational records relating to their children that are collected, maintained, or used by the public agency.

The public agency will make records available to the parent for review:

- Without delay;
- Before any meeting regarding an IEP;
- Before an impartial Due Process hearing; and
- No later than forty-five (45) days after the request.

The parent's rights to inspect and review education records include:

- A response to reasonable requests for explanations and interpretations of the records;
- Copies of records containing the information if failure to provide the copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- The ability to have a representative of the parent inspect and review the records after the parent provides written authorization to the agency.

The parent also has a right to receive a copy of the educational records. The public agency may charge for these copies, but not if the fee would effectively prevent the parent from exercising the right to inspect and review the records. The public agency cannot charge to search for or retrieve the records.

Parents have the right to inspect and review all records relating to his/her child unless the public agency has been advised that the parent does not have the authority under applicable State laws (i.e., guardianship, separation, or divorce). See Procedural Safeguards: Your Family's Special Education Rights.

Surrogate Parent

A surrogate parent is an individual assigned by a public agency to assume the educational rights and responsibilities of a parent in one of the following circumstances:

- A parent cannot be identified;
- The public agency cannot locate a parent after reasonable efforts;
- The student is a ward of the State;
- The student is an unaccompanied homeless youth.

The public agency is required to determine if a student requires a surrogate parent and then assign him/her a surrogate parent. If a student is the ward of the State, the judge overseeing the case may appoint the surrogate parent, provided that the parent meets the criteria below.

Criteria for Selecting a Surrogate Parent

To determine whether a child needs a surrogate parent and to appoint a surrogate to a child, the public agency must ensure the following:

1. Identify an individual who meets the following criteria:
 - Has no other vested interest that conflicts with the interest of the child represented;
 - Has knowledge and skills that ensure adequate representation of the child; and
 - Is not an employee of a public agency responsible for the education and/or care of the child.
2. Arrange for the proposed surrogate to meet the child;
3. Ascertain whether the individual will serve as a surrogate;
4. Appoint the person as surrogate; and
5. Enter this information in the child's file.

NOTE: The public agency may select as a surrogate a person who is an employee of a non-public agency that only provides non-educational care for the child and who meets the standards outlined above.

A surrogate parent must be formally trained to advocate for the child in the special education process, including the procedures concerning the identification, evaluation, placement and the provision of a FAPE. The method of training shall be described by the public agency.

Transfer of Parental Rights at Age of Majority

When a child reaches twenty-one (21), the age of majority, the public agency will ensure that all rights accorded to the parent under IDEA are transferred to the child (except for a child who has been determined to be incompetent under State law). If, under State law, a child is determined to have a severe or profound disability such that legal guardianship is required beyond the age of majority, the public agency upon receipt of a court order regarding the need for such guardianship, will appoint the legal guardian to represent the education interests of the child through the age of twenty (20) or if the child turns twenty-one (21) during the school year. If a surrogate parent is necessary due to the conditions addressed in Surrogate Parent above, the agency will appoint a surrogate parent in accordance with the above procedures to represent the interests of the child.

The public agency must notify the parent and the child of the transfer of rights. When rights are transferred to a child, any notice required under IDEA must be forwarded to the child and to the parent, except for those children who are incarcerated in adult or juvenile, State or local correctional institutions. For incarcerated youth adjudicated as adults, all parental rights, including the notice rights, will be transferred to the youth in accordance with State law.

CHAPTER 8:

Dispute Resolution

Public Agency in this document refers to agencies responsible for providing education to children with disabilities including the Mississippi Department of Education (MDE), Local Education Agencies (LEA), Educational Service Agencies (ESA), and nonprofit public charter schools which are not a part of an LEA or ESA.

Dispute Resolution

If a parent of a child with a disability and representatives of the public agency or other members of the child's Multidisciplinary Evaluation Team (MET) or Individualized Educational Program (IEP) Committee, of which the parent is a member, disagree on any decisions regarding the identification, evaluation, placement, or provision of a Free Appropriate Public Education (FAPE) or the determination of whether a behavior was a manifestation of the child's disability, there are several options for resolution of the dispute. The parent may file a Formal State Complaint, or the parent or public agency may request a due process hearing. However, prior to filing a Formal State Complaint or requesting a due process hearing, the parent and the public agency may first resolve the dispute through a mediation process. Mediation is the first official step in due process and is designed to be less confrontational than a hearing in that its goal is to assist both the parents and the public agency in reaching a compromise.

