

PALAU SPECIAL EDUCATION PROCEDURAL MANUAL



MINISTRY OF EDUCATION
REPUBLIC OF PALAU

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CHILD IDENTIFICATION

CHILD IDENTIFICATION

I. Child Find Activities:

Child identification in the ROP is a continuous, ongoing effort to find, identify by name, village location, and primary area(s) of disability each child suspected of needing special education and related services from birth through 21 years of age.

Child find includes all children residing within Palau between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. This includes children who have not failed or been retained in a course or grade, and is advancing from grade to grade. This also includes children with disabilities who are homeless children or are wards of Palau, highly mobile children including migrant children, and children attending private schools, regardless of the severity of their disability, and who are in need of special education and related services. The activities include identification, location, and evaluation.

Palau adopts the definition of developmental delay as applying to children aged three to five.

School-based Activity: At the end of each quarter, the principal review students' report cards and identify students who may be at risk of failure.

A. Nature and Extent of Participation by Other Agencies

In addition to the work of the MOE, the implementation of child identification activities involves the cooperative efforts of several agencies in the ROP.

1. MOH.

- The ROP Maternity Ward staff conducts medical screening of all newborn children.
- Health operates well-baby clinics in outlying health centers.
- Maternal and Child Health has established a list of children with serious medical and/or disabling conditions. Those known to be "at risk" are also noted.
- ROP Hospital staff provide audiological and vision examinations and refer children with hearing and vision deficits to the Special Education Program of the MOE.
- Shriners' Hospital Team from Honolulu comes to ROP twice a year to provide screening and follow-up for children with physical disabilities.
- A cranio-facial team from the mainland visits the ROP annually to provide screening, treatment, and follow-up for persons with cleft palate and other cranio-facial abnormalities.

2. PCAA.

- The PCAA includes Head Start which serves up to 10% children with disabilities. The Head Start staff screen and identify children aged 4-3 through 5 who have disabilities. Head Start contracts with a local medical clinic to screen all Head Start students annually.
- Head Start works cooperatively with Belau National Hospital (BNH) and the MOE Special Education Program on annual public awareness activities.
- PCAA through the Head Start Program provides counseling services to children and their families and refers children deemed in need of special services.

B. Description of Primary Child Identification Activities

Primary child identification activities include (1) public awareness, (2) screening and (3) referral for evaluation. Each is described below.

1. Public Awareness.

An awareness campaign has been organized to disseminate information to public and professional sectors through a brochure on early childhood and special education

Before any major identification, location or evaluation activities to identify children with disabilities, the Special Education Coordinator shall notify parents throughout the Republic through announcements posted in local grocery stores, radio announcements and notices in the local paper. The Special Education Coordinator shall also document activities that alert members of the community who may not easily understand English or Palauan or who may live in isolated geographic areas.

2. Methods used to increase public awareness include:

- speeches to local service organizations and public meetings;
- articles in local newspapers and other media;
- video presentations for use with service organizations and agencies and on ROP's public access TV station;
- books and articles on disabling conditions and how to work with special needs children available to the public and maintained at the Special Education Program office;
- involvement of the community in awareness activities when possible;
- development of communication links with various agencies that provide services to eligible children and youth within the community;
- Training for regular education principals and staff and other agency personnel about disabling conditions, available services, and responsibilities for referral.

Forms:	Referral form – SE1 Evaluation Plan: Review of Existing Data – SE2 Prior Written Notice for Proposed/Refused Action – SE3 Parent Consent for Evaluation -SE4 Parent Rights (Procedural Safeguards)-SE5
Timeline:	Upon suspicion that child has a disability Initial Evaluation conducted within 60 days
Responsible Person:	Principal

PROCEDURES

I. In-School Referral

Step 1:

Teacher or other school personnel identifies a child as experiencing a school performance problem. Individual completes *Referral form* and submits to the principal.

Step 2:

Principal refers referral to Child Study Team. Principal facilitates a Child Study Team (CST) meeting by scheduling and conducting the meeting.

Step 3:

The CST reviews the child's records and data from the child's teachers and the parents. The CST determines the following:

- Is the child in need of supplementary or intensive instruction?
- If the child is in need of supplementary or intensive instruction, the CST develops and implements the plan for the intervention. The plan shall include timelines for progress monitoring and the next step should the child not respond to the intervention.

Step 4:

School provides intervention. Does the child respond to intervention? If yes, the child continues with grade level program. If no, go to Step 5.

Step 5:

Principal reviews existing evaluation data, if appropriate, with Assessment Team, including the parent and other qualified professionals. This includes reviewing:

- Evaluations and information provided by the parents of the child;
- Current classroom-based, Palau-wide assessments, and classroom-based observations; and,

- Observations by teachers and related service providers.

Based on the review and input from the child's parents, the team identifies what additional data, if any, are needed to determine:

- Whether the child is a child with a disability, and
- The educational needs of the child.
- Present levels of the academic achievement and related developmental needs of the child;
- Whether the child needs special education and related services.

The review is documented on the *Evaluation Plan* form.

NOTE: The group may conduct the review without a meeting, but it must administer such assessments and evaluation measures as may be needed to produce the data identified above. The school will determine the need for a meeting to review existing data. However, it must include parents and other professionals in the review of existing data and document.

Step 6:

Upon completion of evaluation plan, principal or designee completes *Parent Consent for Initial Evaluation/Reevaluation* and *Prior Written Notice* forms.

Step 7:

Principal sends home *Prior Written Notice*, *Parent Rights (Procedural Safeguards)*, and *Parent Consent for Initial Evaluation/Reevaluation* form.

Parental Consent:

- Parental consent for initial evaluation must not be accepted as consent for initial provision of special education and related services.
- The school must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- **For initial evaluations only:**

If the child is a ward of the Palau government and is not residing with the child's parent, the school is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

 - Despite reasonable efforts to do so, the school cannot discover the whereabouts of the parent of the child;
 - The rights of the parents of the child have been terminated in accordance with Palau law; or
 - The rights of the parent to make educational decisions have been transferred by a judge in accordance with Palau law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- **Refusal to evaluate or failure to respond to request for evaluation:**

If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the school may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards including the mediation procedures or the due process procedures, if appropriate, except when it is in conflict with Palau relating to such parental consent.

- The school does not violate its FAPE obligation if it declines to pursue the evaluation.
- If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school may not use the consent override procedures

Step 8:

Upon receipt of *Parent Consent for Initial Evaluation/Reevaluation* form, the school personnel receiving the consent form initials and indicate the date when the form was received. **If the parent does not give consent, STOP HERE. Terminate the referral. If the parent gives consent, go to Step 9.**

Step 9:

Principal submits *Referral form, Evaluation Plan, and Parent Consent for Initial Evaluation/Reevaluation* form to CRT. CRT submits to Data Manager. *Evaluation Plan* is implemented. **GO TO EVALUATION PROCEDURES.**

II. Out-of-School Referral (for current student):

This refers to a referral from an individual outside of the school, but student enrolled in school.

Step 1:

Parent or other individual informs the school that a child is having school performance problems and requests for an evaluation. If school agrees with the parent, go to the next step. Parent completes *Referral* form.

Step 2:

Principal reviews the *Referral* form and agrees with the request. Go to Step 4. Principal provides parent *Prior Written Notice for Proposed/Refused Action* form informing parent of the referral to the Child Study Team. A copy of the *Parent Rights* (Procedural Safeguards) is also attached to the form. If principal does not agree, go to Step 3.

Step 3:

If principal does not agree with the parent's request for an evaluation, the principal completes *Prior Written Notice for Proposed/Refused Action* form and sends home to

the parent with a copy of the *Parent Rights* (Procedural Safeguards). Process stops here pending parent's action upon receiving notice of refusal to evaluate.

Step 4:

Principal refers the child to the Child Study Team. Principal facilitates a Child Study Team (CST) meeting by scheduling and conducting the meeting.

Step 5:

The CST reviews the child's records and data from the child's teachers and the parents. The CST determines the following:

- Is the child in need of supplementary or intensive instruction?
- If the child is in need of supplementary or intensive instruction, the CST develops and implements the plan for the intervention. The plan shall include timelines for progress monitoring and the next step should the child not response to the intervention.
- If the CST agrees that the child is not in need of supplementary instruction, does the CST suspect a disability?
- If YES, the CST documents decision and transmits to the principal.
- If NO, the committee considers other options to address the child's problem.

Step 6:

School provides intervention. Does child respond to intervention? If yes, return to general education program. If no, go to next Step 7.

Step 7:

Principal reviews existing evaluation data if appropriate with the Assessment Team, including the parent and other qualified professionals. This includes reviewing:

- Evaluations and information provided by the parents of the child;
- Current classroom-based, Palau-wide assessments, and classroom-based observations; and,
- Observations by teachers and related service providers.

Based on the review and input from the child's parents, the team identifies what additional data, if any, are needed to determine:

- Whether the child is a child with a disability, and
- The educational needs of the child.
- Present levels of the academic achievement and related developmental needs of the child;
- Whether the child needs special education and related services.

The review is documented on the *Evaluation Plan* form.

NOTE: The group may conduct the review without a meeting, but it must administer such assessments and evaluation measures as may be needed to produce the data identified above.

Step 8:

Principal completes *Prior Written Notice* and *Parent Consent for Initial Evaluation/Reevaluation* form and sends home to parent with Parent Rights (Procedural Safeguards).

Parental Consent:

- Parental consent for initial evaluation must not be accepted as consent for initial provision of special education and related services.
- The school must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.
- **For initial evaluations only**
If the child is a ward of the Palau government and is not residing with the child's parent, the school is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:
 - Despite reasonable efforts to do so, the school cannot discover the whereabouts of the parent of the child;
 - The rights of the parents of the child have been terminated in accordance with Palau law; or
 - The rights of the parent to make educational decisions have been transferred by a judge in accordance with Palau law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.
- **Refusal to evaluate or failure to respond to request for evaluation:**
If the parent of a child enrolled in public school or seeking to be enrolled in public school does not provide consent for initial evaluation, or the parent fails to respond to a request to provide consent, the school may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards including the mediation procedures or the due process procedures, if appropriate, except when it is in conflict with Palau relating to such parental consent.
 - The school does not violate its FAPE obligation if it declines to pursue the evaluation.
- If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school may not use the consent override procedures

Step 9:

Upon receiving consent form, school personnel initials form and indicate the date written consent was received. If the parent **does not give consent**, STOP **HERE**. If parent **gives consent** for the evaluation, **go to STEP 10**.

Step 10:

Principal submits *Referral form, Evaluation Plan, and Parent Consent for Initial Evaluation/Reevaluation* form to the CRT. CRT submits to Data Manager. *Evaluation Plan* is implemented. **GO TO EVALUATION PROCEDURES.**

III. Out of School Referral (Previous student with IEP, but not enrolled)
This refers to a child who is not enrolled and had received services prior to leaving the school, but was not terminated prior to leaving.**Step 1:**

Parent or student (at age of majority) requests to be readmitted to school. Student is first enrolled in school.

Step 2:

Principal reviews student's cumulative file to determine if IEP is current. If IEP is not current, principal places and provides student with services as per last IEP and schedules an IEP review as soon as possible.

Step 3:

If student is in need of reevaluation, principal reviews existing data by completing Evaluation Plan with the IEP Team and determines if a reevaluation is necessary. If reevaluation is necessary, principal completes and sends home *Prior Written Notice for Proposed/Refused Action* and *Parent Consent for Initial Evaluation/Reevaluation* form with copy of *Parent Rights* (Procedural Safeguards). If reevaluation is not necessary, principal sends home *Prior Written Notice* and *Parent Rights*. The school is not required to conduct a reevaluation unless requested by the parent.