Mediation

The mediation process must be voluntary on the part of the parent and the public agency. It cannot be used to deny or delay a parent's right to a hearing on the parent's due process complaint. A qualified and impartial mediator who has been trained in effective mediation techniques by the Mississippi Department of Education (MDE), Office of Special Education (OSE) must conduct the mediation. The OSE maintains a list of such qualified mediators and the mediator for each dispute is selected on a rotational basis. The mediator may not be an employee of the MDE or OSE nor of the public agency that is involved. The mediator must not have a personal or professional interest that conflicts with the person's objectivity. The mediator has no authority to impose a decision but instead is to assist the parent(s) and the public agency to reach a mutually-agreed-upon decision with regards to the dispute. The MDE, OSE bears the cost of the mediation process, including the costs of any meeting(s) related to the process. All sessions for mediation must be scheduled in a timely manner and be held in a location that is convenient to the parties of the dispute.

Resolution of Dispute through Mediation

If the dispute is resolved through the mediation process, the public agency and parent must execute a legally binding agreement that specifies the resolution. This agreement must include a statement that all discussions that occurred during the process and any evidence presented must remain confidential. These confidential matters may not be used in any subsequent due process hearing or civil proceeding in a State or Federal court, regardless of whether the parties resolve the dispute.

The mediation process can benefit both the parent(s) and the public agency by allowing the opportunity to understand each party's reasoning and point of view without being in an adversarial environment. It also helps to maintain a relationship between the parent(s) and the public agency. Mediation is frequently low cost and does not usually require the involvement of an attorney.

Formal State Complaints

An organization or individual may file a signed written Formal State Complaint with the MDE, OSE. The written complaint may be in a letter or on a form provided by the MDE, OSE or public agency. The violation described in the complaint must have occurred not more than one year prior to the date that the complaint is received. A copy of the complaint must be forwarded to the public agency serving the child at the same time as the organization or individual files that complaint with the MDE, OSE. The complaint must include:

- A statement that the public agency has violated a requirement of Part B of Individuals with Disabilities Education Act (IDEA), State Board Policy, Chapter 74, Rule 19 or a statement that the public agency is not implementing a due process hearing decision;
- The facts on which the statement is based, including copies of any documentation that support the allegation and general dates if possible;
- A description of the nature of the problem of the child, including facts relating to the problem;
- A proposed resolution of the problem to the extent known and available at the time the complaint is filed.
- The signature and contact information for the complainant; and
- If the violations concern a specific child:
 - a. The name of the child and the resident address;
 - b. The name of the school/public agency the child is attending
 - c. In the case of a homeless child (denied by the McKinney-Vento Homeless Assistance Act), the available contact information for the child and the school/public agency attending.

MDE, OSE Response 4.1(d)

The MDE, OSE will forward a copy of the complaint to the school district upon receipt. At that time, the school district must provide a copy of the Procedural Safeguards to the Complainant. The public agency and parents may choose to use mediation to resolve the complaint or to resolve the complaint through more formal methods. The public agency must be given the opportunity to submit a written response to the allegations in the State complaint within the timelines specified by the MDE, OSE. The public agency must send a copy of its written response to the complainant. The public agency's response:

- Must include a statement about the issues in the complaint.
- May include a proposal for resolution of the complaint.
- May include a proposal to mediate.

The MDE, OSE may conduct an additional investigation by reviewing documentation provided by both parties and/or by conducting an on-site visit. The MDE, OSE will issue

a written Findings and Decision within sixty (60) calendar days from the date the Formal State Complaint is first received. Day one (1) of the 60-day timeline begins on the day the complaint is initially received, whether by the public agency or by MDE, OSE.

The MDE, OSE does not investigate matters that are currently the subject of a due process hearing or matters that have been previously resolved by a Hearing Officer in a due process hearing decision. If a due process hearing request is filed on the same issues and between the same parties as a pending Formal State Complaint, the MDE, OSE will set aside any part of the Formal State Complaint that is being addressed in the due process hearing. However, any issue in the Formal State Complaint that is not part of the due process request will be resolved by the MDE, OSE within the 60-calendar day timeline. All timelines, submissions, and extensions are tracked and documented through the conclusion of the Formal State Complaint internally by the Office of Dispute Resolution and Parent Engagement.

Complaints Filed by Non-Parent Complainants (4.1 c)

The MDE, OSE must resolve a Formal State Complaint regardless of whether it has been filed by the child's parent or by an organization or individual other than the child's parent. In resolving such a complaint, the State would be required to follow the minimum State Complaint procedures in 34 C.F.R. § 300.152 as it would any other State Complaint that alleges that a public agency has violated a requirement of Part B regulations. This includes issuing a written decision to the complainant that addresses each allegation in the complaint and contains (i) findings of facts and decisions; and (ii) the reasons for the SEA's final decision in accordance with 34 C.F.R. 300.152(a)(5), subject to conditions discussed below. Under these circumstances, parental consent must be obtained before the MDE, OSE may provide personally identifiable information (PII) about the child to the non-parent complainant as part of the complaint decision. If parental consent is not obtained, any PII about the child who is the subject of the complaint must be redacted from the written decision.

Therefore, the MDE, OSE will issue amended written Findings and Decision to non-parent complainants. In accordance with confidentiality requirements, the report will include only the final decision and any corrective actions deemed appropriate.

Timeline Extension, Final Decision, Implementation (4.1e)

The MDE may also permit an extension of the time limit described above only if (i) exceptional circumstances exist with respect to a particular complaint; or (ii) the parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under the MDE procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available.

Exceptional circumstances" refer to unforeseen events or conditions beyond the control of the MDE, OSE or the parties involved that prevent completion of the complaint investigation within the standard 60-day timeline. Examples include:

- **Natural disasters or emergencies** (e.g., hurricanes, floods, pandemics)

- **Unavailability of key parties** due to illness or other documented reasons
- **Complexity of the complaint, which is at the discretion of the MDE OSE, based on the following procedure:**
 - Level 1: requires additional evidence
 - Level 2: requires expert review
- **Multiple related complaints** that must be consolidated for efficiency

The MDE, OSE will determine what constitutes an exceptional circumstance on an individual basis. All time limit extensions will be documented in detail and communicated to both parties notifying them of the extension. The MDE, OSE will record the following on the internal tracking system: original 60-day timeline, date extension was granted, and justification for extension.

Due Process Complaints

Filing a Due Process Complaint

A parent or public agency may file a due process complaint on any matters relating to:

- the identification, evaluation, or educational placement of a child with a disability, or provisions of FAPE to the child;
- Proposals of a change in placement as a result of a disciplinary action; or
- Public agencies determine that the child's behavior is a manifestation of the child's disability.

The violation must have occurred not more than two (2) years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint. This two-year timeline does not apply if the public agency has misrepresented the resolution of the problem forming the basis of the dispute or if the public agency withheld required information from the parent. The public agency must 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 if the parent or the agency filed a due process complaint. The public agency must also provide the parent with the Procedural Safeguards Notice document and the procedures regarding mediation services.

The party filing the complaint must provide the other party with the due process complaint, which must remain confidential. The parties involved may be the public agency, the parent or the attorney representing the parent or public agency. The party filing the complaint must also forward a copy of the complaint to the MDE, OSE. The complaint must include:

- The name of the child and the resident address;
- The name of the school the child is attending and the district;
- In the case of a homeless child (defined by the McKinney-Vento Homeless Assistance Act), the available contact information for the child and the school attending;
- A description of the nature of the problem of the child, including facts relating to the problem; and
- A proposed resolution of the problem to the extent known and available at the time the complaint is filed. No party may have a hearing on the due process complaint until the party, or the attorney representing the party, files a due

process complaint that meets the requirements specified above. Once the due process complaint has been filed the following timelines apply:

- The due process complaint is deemed to be sufficient unless the receiving party notifies the hearing officer and the filing party in writing within fifteen (15) days of receipt that the due process complaint does not meet the requirements specified above.
 - Within five (5) days of receiving the complaint, the Hearing Officer must make a decision as to whether the due process complaint meets the criteria described above and notify the parties in writing of his/her decision.
- A party may amend its due process complaint only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to §300.510, or the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five (5) days before a due process hearing begins. If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.

Basic Timelines for the Complaint and Resolution Process.

If the public agency has not sent a Prior Written Notice (PWN) to the parent(s) regarding the subject matter contained in the parent's due process complaint, within ten (10) days of receiving a due process complaint, filed by a parent, the public agency must send a response that includes the following:

- An explanation of why the agency proposed or refused to take the action raised in the complaint;
- A description of other options considered by the Individualized Education Program (IEP) committee and why these options were rejected;
- A description of each evaluation procedure, assessment, record or report on which the agency based their decision; and
- A description of the other factors that are relevant to the agency's proposed or refused action.

This response does not negate the public agency's option of declaring the due process complaint as insufficient, if appropriate. If the due process complaint is received by a party other than the public agency, the receiving party must respond within ten (10) days to address the issues raised in the due process complaint.

Resolution Meeting: The purpose of this meeting is to discuss the due process complaint and the facts that form the basis of the complaint so that the public agency has the opportunity to resolve the dispute.

Process of resolution includes:

Upon receiving a due process complaint, the public agency must:

- Document the date of receipt.
- Initiate the resolution process timeline (30 calendar days).

Within 15 calendar days of receiving the complaint, the public agency must:

- Schedule and hold a resolution meeting with:
 - The parent.
 - Relevant IEP Team members, as determined by both the parent and the agency.
 - An agency representative with decision-making authority.
- Note: The agency may not include an attorney unless the parent is accompanied by one.

The resolution meeting may be waived if:

- Both the parent and the public agency agree in writing to waive it, or
- Both parties agree to use mediation instead.

Conduct the meeting:

- Discuss the issues raised in the due process complaint.
- Attempt to reach a mutually agreeable resolution.