Parent Consent for Reevaluation:

- The school must obtain informed parental consent, prior to conducting any reevaluation of a child with a disability.
- If the parent refuses to consent to the reevaluation, the school may, but is not required to, pursue the reevaluation by using the consent override procedures.
- The school does not violate its obligation the FAPE requirements if it declines to pursue the evaluation or reevaluation.
- The informed parental consent need not be obtained if the school can demonstrate that:
 - It made reasonable efforts to obtain such consent; and
 - The child's parent has failed to respond.

Other consent requirements

- Parental consent is not required before:
 - Reviewing existing data as part of an evaluation or a reevaluation; or

- Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.
- In addition to the parental consent requirements, the MOE may require parental consent for other services and activities under IDEA if it ensures that each school in Palau establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.
- A school may not use a parent's refusal to consent to one service or activity to deny the parent or child any other service, benefit, or activity of the school, except as required by this part.
- If a parent of a child who is home schooled or placed in a private school by the parents at their own expense does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a request to provide consent, the school may not use the consent override procedures; and
- The school is not required to consider the child as eligible for services.
- To meet the reasonable efforts requirement, the school must document its attempts to obtain parental consent using phone calls, home visits, and any correspondence.

Step 4:

Upon receipt of *Parent Consent for Initial Evaluation/Reevaluation* form, school personnel initials receiving the form and indicate the date received. Principal submits *Referral* form, *Evaluation Plan*, and *Parent Consent for Initial Evaluation/Reevaluation* form to CRT. CRT submits to Data Manager. *Evaluation Plan* is implemented. **GO TO EVALUATION PROCEDURES.**

IV. Private School Referral

Follow same procedures as Out-of-School (current student) procedures.

V. Off-island Transfer Student with IEP

Step 1:

- Child enrolls in school with an IEP from another island (outside of Republic of Palau) or U.S. state.

Step 2:

- Principal reviews off-island documents. In consultation with parents, the school provides child with a free appropriate public education (FAPE) including services comparable to those described in the child's IEP from the previous education agency until:
 - The MOE conducts an evaluation if determined appropriate; and,

- Develops, adopts, and implements a new IEP, if appropriate, that meets the IEP requirements. **REFER TO EVALUATION AND IEP SECTION.**

Step 3:

To facilitate the transition for an off-island transfer student with an IEP, the MOE must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous public agency in which the child was enrolled. The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the MOE.

VI. Transfer Student with IEP (Within Palau)

A Palau school that enrolls a student with an IEP from another Palau school must provide the same services as that provided on the IEP. As appropriate, the school must determine if an annual review and/or a reevaluation is needed at the time of enrollment.

To facilitate the transition from transfer student with an IEP from another school within Palau, the MOE must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education and related services to the child, from the previous public agency in which the child was enrolled. The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the MOE.

Surrogate Parents

The MOE must ensure that the rights of a child are protected when:

- No parent (as defined in Sec. 300.30) can be identified;
- The MOE, after reasonable efforts, cannot locate a parent;
- The child is a ward of Palau under the laws of Palau; or
- The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)).

Duties of public agency

The duties of the MOE under the above paragraph of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method:

- For determining whether a child needs a surrogate parent; and
- For assigning a surrogate parent to the child.

Wards of the State

In the case of a child who is a ward of the State, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements below in this section.

Criteria for selection of surrogate parents

- The MOE may select a surrogate parent in any way permitted under Palau law.
- The MOE must ensure that a person selected as a surrogate parent:
 - Is not an employee of the MOE, or any other agency that is involved in the education or care of the child;
 - Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents; and
 - Has knowledge and skills that ensure adequate representation of the child.

Non-employee requirement; compensation

A person otherwise qualified to be a surrogate parent under the above paragraph in this section is not an employee of the MOE solely because he or she is paid by the MOE to serve as a surrogate parent.

Unaccompanied homeless youth

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to above paragraph of this section, until a surrogate parent can be appointed that meets all of the requirements above.

Surrogate parent responsibilities

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

- The identification, evaluation, and educational placement of the child; and
- The provision of FAPE to the child.

MOE's responsibility

The MOE must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a MOE determines that the child needs a surrogate parent.

EVALUATION/ REEVALUATION

EVALUATION

Forms: Parent Consent for Initial Evaluation/Reevaluation – SE4
Evaluation Plan – SE2
Summary of Evaluation – SE6A

Timeline: **Initial Evaluation:** Evaluation must be conducted within 60 days of receiving parental consent for the evaluation.

Reevaluation: Reevaluation may occur not more than once a year, unless the parent and the MOE agree otherwise, and must occur at least once every 3 years, unless the parent and the MOE agree that a reevaluation is unnecessary.

Responsible Person: Principal

Procedures:

Step 1:

The CRT verifies that parent consent has been received and a copy has been transmitted with the *Evaluation Plan*.

Step 2:

The CRT ensures the *Evaluation Plan* is implemented as per procedures below:

- Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining:
 - Whether the child is a child with a disability; and
 - The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);
- Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and
- Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.
- Assessments:
 - Are selected and administered so as not to be discriminatory on a racial or cultural basis;
 - *Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what*

the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer, if the child is in need of an interpreter, the CRT shall facilitate obtaining an interpreter prior to the evaluation;

- Are used for the purposes for which the assessments or measures are valid and reliable;
- Are administered by trained and knowledgeable personnel; and
- Are administered in accordance with any instructions provided by the producer of the assessments.
- Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.
- Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).
- The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;
 - *If the child requires any medical evaluation such as vision and/or hearing, the CRT facilitates the child obtaining the evaluations at no cost to the parent;*
- Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, and to ensure prompt completion of full evaluations.
- In evaluating each child with a disability, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.
- Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.
- Assessments include:
 - Evaluations and information provided by the parents of the child;
 - Current classroom-based, local, or Palau assessments, and classroom-based observations; and
 - Observations by teachers and related services providers;
- Additional procedures if child is suspected of having a specific learning disability:
 - Child is observed in the child's learning environment (including the regular classroom setting) to document the child's academic performance and behavior in the areas of difficulty. If child is of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.

Step 3:

Upon completion of the evaluation, the assessment members submit evaluation reports to the CRT. The CRT completes the *Summary of Evaluation*. For evaluations that only deal with related services, the related service personnel will complete the *Summary of Evaluation* and submit to CRT.

The CRT will notify principal that the evaluation has been completed and principal schedules the eligibility meeting.

*In the case of Head start, the administrator is the Disability Service Manager.

Evaluations before Change in Eligibility

The MOE must evaluate a child with a disability as per IDEA requirements before determining that the child is no longer a child with a disability.

The evaluation is not required before the termination of a child's eligibility under Part B of IDEA due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under Palau law.

For a child whose eligibility terminates due to graduation with a regular diploma, the MOE must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.

Independent Educational Evaluation (IEE)

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

Public expense means that the MOE either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with Sec. 300.103.

1. The parents of a child with a disability have the right to obtain an independent educational evaluation of the child, as per requirements below.
2. The MOE must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the MOE's criteria applicable for independent educational evaluations.
3. Parent Right to Evaluation at Public Expense:
The conditions for the independent educational evaluation are as follows:

- If a parent requests an independent educational evaluation at public expense, the MOE must, without unnecessary delay, either:
 - File a due process complaint to request a hearing to show that its evaluation is appropriate; or
 - Ensure that an independent educational evaluation is provided at public expense, unless the MOE demonstrates in a hearing that the evaluation obtained by the parent did not meet MOE's criteria.
- If the MOE files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.
- If a parent requests an independent educational evaluation, the MOE may ask for the parent's reason why he or she objects to the MOE's evaluation. However, the MOE may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at MOE's expense or filing a due process complaint to request a due process hearing to defend the MOE's evaluation.
- A parent is entitled to only one independent educational evaluation at MOE's expense each time the MOE conducts an evaluation with which the parent disagrees.
- Parent-initiated evaluations
If the parent obtains an independent educational evaluation at MOE's expense or shares with the MOE an evaluation obtained at private expense, the results of the evaluation:
 - Must be considered by the MOE, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and
 - May be presented by any party as evidence at a hearing on a due process complaint regarding that child.
- Requests for evaluations by hearing officer
If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at MOE's expense.
- Agency criteria
If an independent educational evaluation is at MOE's expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the MOE uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

Except for the criteria described above, the MOE may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense

Step 4: Go to Section on ELIGIBILITY.

ELIGIBILITY

ELIGIBILITY

Forms: Parent Notice of Meeting – SE-7A
IEP Committee Meeting Notice – SE-7B
Student Invitation to Meeting – SE-7C
Summary of Evaluation – SE6A
Summary of Eligibility-Parent Notice: Eligibility Determination – SE6B
Summary of Eligibility-Parent Notice: Specific Learning Disability Documentation – SE6C (if applicable)
Prior Written Notice of Proposed/Refused Action – SE3

Timeline: Within a reasonable time after completion of evaluation

Responsible Person: Principal

PROCEDURES:

Pre-Eligibility Meeting

Step 1:

Principal contacts parent to schedule Eligibility Meeting at a date, time, and location that are convenient for the parents. After mutually agreeing on a date, time, and location, principal sends home *Parent Notice of Meeting* and *Student Invitation to Meeting* (if appropriate such as for discussion of transition) form.

Step 2:

Principal or designee sends out *Individualized Education Program (IEP) Meeting Notice* to IEP Team members.

The eligibility meeting, at a minimum, must include the following individuals:

- The parents of the child;
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
- Not less than one special education teacher of the child, or where appropriate, not less than one special education provider (i.e. related services provider) of the child;
- A representative of the Ministry of Education who:
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - Is knowledgeable about the general education curriculum; and
 - Is knowledgeable about the availability of resources of the Ministry of Education.

Note: In Palau, this would mean a school administrator or the Special Education administrator.

- An individual who can interpret the instructional implications of evaluation results, who may be a member of the team;
- At the discretion of the parent or the MOE, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate [It is the inviting party that determines whether the individual has the knowledge or expertise]; and
- Whenever appropriate, the child with a disability.
- If the child is suspected of having a specific learning disability, the additional members must be included:
 - A regular classroom teacher qualified to teach a child of his or her age; or
 - For a child of less than school age, an individual qualified by the MOE to teach a child of his or her age; and
 - At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

NOTE: The MOE is required to notify parents of any individual that will be invited to the meeting. The parent is not required to notify the school of other individuals that they will be inviting to the meeting.

Eligibility Meeting

Step 3:

The principal facilitates the meeting. The meeting commences with introduction of members and review of purpose of meeting and agenda (to determine eligibility and educational needs).

Step 4:

The principal provides a copy of the evaluation report to the parent.

Step 5:

The IEP team reviews the results of the evaluation to include the following information:

- Variety of sources, including aptitude and achievement tests, current classroom-based assessment, Palau-wide assessments, and classroom-based observations;
- Parent input;
- Teacher recommendations;
- Information about the child's physical condition;
- Information about child's social or cultural background;
- Adaptive behavior; and
- If the child has participated in a process that assesses the child's response to scientific, research-based intervention:
 - The instructional strategies used and the student-centered data collected; and

- The documentation that the child's parents were notified about:
 - Palau's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;
 - Strategies for increasing the child's rate of learning; and

The principal ensures that information obtained from all of these sources is documented and carefully considered on the *Summary of Evaluation* form.

Step 6:

The IEP Team determines if the determinant factor for eligibility determination is:

- Lack of appropriate instruction in reading, including the essential components of reading instruction;
- Lack of appropriate instruction in math; or
- Limited English proficiency; and if the child does not otherwise meet the eligibility criteria.

If one or more of the above factors is the determinant factor for eligibility determination, documentation is provided and the child must not be determined eligible for special education and related services.

Step 7:

Using the *Description of Impairment Areas* as a guide, the IEP Team determines if the child meets the criteria for a child with a disability and if the child is in need of special education and related services. The team must also consider the factors described in Step 6 and provide supporting documents as part of the packet. The team completes *Summary of Eligibility* form. If the child is not identified as a child with a specific learning disability, complete *Summary of Eligibility* form and go to Step 9.