If a resolution is reached, the parties must:

- Execute a legally binding agreement, signed by:
 - The parent.
 - The agency representative with authority.
- Ensure the agreement is enforceable in State or Federal court.

The forty-five (45) day timeline for the due process hearing starts the day after one of the following occurs:

- Both parties agree in writing to waive the resolution meeting.
- After either the mediation or resolution meeting starts, but before the end of the thirty (30) day period, the parties agree in writing that no agreement is possible.
- Both parties agree in writing to continue the mediation at the end of the thirty (30) day period, but later, the parent or public agency withdraws from the mediation process.

Note: If the public agency files a due process complaint, the regulations do not require the public agency to convene a resolution meeting. However, the public agency and the parent(s) may choose to voluntarily engage in mediation to resolve the issue. Since the resolution process is not required under the regulations when a public agency files a complaint, the forty-five (45) day timeline for issuing a written decision begins the day after the public agency's due process complaint is received by the other party and the MDE, OSE. If the complaint is determined to be insufficient and is not amended, the complaint could be dismissed.

Expedited Due Process Procedures

The parent or public agency may also request an expedited due process hearing if the parent of a child with a disability disagrees with any decision regarding placement, or the

manifestation determination or the public agency believes that maintaining the child's current placement is substantially likely to result in injury to the child or to others, may appeal the decision by requesting a hearing.

Process for Expedited Due Process includes:

- A parent or public agency may request an expedited due process hearing. The request must relate to a disciplinary removal of a student with a disability. The Mississippi Department of Education (MDE), through the Office of Special Education (OSE), receives and processes the request.
- Upon receipt of the request, OSE immediately assigns an impartial hearing officer. Written notice of the assignment is provided to both parties.
- The hearing officer must schedule and conduct the hearing within 20 school days from the date the complaint is filed. A written decision must be issued within 10 school days after the hearing concludes.
- The public agency must convene a resolution meeting within seven calendar days of receiving the complaint. Exceptions: Both parties may agree in writing to waive the meeting or choose to use mediation instead.
- If the dispute is not resolved within 15 calendar days of the complaint filing, the hearing proceeds on the expedited timeline.
- The hearing officer ensures compliance with due process requirements under 34 C.F.R. §§ 300.510–300.514. Both parties have the right to present evidence, cross-examine witnesses, receive a verbatim record of the hearing, and receive a written decision at no cost.
- The hearing officer's decision is final unless appealed under IDEA and State policy. The public agency must implement the decision immediately upon receipt, unless otherwise specified in the written order.
- The OSE maintains oversight of all expedited hearings. OSE ensures decisions are issued within federal timelines; corrective actions are documented and completed, and internal tracking is managed by the Office of Dispute Resolution and Parent Engagement.

Hearing Officer (4.3 e)

An impartial hearing officer:

- Is assigned to the complaint by the MDE, OSE.
- Cannot be an employee of the MDE or the public agency that is involved in the education or care of the child.
- Cannot have a personal or professional interest that conflicts with the person's objectivity in the hearing.
- Must possess knowledge of and the ability to understand the provisions of Individuals with Disabilities Education Act (IDEA) Amendments of 2004, State Board Policy 74.19 and legal interpretations of IDEA by Federal and State courts.
- Must also possess the knowledge and ability to conduct hearings in accordance with appropriate standard legal practice; and possess the knowledge and

ability to render and write decisions in accordance with appropriate, standard legal practice.

- Must participate in trainings on the duties of hearing officers and the implementation of a due process hearing at least annually.

If a hearing officer cannot be impartial, they must: (4.3e)

- Disqualify themselves and decline to serve.
- Notify the appointing agency of the conflict.
- Allow the agency to appoint a new qualified hearing officer.
- MDE OSE will appoint an impartial hearing officer to preside over the due process hearing.

Hearing Officer's Authority and Duties

A hearing officer has the authority and the duty to:

- Conduct a fair hearing;
- Ensure that the rights of all parties are protected;
- Define issues;
- Receive and consider all relevant and reliable evidence;
- Ensure an orderly presentation of the evidence and issues;
- Ensure a record is made of the proceedings; and
- Reach a fair, independent and impartial decision based on the issues and evidence presented at the hearing and in accordance with applicable law as well as Federal regulations under IDEA and State policies.