Step 8:

Additional Procedures for Identifying Children with a Specific Learning Disability

The IEP Team must agree that:

- The child does not achieve adequately for the child's age or to meet Palau-approved grade-level standards in one or more of the following areas, when provided with learning experiences and instruction appropriate for the child's age or Palau-approved grade-level standards:
 - Oral expression.
 - Listening comprehension.
 - Written expression.
 - Basic reading skill.
 - Reading fluency skills.
 - Reading comprehension.
 - Mathematics calculation.
 - Mathematics problem solving.

- The child does not make sufficient progress to meet age or Palau-approved grade-level standards in one or more of the areas identified above when using a process based on the child's response to scientific, research-based intervention; or
- The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, Palau-approved grade-level standards, or intellectual development, that is determined by the group to be relevant to the identification of a specific learning disability, using appropriate assessments, as per IDEA requirements; and
 - The findings under are not primarily the result of:
 - A visual, hearing, or motor disability;
 - Mental retardation;
 - Emotional disturbance;
 - Cultural factors;
 - Environmental or economic disadvantage; or
 - Limited English proficiency.
 - To ensure that underachievement in a child suspected of having a specific learning disability is not due to lack of appropriate instruction in reading or math, the group must consider, as part of the evaluation:
 - Data that demonstrate that prior to, or as a part of, the referral process, the child was provided appropriate instruction in regular education settings, delivered by qualified personnel; and
 - Data-based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the child's parents.

The team completes *Summary of Eligibility Parent Notice: Specific Learning Disability Documentation* form.

Step 9:

The principal provides parents with a copy of the evaluation and *Summary of Eligibility Parent Notice: Eligibility Determination* form and the *Summary of Eligibility Parent Notice: Specific Learning Disability Documentation* form if the child is suspected of having a specific learning disability.

Step 10:

If the child is determined eligible, the principal facilitates the IEP meeting immediately following the eligibility meeting (if the parents were informed that it would follow should the child be eligible) or schedules the IEP within 30 calendar days of determining eligibility.

NOTE: Nothing in the Part B of the IDEA requires that children be classified by their disability so long as each child who has a disability that is listed under IDEA and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the IDEA.

Go to Development, Review, and Revision of IEP!

**DEVELOPMENT,
REVIEW, AND
REVISION OF
INDIVIDUALIZED
EDUCATION
PROGRAM (IEP)**

Development, Review, and Revision of the Individualized Education Program (IEP)

Forms: Parent Notice of Meeting – SE7A
IEP Committee Meeting Notice – SE7B
Student Invitation to Meeting – SE7C
IEP Meeting Attendance/Excusal – SE7D
Parent Prior Written Notice of Proposed/Refused Action - SE3
Parental Consent for Services – SE9A
Individualized Education Program (IEP) – SE8

Timeline: **Initial IEP:** Within 30 calendar days of the determination of eligibility
Annual IEP: On or before anniversary date of previous IEP
NOTE: IEPs must be in effect at the beginning of each year

Responsible Person: Principal or Designee

PROCEDURES:

(Unless indicated, the procedures are the same for the Annual Review meeting.)

Scheduling and Parent Notification

Step 1:

Initial IEP Meeting:

Principal contacts parent to schedule IEP meeting at a date, time, and location that is convenient for the parents. If this is an initial IEP meeting and it is to be held immediately after the eligibility meeting, the principal informs the parent and agreed upon when scheduling the eligibility meeting. If the parent agrees, the appropriate section of the form must be checked on the notice prior to sending out notice for eligibility meeting.

After mutually agreeing on a date, time, and location, principal sends home *Parent Notice of Meeting* and *Student Invitation to Meeting* (if appropriate such as for discussion of transition and at age of majority) form.

IEP Review:

The principal must schedule the meeting on/or before the anniversary date of the previous IEP. Principal contacts parent to schedule IEP meeting at a date, time, and location that is convenient for the parents. After mutually agreeing on a date, time, and

location, principal sends home *Parent Notice of Meeting* and *Student Invitation to Meeting* (if appropriate such as for discussion of transition and at age of majority) form.

Parent Notification Requirement:

The principal must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including:

- Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
- Scheduling the meeting at a mutually agreed on time and place.

Information provided to parents:

The parent notice of the meeting must:

- Indicate the purpose, time, and location of the meeting and who will be in attendance; and
- Inform the parents of the provisions relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child.
- For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must:
 - Indicate:
 - That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child; and
 - That the school will invite the child; and
 - Identify any other agency that will be invited to send a representative and obtain consent for the agency to attend the meeting.

Purpose is Transition

If the child is 15 and will be turning 16 during this IEP period, transition must be discussed and the child must be invited to attend as well as any agency responsible for paying for and/or providing transition services. Principal provides child with the *Student Invitation to Meeting* form.

Other methods to ensure parent participation:

If neither parent can attend an IEP Team meeting, the school must use other methods to ensure parent participation, including individual or conference telephone calls.

Step 2:

Principal notifies IEP Team committee members of the scheduled IEP meeting by sending out the *Individualized Education Program (IEP) Committee Meeting Notice*.

The IEP Team committee must include at a minimum the following participants:

- The parents of the child;
- Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);

- A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of:
 - Appropriate positive behavioral interventions and supports and other strategies for the child; and
 - Supplementary aids and services, program modifications, and support for school personnel.
- Must participate in the review and revision of the IEP of the child.
- Not less than one special education teacher of the child, or where appropriate, not less than one special education provider (e.g. related services provider of the child);
- A representative of the Ministry of Education who:
 - Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
 - Is knowledgeable about the general education curriculum; and
 - Is knowledgeable about the availability of resources of the Ministry of Education.
- Note:** In Palau, this would mean a school administrator (e.g. the Principal or designee) or the Special Education administrator.
- An individual who can interpret the instructional implications of evaluation results, who may be a member of the team;
- At the discretion of the parent or the MOE, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate (The determination of the knowledge or special expertise of any individual described in this section must be made by the party [parents or school] who invited the individual to be a member of the IEP Team).
NOTE: The MOE must notify parents of any individual that they are inviting to the meeting. The parent is not required to inform the school if they are bringing someone to the meeting.
- Whenever appropriate, or upon reaching the age of majority, or whenever the purpose of the meeting will be the consideration of the postsecondary goals for the child and the transition services needed to assist the child in reaching those goals, the child with a disability;
NOTE: If the child does not attend the IEP Team meeting, the school must take other steps to ensure that the child's preferences and interests are considered; and
- **Transition Services Participants:** If transition is being discussed and to the extent appropriate, a representative of any participating agency that is likely to be responsible for providing or paying for transition services must be invited, with the consent of the parents or a child who has reached the age of majority.

IEP Team Member attendance

FOR EXTENUATING CIRCUMSTANCES ONLY!

A member of the IEP Team described above is not required to attend an IEP Team meeting, in whole or in part, if the parent of a child with a disability **and** the MOE agree, ***in writing***, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting. Complete Part A of ***IEP Meeting Attendance/Excusal*** form.

IEP Team Member Excusal

FOR EXTENUATING CIRCUMSTANCES ONLY!

A member of the IEP Team described above may be excused from attending an IEP Team meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if:

- The parent, *in writing*, and the MOE consent to the excusal; and
- The member submits, in writing to the parent and the IEP Team, input into the development of the IEP prior to the meeting.

Complete Part B of the *IEP Meeting Attendance/Excusal Form*.

Conducting an IEP Team meeting without a parent in attendance

A meeting may be conducted without a parent in attendance if the school is unable to convince the parents that they should attend. In this case, the school must keep a record of its attempts to arrange a mutually agreed on time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parents and any responses received; and
- Detailed records of visits made to the parent's home or place of employment and the results of those visits.

Use of interpreters or other action, as appropriate:

The school must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

Step 3:

The principal or designee confirms attendance at the IEP meeting with the parents and the committee members. The principal ensures that the parents will understand the proceedings. If an interpreter is needed, the principal ensures that one is available for the duration of the meeting. The principal ensures that the teachers and other service providers are prepared with appropriate reports.

Step 4:

Development of the IEP

In developing each child's IEP, the IEP Team must consider;

- The strengths of the child;
- The concerns of the parents for enhancing the education of their child;
- The results of the initial or most recent evaluation of the child; and
- The academic, developmental, and functional needs of the child.

The principal or designee facilitates the IEP meeting by discussing the IEP components and completes the documentation on the IEP:

a. Postsecondary goals (if age appropriate as determined by IEP Team):

When the child turns 16 years of age (or younger if appropriate) or if the child will be 16 during the IEP in effect, and updated annually, the IEP Team must determine appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills. All other sections of the IEP should be driven by the postsecondary goals.

Example: Postsecondary goal for Employment: Student will be employed as an Office Technician.

- b. A statement of the child's **present levels of academic achievement and functional performance**, including:
- How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or
 - For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;
 - The IEP team must consider:
 - The strengths of the child;
 - The concerns of the parents for enhancing the education of their child;
 - The results of the initial or most recent evaluation of the child; and
 - The academic, developmental, and functional needs of the child.

Example: Academic achievement present levels in reading: Child is able to comprehend reading materials on the 4th grade level (Reading Comprehension).

Functional Performance: Child does not participate in nonacademic activities such as lunch, assemblies, and field trips.

Annual Reviews:

In addition to the above, the annual IEP review must also address:

- Any lack of expected progress toward the annual goals, and in the general education curriculum, if appropriate;
- The results of any reevaluation;
- Information about the child provided to, or by, the parents;
- The child's anticipated needs; or
- Other matters.

- c. A statement of **measurable annual goals**, including academic and functional goals designed to:
- Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and
 - Meet each of the child's other educational needs that result from the child's disability;
 - For children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of **short-term objectives**.

Example: Measurable annual goal - Child will decode and comprehend 6th grade reading materials as measured by the Wechsler Individual Achievement test (WIAT).

Example: Measurable functional goal: Child will participate with age-peers 100% of the time in nonacademic activities such as lunch, field trips, and assemblies.

d. A description of:

- How the child's **progress toward meeting the annual goals will be measured;** and
- **When periodic reports on the progress** the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) **will be provided;**

Example: Child's progress will be measured by informal and formal assessment tools. Reports on the progress will be provided at least quarterly with the report card.

e. A statement of the special **education and related services and supplementary aids and services**, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child:

- To advance appropriately toward attaining the annual goals;
- To be involved in and make progress in the general education curriculum, and to participate in extracurricular and other nonacademic activities; and
- To be educated and participate with other children with disabilities and nondisabled children in extracurricular and other nonacademic academic activities.

Examples:

Special education: Individualized reading instruction 5xweek for 45 minutes.

Related Services: Speech therapy 2xweek for 30 minutes each session

Supplementary aids and services: Tutoring a minimum of 30 minutes to review social studies and science content.

Program modifications: Taped readings for social students and science subject areas.

Supports for school personnel: Consulting services 1xweek for 30 minutes to support the teacher in modifying instruction for the child with a specific learning disability.

f. An **explanation of the extent**, if any, to which the **child will not participate with nondisabled children** in the regular class and in extracurricular and other nonacademic activities.

Example: Child will not participate English class as his needs require intensive instruction in a small group setting.

- g. A statement of any **individual appropriate accommodations** that are necessary to measure the academic achievement and functional performance of the child on Palau district wide assessments consistent; and if the IEP Team determines that the child must take an alternate assessment instead of the Palau district wide assessment of student achievement, a statement of why:
- The child cannot participate in the regular assessment; and
 - The particular alternate assessment selected is appropriate for the child.
- h. The **projected date for the beginning of the services and modifications**, and the **anticipated frequency, location, and duration** of those services and modifications.
- i. The **transition services** (including courses of study) needed to assist the child in reaching the postsecondary goals.
Complete section on IEP on *Postsecondary Goals and Transition Courses of Study/Transition services*.

Participating agency failure:

If a participating agency, other than the MOE, fails to provide the transition services described in the IEP, the school must reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in the IEP.

Nothing in Part B of the IDEA relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to children with disabilities who meet the eligibility criteria of that agency.

- j. **Consideration of special factors.** The IEP Team must consider the following:
- **Behavior:**
In the case of a child whose **behavior** impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior; conduct a functional behavior assessment and develop a Positive Behavior Support Plan if appropriate or revise one if one has already been developed.
 - **Limited English Proficiency:**
In the case of a child with **limited English proficiency**, consider the language needs of the child as those needs relate to the child's IEP.
 - **Blind or Visually Impaired:**
In the case of a child who is **blind or visually impaired**, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child.

- **Communication:**
Consider the ***communication needs of the child***, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode.
- **Assistive Technology:**
Consider whether the child needs ***assistive technology devices and services***. Determine what functional skills the child is not able to make progress in the academic and/or functional areas and determine whether the child needs an assistive technology device and/or service in order to make progress.

K. Transfer of rights at age of majority

- Beginning not later than one year before the child reaches the age of majority under Palau law, the IEP must include a statement that the child and the parents have been informed of the child's rights under Part B of the IDEA, if any, that will transfer to the child on reaching the age of majority.
- The exception is for a child with a disability who has been determined to be incompetent under Palau law.
- All rights accorded to parents under Part B of the IDEA transfer to children who are incarcerated in an adult or juvenile, Palau correctional institution.
- Whenever Palau provides for the transfer of rights under Part B of IDEA, the MOE notifies the child and the parents of the transfer of rights.

Special Rule

Upon reaching the age of majority for some children, the Special Education office appoints the parent of the child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the IDEA if, under Palau law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

L. Extended School Year Services

The term extended school year services means special education and related services that:

- Are provided to a child with a disability:
 - Beyond the normal school year of the MOE;
 - In accordance with the child's IEP; and
 - At no cost to the parents of the child; and
- Meet the standards of the MOE.

- The MOE must ensure that extended school year services are available as necessary to provide FAPE, consistent with the requirements below.
- Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, that the services are necessary for the provision of FAPE to the child.
- In implementing the requirements of this section, the MOE may not:
 - Limit extended school year services to particular categories of disability; or
 - Unilaterally limit the type, amount, or duration of those services.

M. Nonacademic Services

- The MOE must take steps, including the provision of supplementary aids and services determined appropriate and necessary by the child's IEP Team, to provide nonacademic and extracurricular services and activities in the manner necessary to afford children with disabilities an equal opportunity for participation in those services and activities.
- Nonacademic and extracurricular services and activities may include counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the MOE, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the MOE and assistance in making outside employment available.

N. Physical Education

Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE, unless the MOE enrolls children without disabilities and does not provide physical education to children without disabilities in the same grades.

Regular physical education

Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless:

- The child is enrolled full time in a separate facility; or
- The child needs specially designed physical education, as prescribed in the child's IEP.

Special physical education

If specially designed physical education is prescribed in a child's IEP, the public agency responsible for the education of that child must provide the services directly or make arrangements for those services to be provided through other public or private programs.

Education in separate facilities

The MOE responsible for the education of a child with a disability who is enrolled in a separate facility must ensure that the child receives appropriate physical education services in compliance with this section.

O. Program Options

In developing the IEP, the school must take steps to ensure that its children with disabilities have available to them the variety of educational programs and services available to nondisabled children in the area served by the MOE, including art, music, industrial arts, consumer and homemaking education, and vocational education

Step 6:

Initial IEP:

If this is an initial IEP, the principal must obtain parental consent for initial provision of special education and related services.

Parent Consent for Services:

- The principal must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.
- The principal must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.
- If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the school:
 - May not use the mediation procedures or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
 - Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the school requests consent; and
 - Is not required to convene an IEP Team meeting or develop an IEP for the child for the special education and related services for which the MOE requests such consent. This is not applicable as the MOE will obtain consent after the development of the IEP.

If the parent refuses to give consent for the provision of special education and related services, the principal obtains signature of committee members, terminates the referral and submits copies of documents to the parents and the special education office.

Annual Review:

Parent consent is not required for continued provision of special education and related services. Parent signature is a documentation of attendance and not consent for provision of special education and related services.

Step 7:

The principal obtains signatures from the IEP committee members. The signature is documentation of attendance. Upon completion of the IEP, the principal or designee must:

- Provide the parent (s) with a copy of the IEP;
- Ensure the child's IEP is accessible to each general education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and each teacher and provider is informed of:
 - His or her specific responsibilities related to implementing the child's IEP; and
 - The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP; and,
- Ensure as soon as possible following development of the IEP, the special education and related services are made available to the child in accordance with the child's IEP.

Step 8:

The principal files original copy in school files and gives a copy to the SPED office. The school must ensure that there is no delay in implementing a child's IEP, including any case in which the payment source for providing or paying for special education and related services to the child is being determined.

Revocation of Consent:

- If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school:
 - May not continue to provide special education and related services to the child, but must provide prior written notice in before ceasing the provision of special education and related services;
 - May not use the mediation procedures or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;
 - Will not be considered to be in violation of the requirement to make available FAPE to the child for the failure to provide the child with the special education and related services for which the public agency requests consent.
- Complete *Revocation of Consent for Provision of Special Education and Related Services* form.

Changes to the IEP

- In making changes to a child's IEP after the annual IEP Team meeting for a school year, the parent of a child with a disability and the school may agree not to convene an IEP Team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP. The principal obtains parent signature on *Amendment to IEP* form and documents the changes on this form.
- If changes are made to the child's IEP in accordance with this section, the school must ensure that the child's IEP Team is informed of those changes.

Amendments to the IEP

- Changes to the IEP may be made by either the entire IEP Team at an IEP meeting, or as provided in the previous paragraph of this section, by amending the IEP rather than by redrafting the entire IEP. If a parent does not agree, the principal must schedule an IEP meeting. If the parent is in agreement, the principal obtains parent signature on *Amendment to IEP* form, signs the form and documents the changes on this form.

Upon request, a parent must be provided a revised copy of the IEP with the amendments incorporated.

Consolidation of IEP Team meetings

To the extent possible, the school must encourage the consolidation of reevaluation meetings for the child and other IEP team meetings for the child.

IEPs for children who transfer from one school in Palau to another

If a child with a disability transfers from one public school to another in Palau, the new school must adopt the IEP from the previous school unless the new school, in consultation with parents feels that it is necessary to conduct an IEP review.

IEPs for children who transfer from another island or from a U.S. State

If a child with a disability (who had an IEP that was in effect in a previous school system in another island or a U.S. State) transfers to and enrolls in a new school within the same school year in Palau, the new school (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous school system), until the new school:

- Conducts an evaluation (if determined to be necessary by the new school); and
- Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in Part B of IDEA.

Transmittal of records

To facilitate the transition for a child described in previous section:

- The new school in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous school in which the child was enrolled; and
- The previous school in which the child was enrolled must take reasonable steps to promptly respond to the request from the new school.

Children with disabilities in adult prisons:

- Requirements that do not apply. The following requirements do not apply to children with disabilities who are convicted as adults under Palau law and incarcerated in adult prisons:
 - The requirements relating to participation of children with disabilities in general assessments.

- The requirements relating to transition planning and transition services do not apply with respect to the children whose eligibility under Part B of the IDEA will end, because of their age, before they will be eligible to be released from prison based on consideration of their sentence and eligibility for early release.
- Modifications of IEP or placement.
 - Subject to the above paragraph in this section, the IEP Team of a child with a disability who is convicted as an adult under Palau law and incarcerated in an adult prison may modify the child's IEP or placement if the MOE has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
 - The requirements relating to IEPs and LRE, do not apply with respect to the modifications described above.

Private school placements by the MOE:

- Developing IEPs.
 - Before the MOE places a child with a disability in, or refers a child to, a private school or facility, the MOE must initiate and conduct a meeting to develop an IEP for the child.
 - The MOE must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the MOE must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.
- Reviewing and revising IEPs.
 - After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the MOE.
 - If the private school or facility initiates and conducts these meetings, the MOE must ensure that the parents and an MOE representative:
 - Are involved in any decision about the child's IEP; and
 - Agree to any proposed changes in the IEP before those changes are implemented.
- Responsibility
 - Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the MOE.

**PLACEMENT IN
THE LEAST
RESTRICTIVE
ENVIRONMENT**

Placement in the Least Restrictive Environment

Forms: Placement in Least Restrictive – SE13
Prior Written Notice of Proposed/Refused Action– SE 3
Individualized Education Program – SE 8

Timeline: Upon completion of development of IEP

Responsible Person: Principal or Designee

NOTE: The MOE must ensure that the parents of the child with a disability are members of any group that makes decisions on the educational placement of their child.

PROCEDURES

Step 1:

The principal or designee discusses the continuum of placement after the development of the Individualized Education Program (IEP). In considering the placement, the IEP Team must ensure that:

- Children with disabilities are educated with children who are nondisabled to the maximum extent appropriate; and
- Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment (e.g. regular class) occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.
- Palau funding mechanism must not result in placements that violate the LRE requirement.
- Palau must not use a funding mechanism by which Palau distributes funds on the basis of the type of setting in which the child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.

Continuum of alternative Placements:

The MOE must ensure that a continuum of placements is available to meet the needs of children with disabilities for special education and related services.

The continuum must include:

- Instruction in regular classes
- Special classes
- Special schools

- Home instruction
- Instruction in hospitals and institutions

The MOE must make provisions for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement.

Definition of supplementary aids and services:

Means aids, services, and other supports that are provided in general education classes, other education-related settings, and in extracurricular and nonacademic settings, to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with LRE requirements.

Step 2:

The IEP team determines the placement based on the following guidelines below:

In determining the educational placement, the principal must ensure that:

- The placement decision:
 - Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
 - Is made in conformity with the LRE requirements.
- The child's placement:
 - Is determined at least annually;
 - Is based on the child's IEP; and
 - Is as close as possible to the child's home.
- Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
- In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quality of services that he or she needs; and
- A child with a disability is not removed from education in age-appropriate regular classroom solely because of needed modifications in the general education curriculum.

Nonacademic settings

In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities, the MOE must ensure that each child with a disability participates with nondisabled children in the extracurricular services and activities to the maximum extent appropriate to the needs of that child. The MOE must ensure that each child with a disability has the supplementary

aids and services determined by the child's IEP Team to be appropriate and necessary for the child to participate in nonacademic settings.

Residential Placement

If placement in a public or private residential program is necessary to provide special education and related services to a child with a disability, the program, including non-medical care and room and board, must be at no cost to the parents of the child.

Children in public or private institutions

Except for the requirements regarding MOE's responsibility for general supervision for some individuals in adult prisons, the MOE ensures that the LRE requirement is effectively implemented, including, if necessary, making arrangements with public and private institutions (such as a memorandum of agreement or special implementation procedures).

Step 3:

The IEP Team reaches agreement on the placement. The principal completes the LRE form. If the parent disagrees with the placement, the principal must inform the parents of their parent rights relating to resolving the disagreement. If the parents exercise their right to utilize mediation and/or due process hearing complaint process, the child remains in the current placement until the matter is resolved.

If there is no disagreement, the principal attaches the LRE form to the IEP form. The principal ensures that a copy is provided to the parents and the Special Education office.

NOTE: Consent is not required for placement if this is an annual review. Consent is only required for the initial provision of special education and related services.

Technical assistance and training activities.

The MOE, through the Special Education program, carries out activities to ensure that teachers and administrators in all public agencies:

- Are fully informed about their responsibilities for implementing the LRE requirement and
- Are provided with technical assistance and training necessary to assist them in this effort.