In order to perform these duties, the hearing officer has the authority to:

- Hold pre-hearing conferences in a timely manner for the purpose of clarifying the matters in dispute or resolving the dispute without the necessity of a hearing;
- Dismiss a hearing request when the issue, once clarified, is one that does not pertain to the identification, evaluation, educational placement and/or provision of a free appropriate public education (FAPE);
- Dismiss a hearing request when the requesting party fails to proceed to a hearing within six (6) months from the date of the hearing request;
- Decide the matter in dispute without a hearing upon submission of written documents and with the agreement of the parties;
- Schedule a mutually convenient date, time and place for the hearing consistent with the rights of the parties under these regulations;
- Receive, rule on, exclude or limit evidence;
- Order additional evaluations by the public agency or an independent evaluation at public expense when necessary in order to determine the appropriate special education and related services for the child;
- Administer the oath of affirmation to anyone who will testify at the hearing;
- Assist all those present in making a full and free statement of the facts;
- Determine if the hearing will be opened or closed to the public based on the decision of the parent;
- Ensure that all parties have a full opportunity to present all their claims orally, or in writing, and to issue a subpoena to compel the attendance of witnesses or the production of documents specifically relevant to the resolution of the

- issues presented in the hearing; and
- Take such steps as appropriate to assure the orderly presentation of evidence and protection of the rights of the parties during the hearing.

If the hearing officer determines that the due process complaint is insufficient, the hearing officer's decision will identify how the notice is insufficient so that the filing party can amend the notice if appropriate. A party may amend its due process complaint only if the other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a resolution meeting or through mediation. The hearing officer may also grant permission to amend the complaint at any time not later than five (5) days before the due process hearing begins. If a party files an amended due process complaint, the timelines for the resolution meeting and resolution period begin again with the filing of the amended due process complaint. If the hearing officer determines that the complaint is insufficient and the complaint is not amended, the complaint may be dismissed. A party may re-file a due process complaint if the complaint remains within the applicable timelines for filing – generally, within the two (2) year period that the alleged action occurred.

No ex-parte communication between the appointed hearing officer and either party to the hearing will be conducted. When communication with the hearing officer by either party is necessary, the hearing officer must ensure both parties are involved in the requested communication. Communication will be conducted between the appointed hearing officer and the MDE personnel or between either party and MDE personnel regarding any substantive issue(s) of the hearing.

Due Process Hearing

The due process hearing is conducted by an impartial due process hearing officer appointed by the MDE, OSE at a time and place that is reasonable and convenient to the parents of the child involved. The party requesting the hearing may not raise issues at the hearing other than those specified in the complaint unless the other party agrees. At least five (5) business days prior to the hearing, each party must disclose to all other parties, any evaluations completed and recommendations based on the evaluations. The hearing officer may bar any introduction of relevant evaluations or recommendations that have not been disclosed. Any party to a hearing or an appeal has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities. Unless determined under State law, non-attorneys may not represent the parents in the due process hearing. Both parties have the right to present evidence, confront, cross-examine and compel the attendance of witnesses. Both parties also have the right to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing. A written or, at the option of the parents, an electronic verbatim record of the hearing may be obtained by either or both parties as well as a written or electronic record of the findings of fact and opinion.

The parent involved in the hearing has the right to have the child who is the subject of the hearing present. They have the right to open the hearing to the public and to have a record of the hearing and the findings of fact and decisions provided at no cost.

Hearing Decisions (4.3d)

A hearing officer's decision of whether a child received FAPE must be made on substantive

grounds. In matters alleging a procedural violation, the violation must have impeded the child’s right to FAPE; the parent’s opportunity to participate in the decision-making process regarding the provision of a FAPE; or caused a deprivation of educational benefit. This does not preclude a hearing officer from ordering a public agency to comply with procedural requirements. A copy of the final decision must be mailed to each of the parties.

The due process hearing decision does not limit the parent from filing a separate due process complaint on an issue unrelated to the current due process complaint. All due process hearing decisions must be transmitted to the State Special Education Advisory Panel, but all personally identifiable information must be deleted. These findings and decisions must also be made available to the public. A decision made in a due process hearing is final and binding on all parties unless either party brings a civil action.

Assurance of Timely Implementation of Hearing Decisions (4.3c)

The Mississippi Department of Education (MDE), through the Office of Special Education (OSE), provides assurance that all hearing officer decisions are implemented in a timely manner as required by 34 C.F.R. § 300.514(b).

Upon issuance of a hearing officer’s decision, the OSE due process resolution staff monitors the implementation process to ensure that the public agency fully complies with the decision within the time frame specified in the order. The public agency is required to submit written documentation of completion – such as copies of amended Individualized Education Programs (IEPs), service verification records, or proof of compensatory services – by the deadline established in the decision.

The OSE reviews the documentation, verifies that corrective actions have been completed, and records compliance status in the Due Process Hearing Tracking System. When follow-up is required, OSE staff provide technical assistance and set short-term deadlines to resolve outstanding items. If a public agency fails to implement a hearing decision within the required timeframe, the matter is referred to the Office of Accreditation for enforcement and potential corrective action.

This monitoring process ensures that every hearing officer’s decision issued under IDEA is implemented promptly, completely, and in accordance with Federal and State procedural requirements.

Civil Action

Either party who disagrees with the hearing officer decision has the right to bring a civil action. The civil action may only address the due process complaint and the facts surrounding the complaint. Before filing a civil complaint, all due process procedures must be exhausted. The civil action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. The civil action must be filed within ninety (90) days from the date of the hearing officer’s decision. In any civil action, the court:

- Receives the records of the administrative proceedings;
- Hears additional evidence at the request of a party;
- Bases its decision on the preponderance of the evidence; and
- Grants the relief that the court determines to be appropriate.

Child’s Status During Proceedings

During the pendency of any administrative or judicial proceeding regarding a due process complaint, the child involved in the complaint must remain in his or her public agency and the parent may agree to a change in placement if determined to be in the best interest of the child. The hearing officer in a due process hearing may agree with the child's parents that a change in placement is appropriate. If the complaint involves an application for initial admission to public school, the child, with the consent of the parent, must be placed in the public school until the completion of all the proceedings.

In the case of a complaint that involves a three (3) year old child transitioning from Part C to Part B who is no longer eligible for Part C services, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent gives consent for services, then the public agency must provide those special education and related services that are not in dispute.

Attorney's Fees

In any action or proceeding as a part of dispute resolution, if the parent is the prevailing party, the court may award the parent reasonable attorneys' fees as part of the costs awarded. The fees awarded must be based on rates prevailing in the community in which the action or proceeding was filed. These rates must also be consistent with the kind and quality of services provided. No bonus or multiplier may be used in calculating the fees awarded. Funds under Part B of IDEA may not be used to pay attorneys' fees or costs of either party that are related to an action or proceeding related to a due process hearing. The prohibited reimbursement of costs would include depositions, expert witnesses and settlements or costs related to settlements. Part B under IDEA funds may be used for conducting an action or proceeding. These costs may include paying a hearing officer, provision of the location for the hearing and the transcript of the hearing. If the public agency is the prevailing party, the court may also award reasonable attorneys' fees against the attorney of a parent in the following circumstances:

- The complaint is frivolous, unreasonable or without foundation;
- The parent continued to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or
- Against the parent if the parent's request for a due process hearing was presented for any improper purpose such as:
 - To harass;
 - To cause unnecessary delay; and
 - To needlessly increase the cost of litigation.

Award of Fees

No attorneys' fees may be awarded or related costs reimbursed for services performed after the time of a written offer of settlement to the parent:

- If the offer was made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure;
- In the case of an administrative proceeding, the offer is made at any time more than ten (10) days before the proceeding begins;
- The offer is not accepted within ten (10) days; and
- The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

Attorneys' fees may not be awarded relating to any meeting of the IEP Committee

unless the meeting is convened as a result of an administrative proceeding or judicial action or at the discretion of the MDE for mediation. An award of attorneys' fees and related costs may be given to the parent who is the prevailing party and who was substantially justified in rejecting the settlement offer. The court may reduce the amount of attorneys' fees awarded if the court finds that:

- The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;
- The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonable comparable skill, reputation and experience;
- The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- The attorney representing the parent did not provide to the public agency the appropriate information in the request notice for the impartial Due process hearing. These provisions do not apply in any action or proceeding if the court finds that the public agency has unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the law which addresses Procedural Safeguards for children with disabilities and their parents.

CHAPTER 9: CONFIDENTIALITY

Public Agency in this document refers to agencies responsible for providing education to children with disabilities, including the Mississippi Department of Education (MDE), Local Education Agencies (LEAs), Educational Service Agencies (ESAs), and nonprofit public charter schools not a part of an LEA or ESA.

The Mississippi Department of Education, Office of Special Education, requires each public agency to have policies and procedures in effect to ensure the confidentiality of any personally identifiable information collected, used or maintained relative to preschool, elementary and secondary students as required under IDEA and the Family Education Rights and Privacy Act (FERPA).

Definitions

Personally identifiable means information that contains:

- The name of the child, the child's parent, or other family member(s);
- The address of the child or the child's family;
- A personal identifier, such as the child's social security number or student ID number;
- A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty;
- Other information that would make the child's identity easily traceable including information recorded in any way, such as computer media, video or audio materials, digital materials or photographs;
- Any indirect identifier such as the child's date of birth, place of birth or mother's maiden name;
- Other information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person in the state agency's community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or
- Information requested by a person who the State agency reasonably believes knows the identity of the child to whom the education record relates.

Education records mean the type of records covered under the definition of "education records" in 34 CFR §99 of the Family Rights and Privacy Act of 1974. Under FERPA, the term means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. **Participating agency** means any agency or institution that collects, maintains or uses personally identifiable information or from which information is obtained, under Part B of IDEA.