Transition to High School:

If the initial IEP or Annual IEP is going to expire during the following school year, the IEP Team must also discuss the placement for the following school year if the child is transitioning to high school at the beginning of the following year in which the current IEP is still in effect.

Special Procedures for Children with Disabilities Incarcerated in Adult Prisons:

The following requirements do not apply to students with disabilities who are convicted as adults under Palau law and incarcerated in adult prisons.

- The student's IEP Team may modify the student's IEP or placement notwithstanding the IEP requirements of least restrictive environment and contents of the IEP, if the MOE has demonstrated a bonafide security or compelling penological interest that cannot otherwise be accommodated.

DISCIPLINING CHILDREN WITH DISABILITIES

Disciplining Children with Disabilities

Forms: Parent Prior Written Notice for Proposed/Refused Action – SE3
Parent Rights (Procedural Safeguards) – SE5
Manifestation Determination Review – SE14A
Individualized Education Program (IEP) – SE8

Timeline:

- ♦ Parent Notice given on the date on which the decision is made to make a removal that constitutes a change of placement
- ♦ For Manifestation Determination: Within 10 days of determination to remove child for disciplinary reasons for more than 10 days
- ♦ For provision of services after removal: On the 11th day of removal

Responsible Person: Principal

PROCEDURES:

1. Child with a disability violates a student code of conduct (i.e. breaks a school rule).
2. Depending on the violation, school personnel takes one of the actions below:

Action A: Proposes to remove the child for less than 10 consecutive days and total for the year is less than 10 cumulative school days.

Action B: Proposes to remove the child for less than 10 consecutive days but total removals are more than 10 school days in the school year.

Action C: Proposes to remove the child for 11 or more consecutive school days.

Action to be taken:

Action A:

1. School removes child for less than 10 consecutive days.
2. School is not required to provide educational services when removing a child with a disability for less than 10 consecutive days if they do not provide services for students without disabilities who are removed for the same amount of time.

Action B:

1. School removes the child for less than 10 consecutive days but removals total more than 10 school days in the school year.

2. The school must determine if the current removal is a pattern of removal that may be considered a change of placement.
3. If the determination is NO, then the school must by the 10th cumulative school day of removal in the same school year, consult with at least one of the student's teachers to determine the extent to which FAPE services are needed to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals.
4. If the determination is YES, then the IEP Team must make a manifestation determination. Go to Section on Manifestation Determination.
5. If the IEP Team determines there is no manifestation between disability and the behavior in question, the school may remove the child for the number of days specified.
6. If the IEP Team determines there is a manifestation, proceed with procedures for removals of more than 10 days.

Action C:

1. School proposes to remove the child for more 11 or more consecutive days. The removal of a child for more than 10 consecutive days is considered a change of placement.
2. School notifies parents immediately of the decision to change the placement for disciplinary reasons, and provides them with a copy of the parent rights (procedural safeguards).
3. Within 10 school days of decision to remove student for disciplinary reasons the school, the parent (s) and relevant members of the IEP Team must review relevant information and make a manifestation determination.
4. Follow procedures based on manifestation determination.

Manifestation Determination:

Step 1:

Principal or designee notifies relevant members of the child's IEP Team (as determined by parent and the school), including the parent, of the meeting to make a manifestation determination.

Step 2:

Principal or designee facilitates manifestation determination meeting by going through the following process:

IEP team reviews all relevant information to include but not limited to the following:

- All information in the child's file
- Child's IEP
- Any teacher observations
- Any relevant information provided by the parents

Step 3:

The IEP team must determine:

- a. Was the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability?, or
- b. Was the conduct in question the result of the school's failure to implement the IEP?

If the answer to either question is **YES**, the conduct must be determined to be a manifestation of the child's disability. **Go to Step 5.** If the answer is **NO**, the conduct must be determined not to be a manifestation of the child's disability. Proceed with the next step.

Step 4:

The school may use the same disciplinary procedures as that used for students without disabilities. The IEP Team must determine the extent to which services are needed to enable the child to continue to participate in the general education curriculum and progress toward meeting IEP goals.

Step 5:

If the conduct was a manifestation of the child's disability and the conduct in question was the result of the school's failure to implement the IEP, then the school must take steps to correct the deficiencies.

Step 6:

If the conduct was a result of the school's failure to implement the IEP and/or if the conduct was a manifestation of the child's disability and there is a direct and substantial relationship between the behavior and the disability, then the school must follow the procedures below:

- Conduct a functional behavioral assessment, unless the school had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred; and
- Implement a behavioral intervention plan for the child; if the behavioral intervention plan has already been developed, review the plan, and make changes, as necessary, to address the behavior; and

- Return the child to the placement from which the child was removed, unless the parent and the school agree to a change of placement as part of the modification of the behavior intervention plan.

Special Circumstances

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child:

1. Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of Ministry of Education;
 2. Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Ministry of Education; or
 3. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Ministry of Education.
- The school must notify the parents on the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a code of student conduct of the decision, and provide the parents with their parent rights.

Determination of Setting

The child's IEP Team determines the interim alternative educational setting for services mentioned above.

Definitions in this section:

- *Controlled substance* means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). Any drug as defined in the five categories of the federal Controlled Substances Act of 1970. The categories, or schedules, cover opium and its derivatives, hallucinogens, depressants, and stimulants.
- *Illegal drug* means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under IDEA or under any other provision of Federal law.
- *Serious bodily injury* has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

Bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. 18 USC[From the 'Lectric Law Library's Lexicon].

- *Weapon* has the meaning given the term “dangerous weapon” under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. Section 930 of title 18, United States Code defines a “dangerous weapon” as “a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2 1/2 inches in length.”

Appeal for Interim Alternative Placement

The parent of a child with a disability who disagrees with any decision regarding placement due to drugs, weapons, or serious bodily injury, or the manifestation determination, or the MOE believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint as per due process hearing procedures.

- A hearing officer hears and makes a determination regarding an appeal based on the reasons given above.
- In making the determination, the hearing officer may:
 - (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of Sec. 300.530 or that the child's behavior was a manifestation of the child's disability; or
 - (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.
- The procedures under this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Expedited due process hearing

- Whenever a hearing is requested in this section, the parents or the MOE involved in the dispute must have an opportunity for an impartial due process hearing consistent with the due process requirements as outlined in the Dispute Resolution section of the MOE Special Education Procedural Manual, except as provided in this section.
- The MOE is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

- Unless the parents and MOE agree in writing to waive the resolution meeting, or agree to use the mediation process:
 - (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
 - (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
- Palau may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in this section, the MOE must ensure that the requirements are met.
- The decisions on expedited due process hearings are appealable as per procedures found in the section on Dispute Resolution.

Placement during appeals

When an appeal has been made by either the parent or the MOE, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in the discipline procedures, whichever occurs first, unless the parent and the MOE agree otherwise.

Protections for children not determined eligible for special education and related services

A child who has not been determined to be eligible for special education and related services under Part B of IDEA and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in under IDEA if the MOE had knowledge (as determined in this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

Basis of knowledge

The MOE is determined to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred:

- (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the MOE, or a teacher of the child, that the child is in need of special education and related services;
- (2) The parent of the child requested an evaluation of the child; or
- (3) The teacher of the child, or other personnel of the MOE, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the special education coordinator of the MOE or to other supervisory personnel of the MOE.

Exception

The MOE is not determined to have knowledge if:

- (1) The parent of the child:

- (i) Has not allowed an evaluation of the child as per evaluation procedures; or
 - (ii) Has refused services under Part B of IDEA; or
- (2) The child has been evaluated in accordance with evaluation procedures and determined to not be a child with a disability under Part B of IDEA.

Conditions that apply if no basis of knowledge

- (1) If the MOE does not have knowledge that a child is a child with a disability (in accordance with this section) prior to taking disciplinary measures against the child, the disciplinary measures applied to children without disabilities may be applied to the child who engage in comparable behaviors.
- (2) (i) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.
- (ii) Until the evaluation is completed, the child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- (iii) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the MOE and information provided by the parents, the MOE must provide special education and related services as per the discipline procedures in Part B of IDEA.

Referral to and action by law enforcement and judicial authorities

Nothing in Part B of IDEA prohibits the MOE from reporting a crime committed by a child with a disability to appropriate authorities or prevents Palau law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.

Transmittal of records

- If the MOE reports a crime committed by a child with a disability, it must ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the MOE reports the crime.
- When the MOE reports a crime under this section, it may transmit copies of the child's special education and disciplinary records only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

Change of placement because of disciplinary removals

- For purposes of removals of a child with a disability from the child's current educational placement under discipline procedures, a change of placement occurs if:
 - (1) The removal is for more than 10 consecutive school days; or
 - (2) The child has been subjected to a series of removals that constitute a pattern:
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

- (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- The MOE determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
- This determination is subject to review through due process and judicial proceedings.

CHILDREN IN PRIVATE SCHOOL

Children in Private Schools

Forms: Prior Written Notice for Proposed/Refused Action – SE3
Parent Rights (Procedural Safeguards) – SE5
Individualized Education Program-SE8
Service Plan – SE15

Responsible Person: Special Education Coordinator

PROCEDURES

Children with Disabilities in Private Schools Placed or Referred by MOE

This section applies only to children with disabilities who are or have been placed in or referred to a private school or facility by the MOE as a means of providing special education and related services.

The MOE ensures that a child with a disability who is placed in or referred to a private school or facility by the school:

(a) Is provided special education and related services:

(1) In conformance with an IEP that meets the requirements of Sections 300.320 through 300.325; and

(2) At no cost to the parents;

(b) Is provided an education that meets the standards that apply to education provided by the MOE including the requirements of this part, except for Sec. 300.18 and Sec. 300.156(c); and

(c) Has all of the rights of a child with a disability who is served by the MOE.

Developing IEPs

1. Before the MOE places a child with a disability in, or refers a child to, a private school or facility, the MOE initiates and conducts a meeting to develop an IEP for the child.
2. The MOE ensures that a representative of the private school or facility attends the meeting. If the representative cannot attend, the MOE uses other methods to ensure participation by the private school or facility, including individual or conference telephone calls.

Reviewing and revising IEPs

1. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the MOE.
2. If the private school or facility initiates and conducts these meetings, the MOE ensures that the parents and an MOE representative:
 - (i) Are involved in any decision about the child's IEP; and
 - (ii) Agree to any proposed changes in the IEP before those changes are implemented.

NOTE: Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the MOE.

3. Once the child is placed or referred to a private school, the MOE:
 - Monitors compliance through procedures such as written reports, on-site visits, and parent questionnaires;
 - Disseminates copies of applicable standards to each private school and facility to which the MOE has referred or placed a child with a disability; and
 - Provides an opportunity for those private schools and facilities to participate in the development and revision of Palau standards that apply to them.

Children with Disabilities Enrolled by Their Parents in Private Schools When FAPE Is at Issue

Placement of children by parents when FAPE is at issue:

1. If a parent feels that the proposed IEP developed by the school will not or has not been providing the child FAPE, the principal must inform the parent of his/her right to file a due process complaint and/or request for mediation. Disagreements between the parents and the MOE regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures.

IDEA does not require the MOE to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the MOE made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the MOE must include that child in the population whose needs are addressed.

2. While the issues are being resolved, the child shall remain in the current placement.

3. Reimbursement for private school placement.

If the parents of a child with a disability, who previously received special education and related services under the authority of the MOE, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the MOE, a court or a hearing officer may require the MOE to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the MOE had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the Palau standards that apply to education provided by the MOE.