Responsibilities of the Agency for Confidentiality of Records

Each participating agency must protect the confidentiality of personally identifiable information at:

- Collection
- Storage

- Disclosure
- Destruction

The agency must appoint one official to assume responsibility for ensuring the confidentiality of personally identifiable information. Responsibilities of this individual would include:

- Maintaining the data in a locked storage facility;
- Determining who has access to the records;
- Maintaining records of all individuals who had access to the records except parents and appropriate agency staff; and
- Securing parental consent prior disclosure of personally identifiable data, unless allowed by law. All agency personnel collecting or using personally identifiable information must receive training or instruction regarding MDE's policies and procedures for protecting the confidentiality of personally identifiable information.

Access Rights to Personally Identifiable information and Required Procedures

- Each public agency must permit parents to inspect and review any education records relating to their children that are collected, maintained or used by the public agency. The rights of parents regarding education records are transferred to the adult student at age twenty-one (21), taking into consideration the type or severity of the disability.
- The public agency must comply with a request without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP), any due process hearing or resolution session and in no case more than forty-five (45) days after the request has been made.
- An agency may presume that the parent has authority to inspect and review the records relating to his or her child unless the agency has been advised that parent does not have the authority under applicable State laws governing such matters as guardianship, separation and divorce.
- If any education record includes information on more than one child, the parents have the right to inspect and review only the information relating to their child or to be informed of that specific information.
- Upon request, the public agency must provide the parents with a list of the types and locations of education records collected, maintained or used by the public agency.
- The public agency must respond to reasonable requests for explanations and interpretations of the records.
- The public agency must comply with the parent's request for copies of the records containing the information if failure to provide these copies would effectively prevent the parents from exercising the right to inspect and review the records.
- The parent must provide written authorization to the agency if a representative of the parent inspects and reviews the records.

Notice to Parents

Annually, the public agency must give notice to parents concerning the confidentiality regulations using various methods of communication (e.g., website, brochures, newspapers, etc.). Notices must be available in the native language of the children and/or the families of those served by the public agency.

This notice must include:

- A description of the children for whom personally identifiable information is maintained;
- The types of information sought;
- The methods used to gather the information including sources from whom the information is gathered;
- The uses to be made of the information;
- A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention and destruction of personally identifiable information; and
- A description of all of the rights of parents and children regarding this information, including the rights under IDEA and the Family Educational Rights and Privacy Act (FERPA).

Record of Access and Disclosure of Personally Identifiable Information

Each participating agency must keep a record of parties obtaining access to, or requests for disclosure of, education records collected, maintained or used under Part B of IDEA. Record of access by parents and authorized employees of the participating agency does not need to be maintained. The agency must maintain, for public inspection, a current listing of the names and position of those employees within the agency who may have access to the information. For all other parties who obtain access to education records collected and maintained by the public agency, the public agency must keep a record which includes:

- The name of the party;
- The date access was given; and
- The purpose for which the party is authorized to use the records. The agency must maintain the record of access with the education records of the student as long as the records are maintained.

Fees for Copies of Records

Each participating agency may charge a fee for copies of records that are made for parents. However, the charge cannot effectively prevent the parents from exercising their right to inspect and review those records. Fees cannot be charged for the time required to search for or retrieve the records.

Consent for Disclosure of Personally Identifiable Information

Consent for the release of personally identifiable data means that the parent has been fully informed in his or her native language or other mode of communication of all information that will be released. The parent must consent in writing to the disclosure. The parent should understand that the granting of consent is voluntary and may be

revoked at any time. If the parent revokes consent, this action does not negate any disclosure that occurred prior to the revocation of the consent.

The written consent must include:

- A specification of the records to be disclosed;
- The purpose of the disclosure; and
- Identification of the party or parties to whom the disclosure may be made.

The consent must be signed and dated by the parent. Parental consent must be obtained before personally identifiable information is disclosed. At the parent request, the agency must provide a copy of the records disclosed.

Refusal to Give Consent

In a situation where the public agency is seeking consent for the release of records (e.g., educational, medical, psychological, etc.), but the parent refuses to give consent, the public agency may, but is not required to, initiate mediation or due process procedures (refer to Chapter 8: Dispute Resolution).