Limitation on reimbursement

The cost of reimbursement described above may be reduced or denied:

- (1) If:
 - (i) At the most recent IEP Team meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the MOE to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
 - (ii) At least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the MOE of the information described in this section;
- (2) If, prior to the parents' removal of the child from the public school, the MOE informed the parents, through the notice requirements of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or
- (3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Exception

Notwithstanding the notice requirement of this section, the cost of reimbursement:

- (1) Must not be reduced or denied for failure to provide the notice if:
 - (i) The school prevented the parents from providing the notice;
 - (ii) The parents had not received notice of the notice requirement in this section; or
 - (iii) Compliance would likely result in physical harm to the child; and
- (2) May, in the discretion of the court or a hearing officer, not be reduced or denied for failure to provide this notice if:
 - (i) The parents are not literate or cannot write in English; or
 - (ii) Compliance with this section would likely result in serious emotional harm to the child.

Children with Disabilities Enrolled by Their Parents in Private Schools

Definition of parentally-placed private school children with disabilities

Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school or secondary school, other than children with disabilities placed or referred by the MOE.

Child find for parentally-placed private school children with disabilities

1. The MOE must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the MOE.
2. The child find process must be designed to ensure:
 - (1) The equitable participation of parentally-placed private school children; and
 - (2) An accurate count of those children.
3. The child find activities must be similar to the activities conducted for the MOE's public school children.
4. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if the MOE has met its obligation under Sec. 300.133.
5. The child find process must be completed in a time period comparable to that for students attending public schools in Palau.
6. **Out-of-State children**
The MOE, in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than in Palau in which the private schools that they attend are located.

Basic Requirement for Provision of services for parentally-placed private school children with disabilities

1. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the MOE, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with Sec. 300.137,

unless the Secretary has arranged for services to those children under the by-pass provisions in Sections 300.190 through 300.198.

2. **Service Plan**

A services plan must be developed and implemented for each private school child with a disability who has been designated by the MOE in which the private school is located to receive special education and related services under Part B of IDEA.

3. **Record keeping**

The MOE must maintain in its records the following information related to parentally-placed private school:

- The number of children evaluated;
- The number of children determined to be children with disabilities; and
- The number of children served

Expenditures

1. Formula

To meet the requirement of Sec. 300.132(a), the MOE must spend the following on providing special education and related services (including direct services) to parentally-placed private school children with disabilities:

- For children aged 3 through 21, an amount that is the same proportion of the MOE's total subgrant under section 611(f) of the Act as the number of private school children with disabilities aged 3 through 21 who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, is to the total number of children with disabilities in its jurisdiction aged 3 through 21.
- For children aged three through five, an amount that is the same proportion of the MOE's total subgrant under section 619(g) of the Act as the number of parentally-placed private school children with disabilities aged three through five who are enrolled by their parents in a private, including religious, elementary school located in the school district served by the MOE, is to the total number of children with disabilities in its jurisdiction aged three through five.
- Children aged three through five are considered to be parentally-placed private school children with disabilities enrolled by their parents in private, including religious, elementary schools, if they are enrolled in a private school that meets the definition of elementary school.
- If the MOE has not expended for equitable services all of the funds described in this section by the end of the fiscal year for which Congress appropriated the funds, the MOE must obligate the remaining funds for special education and related services (including direct services) to parentally-placed private school children with disabilities during a carry-over period of one additional year.

2. Calculating proportionate amount

In calculating the proportionate amount of Federal funds to be provided for parentally-placed private school children with disabilities, the MOE, after timely and meaningful consultation with representatives of private schools, must conduct a thorough and complete child find process to determine the number of parentally-placed children with disabilities attending private schools located in the MOE.

3. Annual count of the number of parentally-placed private school children with disabilities

- The MOE must:
 - (i) After timely and meaningful consultation with representatives of parentally-placed private school children with disabilities, determine the number of parentally-placed private school children with disabilities attending private schools located in the MOE; and
 - (ii) Ensure that the count is conducted on any date between October 1 and December 1, inclusive, of each year.
- The count must be used to determine the amount that the MOE must spend on providing special education and related services to parentally-placed private school children with disabilities in the next subsequent fiscal year.

4. Supplement, not supplant

Palau local funds may supplement and in no case supplant the proportionate amount of Federal funds required to be expended for parentally-placed private school children with disabilities under Part B of IDEA.

Consultation

1. The MOE must consult with private school representatives and representatives of parents of parentally-placed private school children with disabilities during the design and development of special education and related services for the children regarding the following:

(a) Child Find

The child find process, including:

- (1) How parentally-placed private school children suspected of having a disability can participate equitably; and
- (2) How parents, teachers, and private school officials will be informed of the process.

(b) Proportionate share of funds

The determination of the proportionate share of Federal funds available to serve parentally-placed private school children with disabilities under Sec. 300.133(b), including the determination of how the proportionate share of those funds was calculated.

(c) Consultation process

The consultation process among the MOE, private school officials, and representatives of parents of parentally-placed private school children with

disabilities, including how the process will operate throughout the school year to ensure that parentally-placed children with disabilities identified through the child find process can meaningfully participate in special education and related services.

(d) Provision of special education and related services.

How, where, and by whom special education and related services will be provided for parentally-placed private school children with disabilities, including a discussion of--

- (1) The types of services, including direct services and alternate service delivery mechanisms; and
- (2) How special education and related services will be apportioned if funds are insufficient to serve all parentally-placed private school children; and
- (3) How and when those decisions will be made;

(e) Written explanation by MOE regarding services

If the MOE disagrees with the views of the private school officials on the provision of services or the types of services (whether provided directly or through a contract), the MOE will provide to the private school officials a written explanation of the reasons why

Written affirmation

When timely and meaningful consultation, has occurred, the MOE must obtain a written affirmation signed by the representatives of participating private schools.

If the representatives do not provide the affirmation within a reasonable period of time, the MOE must forward the documentation of the consultation process.

Compliance

A private school official has the right to submit a complaint to the MOE:

- (1) Did not engage in consultation that was meaningful and timely; or
 - (2) Did not give due consideration to the views of the private school official.
- If the private school official wishes to submit a complaint, the official must provide to the MOE the basis of the noncompliance with the applicable private school provisions; and
 - If the private school official is dissatisfied with the decision of the MOE, the official may submit a complaint to the U.S. Secretary of Education by providing the information on noncompliance.
 - The MOE must forward the appropriate documentation to the U.S. Secretary of Education.

Equitable services determined

No individual right to special education and related services

No parentally-placed private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

Decisions

- Decisions about the services that will be provided to parentally-placed private school children with disabilities must be made in accordance with the consultation requirements.
- The MOE must make the final decisions with respect to the services to be provided to eligible parentally-placed private school children with disabilities.

Services plan for each child served

If a child with a disability is enrolled in a religious or other private school by the child's parents and will receive special education or related services from the MOE, the MOE must:

- Initiate and conduct meetings to develop, review, and revise a services plan for the child; and
- Ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the MOE shall use other methods to ensure participation by the religious or other private school, including individual or conference telephone calls.

Equitable services provided

- The services provided to parentally-placed private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools, except that private elementary school and secondary school teachers who are providing equitable services to parentally-placed private school children with disabilities do not have to meet the highly qualified special education teacher requirements.
- Parentally-placed private school children with disabilities may receive a different amount of services than children with disabilities in public schools.
- Services provided in accordance with a services plan.
 - Each parentally-placed private school child with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the MOE will provide to the child in light of the services that the MOE has determined, through the process described in Sections 300.134 and 300.137, it will make available to parentally-placed private school children with disabilities.
 - The services plan must, to the extent appropriate:

- Meet the requirements of Sec. 300.320, or for a child ages three through five, meet the requirements of Sec. 300.323(b) with respect to the services provided; and
 - Be developed, reviewed, and revised consistent with Sections 300.321 through 300.324.
- Provision of equitable services.
 - The provision of services pursuant to this section and Sections 300.139 through 300.143 must be provided:
 - By employees of the MOE; or
 - Through contract by the MOE with an individual, association, agency, organization, or other entity.
 - Special education and related services provided to parentally-placed private school children with disabilities, including materials and equipment, must be secular, neutral, and nonideological.

Location of services and transportation

Services on private school premises

- Services to parentally-placed private school children with disabilities may be provided on the premises of private, including religious, schools, to the extent consistent with law.

Transportation

- If necessary for the child to benefit from or participate in the services provided under this part, a parentally-placed private school child with a disability must be provided transportation:
 - From the child's school or the child's home to a site other than the private school; and
 - From the service site to the private school, or to the child's home, depending on the timing of the services.
- The MOE is not required to provide transportation from the child's home to the private school.
- The cost of the transportation described in this section may be included in calculating whether the MOE has met the requirement of Sec. 300.133.

Due process complaints and State complaints

Due process not applicable, except for child find

- Except as provided below in this section, the due process procedures do not apply to complaints that the MOE has failed to meet the requirements of Sections 300.132 through 300.139, including the provision of services indicated on the child's services plan.
- Child find complaints: to be filed with the MOE in which the private school is located.

(1) The State Complaint procedures apply to complaints that MOE has failed to meet the child find requirements.

(2) Any due process complaint regarding the child find requirements must be filed with the MOE in which the private school is located.

- State complaints.

(1) Any complaint that the MOE has failed to meet the requirements in Sections 300.132 through 300.135 and 300.137 through 300.144 must be filed in accordance with the procedures described in Sections 300.151 through 300.153.

(2) A complaint filed by a private school official under Sec. 300.136(a) must be filed with the MOE in accordance with the procedures in Sec. 300.136(b).

Requirement that funds not benefit a private school

- The MOE may not use funds provided under section 611 or 619 of the IDEA to finance the existing level of instruction in a private school or to otherwise benefit the private school.
- The MOE must use funds provided under Part B of the IDEA to meet the special education and related services needs of parentally-placed private school children with disabilities, but not for meeting:
 - (1) The needs of a private school; or
 - (2) The general needs of the students enrolled in the private school.

Use of personnel

Use of public school personnel

- The MOE may use funds available under sections 611 and 619 of the Act to make public school personnel available in other than public facilities:
 - (1) To the extent necessary to provide services under Sections 300.130 through 300.144 for parentally-placed private school children with disabilities; and
 - (2) If those services are not normally provided by the private school.

Use of private school personnel

The MOE may use funds available under sections 611 and 619 of the Act to pay for the services of an employee of a private school to provide services under Sections 300.130 through 300.144 if:

- (1) The employee performs the services outside of his or her regular hours of duty; and
- (2) The employee performs the services under public supervision and control.

Separate classes prohibited

- The MOE may not use funds available under section 611 or 619 of the Act for classes that are organized separately on the basis of school enrollment or religion of the children if:
 - (a) The classes are at the same site; and
 - (b) The classes include children enrolled in public schools and children enrolled in private schools.

Property, equipment, and supplies

- The MOE must control and administer the funds used to provide special education and related services under Sections 300.137 through 300.139, and hold title to and administer materials, equipment, and property purchased with those funds for the uses and purposes provided in the Act.
- The MOE may place equipment and supplies in a private school for the period of time needed for the Part B program.
- The MOE must ensure that the equipment and supplies placed in a private school:
 - Are used only for Part B purposes; and
 - Can be removed from the private school without remodeling the private school facility.
- The MOE must remove equipment and supplies from a private school if:
 - The equipment and supplies are no longer needed for Part B purposes; or
 - Removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.
- No funds under Part B of the Act may be used for repairs, minor remodeling, or construction of private school facilities.

CONFIDENTIALITY OF INFORMATION

Confidentiality of Information

Definitions

As used under the heading Confidentiality of Information:

- *Destruction* means physical destruction or removal of personal identifiers from information, or from which information is obtained, under Part B of the IDEA information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).
- *MOE* means any school that collects, maintains, or uses personally identifiable.

Personally Identifiable

Personally identifiable means information that has:

- (a) The child's name, the name of the parent, or the name of another family member;
- (b) The child's address;
- (c) A personal identifier, such as the child’s social security number or student number; **or**
- (d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Notice to Parents

The MOE gives notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

1. A description of the extent to which the notice is given in the native languages of the various population groups in Palau;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods Palau intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
3. 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**
4. A description of all of the rights of parents and children regarding this information, including the rights under the Family Educational Rights and Privacy Act (FERPA) and its implementing regulations in 34 CFR Part 99.

Before any major activity to identify, locate, or evaluate activity children in need of special education and related services (also known as “child find”), the notice is published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout Palau of these activities.

Access Rights

The MOE permits the parent to inspect and review any education records relating to the child that are collected, maintained, or used by the MOE under Part B of the IDEA. The MOE must comply with the parent’s request to inspect and review any education records on the child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after the parent has made a request.

The parent right to inspect and review education records includes:

1. The right to a response from the MOE to reasonable requests for explanations and interpretations of the records;
2. The right to request that the MOE provide copies of the records if the parent cannot effectively inspect and review the records unless the parent receive those copies; **and**
3. The right to have his/her representative inspect and review the records.

The MOE presumes that the parent has the authority to inspect and review records relating to the child unless advised that the parent does not have the authority under applicable Palau law governing such matters as guardianship, or separation, and divorce.

Record of Access

The MOE keeps a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the MOE), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Records on more than one child

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

List of Types and Locations of Information

On request, the MOE provides the parent with a list of the types and locations of education records collected, maintained, or used by the MOE.

Fees

The MOE may charge a fee for copies of records that are made for the parent under Part B of the IDEA, if the fee does not effectively prevent the parent from exercising his/her right to inspect and review those records. The MOE may not charge a fee to search for or to retrieve information under Part B of the IDEA.

Amendment of Records at Parent's Request

If the parent believes that information in the education records regarding the child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of the child, the parent may request the MOE that maintains the information to change the information.

The MOE must decide whether to change the information in accordance with the parent's request within a reasonable period of time of receipt of the parent request.

If the MOE refuses to change the information in accordance with the parent's request, it must inform the parent of the refusal and advise the parent of the right to a hearing for this purpose as described under the heading ***Opportunity For a Hearing***.

Opportunity for a Hearing

The MOE provides the parent, on request, an opportunity for a hearing to challenge information in education records regarding the child to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

Hearing Procedures

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

Result of Hearing

If, as a result of the hearing, the MOE decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform the parent in writing.

If, as a result of the hearing, the MOE decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the right to place in the records that it maintains on the child a statement commenting on the information or providing any reasons the parent disagrees with the decision of the MOE.

Such an explanation placed in the records of the child must:

1. Be maintained by the MOE as part of the records of the child as long as the record or contested portion is maintained by the MOE; **and**
2. If the MOE discloses the records of the child or the challenged portion to any party, the explanation must also be disclosed to that party.

Consent For Disclosure of Personally Identifiable Information

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), the parent's consent is obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, parent consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA.

Parent consent, or consent of an eligible child who has reached the age of majority under Palau law, is obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If the child is in, or is going to go to, a private school that is not located in Palau, parent consent is obtained before any personally identifiable information about the child is released between officials in the state or territory where the private school is located and officials in the MOE school where the child resides.

Safeguards

The MOE protects the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at each school of the MOE assumes responsibility for ensuring the confidentiality of any personally identifiable information.

All persons collecting or using personally identifiable information receives training or instruction regarding the school's policies and procedures regarding confidentiality under Part B of the IDEA and the Family Educational Rights and Privacy Act (FERPA).

The MOE maintains, for public inspection, a current listing of the names and positions of those employees within the MOE who may have access to personally identifiable information.

Destruction of Information

The MOE informs the parent when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to the child.

The information is destroyed at the parent request. However, a permanent record of the child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

STATE COMPLAINT PROCEDURES

STATE COMPLAINT PROCEDURES

If a parent has concerns about their child’s special education services, the first step is to talk to the child’s teacher, the building principal, or one of the staff at the special education office. It helps to deal with concerns when they first arise.

If the concern cannot be resolved informally with the MOE, there are further steps available to the parents. The parent:

- May file a written State complaint with the special education office;
- May request for an impartial mediation; or
- May file a due process complaint which may result in a hearing.

The two major complaint procedures are the State Complaints and the Due Process Complaint. The table below describes briefly the difference between a State Complaint and a Due Process Complaint.

Table 1: Difference between a State Complaint and a Due Process Complaint.

	State Complaint	Due Process Complaint
Who can file?	Individual or organization	Parent/guardian or MOE
Reason for filing?	Violation of Part B requirement by the MOE or any other agency	Complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation (includes eligibility), or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to your child.

	State Complaint	Due Process Complaint
Timeline for Filing	Violation that occurred not more than one year prior to the date that the complaint is filed.	Violation that happened not more than two years before the parent or the MOE knew or should have known about the stated action that is the reason for the due process complaint.
Timeline for Resolution	60-calendar days unless the timeline is properly extended for the following reasons: (a) exceptional circumstances exist with respect to a particular State complaint; <u>or</u> (b) the parent and the MOE or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution, if available in Palau.	The MOE must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings <u>or</u> , as adjustments to the 30-calendar-day resolution period, but not later than 45 calendar days after the expiration of the adjusted time period, a decision is made. A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (the parent or the MOE).
Process	Investigation by MOE	Hearing conducted by an impartial hearing officer unless issue is resolved through resolution meeting.

Forms:

State Complaint/Due Process Complaint Model Form-SE16A
Request for Mediation form – SE 16B

Timeline: State Complaint: Must be resolved within 60 calendar days unless both parties agree to extension.

Due Process Complaint

- **Hearing decision** must be made within 45 calendar days unless resolved through Resolution meeting or if hearing is held, hearing is extended by Hearing Officer.
- **Resolution Meeting** must be held within 15 days of receiving due process complaint. Must be completed within 30 days of receiving the due process complaint

Responsible person: Special Education Coordinator

PROCEDURES

STATE COMPLAINT PROCEDURES

General

The MOE must widely disseminate the State complaint procedures to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

Remedies for denial of appropriate services

In resolving a State complaint in which the MOE has found a failure to provide appropriate services, the MOE must address:

- The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- Appropriate future provision of services for all children with disabilities.

Filing a State Complaint

1. An organization or an individual such as a parent may file a written state complaint when it believes that the MOE has violated a Part B requirement of IDEA. The organization or individual may file the complaint by completing the model form provided by the MOE or any other format as long as it includes the required information.

2. In completing the model form, the individual must ensure it includes the following:

State Complaint Procedures

- A statement that the MOE or other public agency has violated a requirement of Part B of IDEA or its implementing regulations; the complaint must state a violation that occurred not more than one year prior to the date that the complaint is received.
 - The facts on which the statement is based;
 - The organization's or individual's (such as the parent) signature and contact information as the individual filing the complaint; and
 - If alleging violations regarding a specific child:
 - (a) The name of the child and address of the residence of the child;
 - (b) The name of the school the child is attending;
 - (c) In the case of a homeless child or youth, available contact information for the child, and the name of the school the child is attending;
 - (d) A description of the nature of the problem of the child, including facts relating to the problem; and
 - (e) A proposed resolution of the problem to the extent known and available to the individual or organization filing the complaint at the time the complaint is filed.
3. The individual or organization filing the State complaint must deliver or mail a copy of the complaint to the MOE or other public agency serving the child at the same time the party files the complaint with the MOE. If the individual or organization submits the form directly to the school, the school must submit the complaint to the central Special Education office and indicate "Attention: Special Education Coordinator.
 4. The MOE, through the SPED program, will carry out an independent on-site investigation, if the MOE determines that an investigation is necessary. The Special Education Coordinator shall assign a staff member to conduct the independent on-site investigation. If the complaint involves an issue for a specific child, the on-site evaluation must include interviews with the child's school staff and a review of all records at the school.
 5. The MOE will give the individual or organization filing the complaint the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The special education coordinator will be the main contact for addressing complaints.
 6. The MOE or other public agency will respond to the complaint, including, at a minimum: (a) a proposal to resolve the complaint; and (b) an opportunity for a parent who has filed a complaint and the MOE to agree voluntarily to engage in mediation;
 7. The MOE must review all relevant information and make an independent determination as to whether the MOE or other public agency is violating a requirement of Part B of IDEA; and

8. The MOE must issue a written decision within 60 calendar days to the individual or organization filing the complaint that addresses each allegation in the complaint and contains: (a) findings of fact and conclusions; and (b) the reasons for the MOE's final decision. The MOE's final decision, if needed, will include: (a) technical assistance activities; (b) negotiations; and (c) corrective actions to achieve compliance.

Extension of timeline

The individual or organization may be permitted an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; or (b) the individual or organization and the MOE or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation.

State complaints and due process hearings

1. If a written State complaint is received that is also the subject of a due process hearing, or the State complaint contains multiple issues of which one or more are part of such a hearing, the MOE must set aside any part of the State complaint that is being addressed in the due process hearing until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.
2. If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, the parent and the MOE), then the due process hearing decision is binding on that issue and the MOE must inform the complainant that the decision is binding.
3. A complaint alleging a MOE's or other public agency's failure to implement a due process hearing decision must be resolved by the MOE.

DUE PROCESS COMPLAINT PROCEDURES

General

The parent or the MOE may file a due process complaint on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of a child or the provision of a free appropriate public education (FAPE) to the child.

The due process complaint must state a violation that happened not more than two years before the parent or the MOE knew or should have known about the stated action that is the reason for the due process complaint. A parent may submit the Due process complaint to the school and the school will review and then transmit to the MOE Special Education Coordinator.

The above timeline does not apply if the parent could not file a due process complaint within the timeline because:

- The MOE specifically misinformed the parent that it had resolved the issues identified in the complaint; **or**
- The MOE did not give you information that it was required to provide the parent under Part B of IDEA.

Information for parents

The MOE must inform the parent of any free or low-cost legal and other relevant services available in the ROP if he/she requests the information, **or** if the parent or the MOE files a due process complaint.

FILING A DUE PROCESS COMPLAINT

1. In order to request a hearing, the parent or the MOE (or the parent's attorney or the MOE's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

The parent or the school may request a copy of the form from the MOE Special Education office. However, the MOE may not require the use of these model forms. In fact, the parent can use the model form or another appropriate form, so long as it contains the required information for filing a due process complaint or a State complaint. The parent may submit the complaint directly to the school.

2. Whoever files the complaint must also provide the MOE with a copy of the complaint. This is applicable if the school is the one filing the due process complaint. Therefore, they must submit to the MOE Special Education office.
3. The parent or the school must complete the model form **or other form** for Due Process complaints and must ensure the following information is included:
 - The child's name and address, and the name of the child's school;
 - If the child is a homeless child or youth, the name of the child's contact information and the name of the child's schools;
 - A description of the nature of the problem of the child relating to the proposed or refused action, including facts related to the problem; **and**
 - A proposed resolution of the problem to the extent known and available to the complaining party (the parent or the MOE) at the time.

Notice required before a hearing on a due process complaint

The parent or the MOE may not have a due process hearing until the parent or the MOE (or his/her attorney or the MOE's attorney) files a due process complaint that includes the information listed above.

A valid complaint

In order for a due process complaint to go forward, it must include all the required information. The due process complaint will be considered to include all the requirements unless the party receiving the due process complaint (the parent or the MOE) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the complaint that the receiving party believes that the due process complaint does not meet the requirements listed above.

Within **five calendar days** of receiving the notification that the receiving party (the parent or the MOE) considers a due process complaint invalid, the hearing officer must decide if the due process complaint meets the requirements listed above, and notifies the parent and the MOE in writing immediately.