Consent is not Required for Disclosure

Consent is not required to disclose personally identifiable information to or for the purpose of:

- Other school officials, including teachers, within the public agency whom the agency has determined to have legitimate educational interests.
- Authorized Federal, State or local representatives in connection with an audit or evaluation of the Federal or State supported education programs, or for the enforcement of or compliance with Federal legal requirements which relate to those programs. The information must be protected in a manner that does not permit personal identification of individuals by anyone except the officials referred to above and must be destroyed when no longer needed.
- A financial aid application if the information is necessary for the completion of the application for which the student has applied or which the student has received.
- State and local officials or authorities to whom this information is allowed to be disclosed under State statute concerning the juvenile justice system and the system's ability to effectively serve the student whose records are released.
- Organizations conducting studies for, or on behalf of, educational agencies or institutions to develop, validate or administer predictive tests; administer student aid programs; or improve instruction. Information may only be disclosed if the study is conducted in a manner that does not permit personal identification of parents and students by individuals other than representatives of the organization and the information is destroyed when no longer needed.
- Accrediting organizations to carry out their accrediting functions.
- A judicial order or a lawfully issued subpoena. The public agency must make a reasonable attempt to notify the child's parents of the judicial order or subpoena before releasing the records. Notice to the parents is not required if the disclosure is in compliance with a Federal grand jury subpoena or any other subpoena issued for law enforcement purposes and the court or other issuing agency has ordered

that the existence or the contents of the subpoena or the information furnished not be disclosed.

A public agency designated directory. Public notice must be given to parents of students in attendance and eligible students in attendance at the agency prior to the disclosure. The notice must specify the types of personally identifiable information that the agency has designated as “directory” information.

The parent or eligible student has the right to refuse to let the agency designate any or all of those types of information about the student as directory information. The parent or eligible student must be given a timeline for submitting in writing their refusal to allow any or all of the disclosure.

- The court, without a court order or subpoena, if the public agency has initiated legal action against the parent or student. The information disclosed must be relevant for the agency to proceed with the legal action as plaintiff.
- To the court, without a court order or subpoena, if the parent or eligible student has initiated legal action against the public agency. The information disclosed must be relevant for the agency to defend itself.
- Protecting the health or safety of the child or other individuals in connection with a health or safety emergency.
- The Office for Civil Rights.
- Officials within the Department of Human Services, Department of Corrections, Department of Juvenile Justice and Department of Labor for the purpose of making appropriate educational decisions regarding placements.

Destruction of Personally Identifiable Information

The public agency must inform parent when personally identifiable information collected, maintained or used under this part is no longer needed to provide educational services to the child.

Destruction means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

The information must be destroyed at the request of the parents. The parents have the right to request a copy of the information at no cost.

However, the agency must keep a permanent record of the student’s name, address, telephone number, grades, attendance record, classes attended, grade level completed, and year completed.

Amendments of Records at Parent Request

If a parent believes that information in the education records collected, maintained, or used is inaccurate or misleading or violates the privacy or other rights of the child, the parent may request the public agency to amend the information. The public agency must decide whether to amend the information in accordance with the request. This decision must be made within a reasonable period of time of receipt of the request. If the public

agency decides to refuse to amend the information in accordance with the request, it must inform the parents of the refusal and advise the parent of the right to a hearing. If the public agency agrees to amend the information in accordance with the request, it must notify the parent within a reasonable time period from when the amendment has been completed.

Opportunity for Hearing

If the parent requests a hearing, the public agency provides 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 child. The public agency must hold the hearing within a reasonable time after it has received the request for the hearing from the parent. The parents must be given a notice (within a reasonable amount of time) of the date, time and place of the hearing. Any individual, including an official of the educational agency who does not have direct interest in the outcome of the hearing, may conduct the hearing. The parent must have a full and fair opportunity to present evidence relevant to the issue raised. The parent may, at their own expense, be represented by an attorney(s) licensed to practice law in Mississippi and one or more individuals of their choice. The public agency must make its decision in writing within a reasonable period of time after the hearing. The decision must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reasons for the decision.

Result of the Hearing

If, as a result of the hearing, the public agency determines that evidence presented in the hearing substantiates the parents' charge, the student's record will be amended to correct the error and the parent shall be informed in writing that this amendment has been made. If, as a result of the hearing, the public agency determines that the records are not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the parent shall be informed of this decision and their right to place in their child's record a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the hearing. The statement shall be maintained with the contested part of the record for as long as the record is maintained. If the records of the child or the contested portion are disclosed by the agency to any party, the explanation must also be disclosed to the party.

Referral To and Action by Law Enforcement and Judicial Authorities

If the public agency has reported a crime committed by a child with a disability, the agency may forward copies of the special education and disciplinary records of the child for consideration by the appropriate authorities to whom the agency reported the crime. Parental consent will be required when releasing personally identifiable information except in certain limited circumstances. These circumstances would include:

- The public agency initiates legal action against a parent or student. The public agency may disclose to the court the education records of the student that are relevant for the agency to proceed with the legal action as plaintiff.
- A parent initiates legal action against a public agency. The agency may disclose to the court the education records of the student that are relevant for the agency to defend itself.

- The disclosure is in connection with a health or safety emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Appropriate information concerning disciplinary action taken against the student may also be included if the student's conduct posed a significant risk to the safety or well-being of that student, other students or other members of the school community.
- The student is an alleged perpetrator of a crime of violence or non-forcible sex offense.
- The student has committed a violation of the institution's rules or policies.