Changes to the Due Process Complaint

The parent or the MOE may make changes to the complaint only if:

- The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting; **or**
- By no later than **five days** before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (the parent or the MOE) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

4. Once the MOE receives the due process complaint and if the MOE has not sent a prior written notice to the parent regarding the issue contained in the due process complaint, the MOE must, within **10 calendar days** of receiving the due process complaint, send to the parent a response that includes:
 - An explanation of why the MOE proposed or refused to take the action raised in the due process complaint;
 - A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
 - A description of each evaluation procedure, assessment, record, or report the MOE used as the basis for the proposed or refused action; **and**
 - A description of the other factors that is relevant to the MOE's proposed or refused action.
5. The Special Education Coordinator appoints a hearing officer.
6. Up receipt of the complaint, the MOE makes available the option of mediation to allow the parent and the MOE to resolve disagreements involving any matter under Part B of IDEA, including matters that happen prior to the filing of a due process

complaint. Thus, mediation is available to resolve disputes under Part B of IDEA, whether or not the parent has filed a due process complaint to request a due process hearing. **Refer to MEDIATION procedures.**

Providing the information in items 1-4 above does not prevent the MOE from stating that the due process complaint did not have all the required information.

Except as stated above, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

RESOLUTION PROCESS

6. Resolution meeting

Within **15 calendar days** of receiving notice of the due process complaint, and before the due process hearing begins, the MOE must hold a meeting with the parent and the relevant member or members of the individualized education program (IEP) Team who have specific knowledge of the facts identified in the due process complaint. The meeting:

- Must include a representative of the MOE who has the authority to make decisions for the MOE; **and**
- May not include an attorney of the MOE unless you are accompanied by an attorney.

The parent and the MOE determine the relevant members of the IEP Team to attend the meeting. The purpose of the meeting is for the parent and the MOE to discuss the due process complaint, and the facts that form the basis of the complaint, so that the MOE has the opportunity to resolve the disagreement. .

The resolution meeting is not necessary if:

- The parent and the MOE agree in writing to waive the meeting; **or**
- The parent and the MOE agree to use the mediation process.

Resolution period

If the MOE has not resolved the due process complaint to the satisfaction within **30 calendar days** of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The **45-calendar-day** timeline for issuing a final due process hearing decision begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where the parent and the MOE have both agreed to waive the resolution process or to use mediation, the failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

If after making reasonable efforts and documenting such efforts, the MOE is not able to obtain the participation of the parent in the resolution meeting, the MOE may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss the due process complaint.

Documentation of such efforts must include a record of the MOE's attempts to arrange a mutually agreed upon time and place, such as:

- Detailed records of telephone calls made or attempted and the results of those calls;
- Copies of correspondence sent to the parent and any responses received; and
- Detailed records of visits made to the home or to your workplace and the results of those visits.

If the MOE fails to hold the resolution meeting within 15 calendar days of receiving notice of the due process complaint **or** fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.

Adjustments to the 30-calendar-day resolution period

If the parent and the MOE agree in writing to waive the resolution meeting, then the 45-calendar-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-calendar-day resolution period, if the parent and the MOE agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If the parent and the MOE agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period, the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the MOE withdraws from the mediation process during this continuation period, then the 45-calendar-day timeline for the due process hearing starts the next day.

Written settlement agreement

If a resolution to the disagreement is reached at the resolution meeting, the parent and the MOE must enter into a legally binding agreement that is:

- Signed by the parent and a representative of the MOE who has the authority to legally sign for the MOE; **and**

- Enforceable in any ROP court of competent jurisdiction (a ROP court that has authority to hear this type of case) or in a district court of the United States or by the MOE, if the ROP has another mechanism or procedures that permit parties to seek enforcement of resolution agreements.

Agreement review period

If the parent and the MOE enter into an agreement as a result of a resolution meeting, either party (the parent or the MOE) may cancel the agreement within **3 business days** of the time that both you and the MOE signed the agreement.

7. If the parent and the MOE have not resolved the issue through the resolution process and/or mediation, the due process hearing shall proceed. **Refer to Due Process Hearing Procedures.**

MEDIATION

Procedures

1. Upon receiving a request for a due process complaint hearing, the MOE must make available the option of mediation. However, a parent may request for mediation without submitting a due process complaint and request for a hearing.
 - The MOE must ensure that mediation is voluntary on the parents' part and the MOE's part;
 - Mediation is not used to deny or delay the right to a due process hearing, or to deny any other rights provided under Part B of IDEA; **and**
 - Mediation is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
 - Instead of mediation, the MOE may offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to them, with an individual who has no interest regarding the issue:
 - Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the ROP; **and**
 - Who would explain the benefits of, and encourage the use of, the mediation process to you.
 - The MOE must keep a list of people who are qualified mediators and know the laws and regulations related to the provision of special education and related services and trained in mediation techniques. The MOE must select mediators on a random, rotational, or other impartial basis.
3. The MOE shall select a qualified and impartial mediator from the list of mediators available on a rotating basis.

4. The mediator schedules the meeting in a timely manner and at a place that is convenient for the parent and the MOE.
5. If the parent and the MOE resolve a dispute through the mediation process, both parties must agree to a legally binding written agreement that identifies the agreements made and:
 - States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any due process hearing or civil proceeding (court case) that is held after the mediation; **and**
 - Is signed by both the parent and the special education coordinator will serves as the representative of the MOE who has the authority to bind the MOE.
 - A written, signed mediation agreement is enforceable in any ROP court of competent jurisdiction (a court that has the authority under ROP law to hear this type of case) or in a district court of the United States.
 - Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or court of the ROP receiving assistance under Part B of IDEA.

Impartiality of mediator

The mediator:

- May not be an employee of the MOE or the MOE that is involved in the education or care of the child; **and**
- Must not have a personal or professional interest which may prevent the mediator from remaining neutral.
- A person who otherwise qualifies as a mediator is not an employee of the MOE or ROP agency solely because he or she is paid by the agency or MOE to serve as a mediator.

HEARINGS ON DUE PROCESS COMPLAINTS

General

Whenever a due process complaint is filed, the parent or the MOE involved in the dispute must have an opportunity for an impartial due process hearing.

Impartial Hearing Officer

- An impartial hearing officer will be appointed to conduct the hearing.
- A hearing officer may not be conducted by a person who is an employee of the MOE or any public agency that is involved in the education or care of the child, or by any

person having personal or professional interest that would conflict with his or her objectivity in the hearing.

- However, a person is not an employee of the agency solely because he or she is paid by the MOE to serve as a hearing officer.
- The individual selected to be a hearing officer must be knowledgeable and understand the provisions of IDEA, Federal and ROP regulations pertaining to IDEA, and legal interpretations of IDEA by Federal and ROP courts; **and**
- Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The MOE shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

Subject matter of due process hearing

The party (the parent or the MOE) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

Timeline for requesting a hearing

The parent or the MOE must request an impartial hearing on a due process complaint within two years of the date you or the MOE knew or should have known about the issue addressed in the complaint.

Exceptions to the timeline

The above timeline does not apply to you if the parent could not file a due process complaint because:

- The MOE specifically misrepresented that it had resolved the problem or issue that the parent was raising in the complaint; **or**
- The MOE did not inform the parent what it was required to provide to the parent under Part B of IDEA.

DUE PROCESS HEARING RIGHTS

The parent or MOE have the right to represent him/her at a due process hearing (including a hearing related to disciplinary procedures). Any party (parent or MOE) has certain rights, including the right to:

- Bring an attorney who can give advice;
- Bring one or more individuals who have knowledge or training regarding the problems of children with disabilities;
- Be represented at the due process hearing by an attorney or someone who is not an attorney;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to you at least **five (5) business days** before the hearing;

- Present evidence and confront, cross-examine (i.e. ask questions of the other side's witnesses), and require the attendance of witnesses;
- Obtain a written, or, at the option, electronic, word-for-word record of the hearing; **and**
- Obtain written, or, at the option, electronic findings of fact and decisions.

Additional disclosure of information

At least **five business days** prior to a due process hearing, the parent and the MOE must **disclose to each other all evaluations completed** by that date and recommendations based on those evaluations that you or the MOE intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Parental Rights at hearings

- You must also be given the right to have your child present;
- Open the hearing to the public, if you choose; and
- Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

Hearing Decisions:

Decision of the hearing officer

A hearing officer's decision on whether the child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE. The decision must be made within 45-days and mailed to both parties.

In matters alleging a procedural violation (such as "an incomplete IEP Team"), a hearing officer may find that the child did not receive FAPE only if the procedural violations:

- Interfered with the child's right to a free appropriate public education (FAPE);
- Significantly interfered with the opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to the child; **or**
- Caused the child to be deprived of an educational benefit.

None of the provisions described above can be interpreted to prevent a hearing officer from ordering a MOE to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of IDEA.

Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of IDEA can be interpreted to prevent the parent or the MOE from filing a separate due process complaint on an issue separate from a due process complaint already filed.

Findings and decision provided to the advisory council and general public

The MOE, after deleting any personally identifiable information, must:

- Provide the findings and decisions in the due process hearing or appeal to the special education advisory council; **and**
- Make those findings and decisions available to the public.

APPEALS

Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that the parent or the MOE may appeal the hearing officer decision in a Republic of Palau court.

Timelines and Convenience of Hearings and Reviews

The MOE must ensure that not later than **45 calendar days** after the expiration of the 30-calendar-day period for resolution meetings or, not later than 45 calendar days after the expiration of the adjusted time period:

- A final decision is reached in the hearing; **and**
- A copy of the decision is mailed to each of the parties.
 - A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party (the parent or the MOE).
 - Each hearing must be conducted at a time and place that is reasonably convenient to the parent and your child.

Civil Actions, Including the Time Period in Which to File Those Actions

General

Any party (the parent or the MOE) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action (i.e. take it to the courts) with respect to the matter that was the subject of the due process hearing. The action may be brought in a ROP court of competent jurisdiction (a ROP court that has authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

Time limitation

The party (the parent or the MOE) bringing the action shall have **90 calendar days** from the date of the decision of the hearing officer to bring the case to court.

Additional procedures

In any civil action, the court:

- Receives the records of the administrative proceedings;

- Hears additional evidence at the parent's request or at the MOE's request; **and**
- Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Under appropriate circumstances, judicial relief may include reimbursement of private school tuition and compensatory education services.

Jurisdiction of district courts

The district courts of the United States have authority to rule on actions brought under Part B of IDEA regardless of the amount of disagreement.

Rule of construction

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

The child's placement while the due process complaint and hearing are pending

During the course of any resolution process, due process hearing, or civil court appeal, the child will remain in his or her current educational placement. This is known as the "stay put" rule and applies unless: The parent and the MOE agree to another placement;

The child is applying for initial admission to a public school and the parent consents to the child's placement in the public school program until the completion of the hearing; or

- The child is removed to an interim alternative educational setting for discipline reasons by school personnel or hearing officer.

If a hearing officer in a due process hearing conducted by the MOE agrees with the parent that a change of placement is appropriate, that placement must be treated as the child's current educational placement where the child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

Attorney's Fees

General

A court may award reasonable attorney's fees to the parents or guardians of a child or youth with disabilities if the hearing officer rules in the parent's favor in any action or

proceeding related to the requirements of the Individuals with Disabilities Education Act (IDEA) to be paid by the attorney, if the attorney: (a) filed a complaint or court case that the court finds is not serious, unreasonable, or without any basis; **or** (b) continued to go to court after the court case clearly became silly, unreasonable, or without any basis; **or**

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

Award of Attorney fees

A court awards reasonable attorneys' fees as follows:

1. Fees must be based on rates used in the Palau community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.
2. Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Part B of IDEA for services performed after a written offer of settlement is made to you if:
 - a. The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing, at any time more than 10 calendar days before the proceeding begins;
 - b. The offer is not accepted within 10 calendar days; **and**
 - c. The court or administrative hearing officer finds that the resolution finally obtained by you is not more favorable to you than the offer of settlement.

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

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

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

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

1. The parent, or the attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
2. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
3. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
4. The attorney representing parent did not provide to the MOE the appropriate information in the due process request notice.

However, the court may not reduce fees if the court finds that the MOE unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of IDEA.