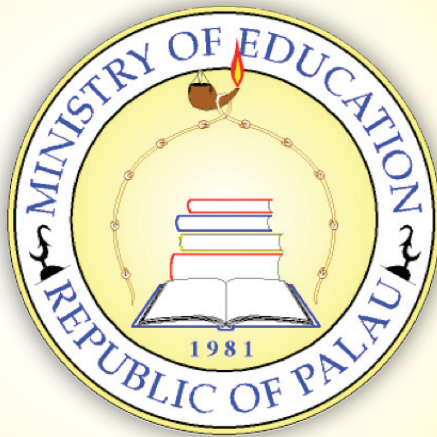


SPECIAL EDUCATION RIGHTS OF PARENTS IN PALAU

(Notice of Procedural Safeguards)



MINISTRY OF EDUCATION
REPUBLIC OF PALAU

FOR MORE INFORMATION, CONTACT:
Special Education Coordinator
Ministry of Education
Republic of Palau
P.O. Box 189
Koror, Palau 96940
Phone: (680) 488-2568/5298

To: PARENTS

This notice describes the rights and protections available to you and your child while he or she is receiving special education services in Palau. These rights and protections are also called Procedural Safeguards, and are guaranteed under Palau Public Law 3-9 (the Programs and Services for Handicapped Children Act) and the United States federal special education law, the Individuals with Disabilities Education Act (IDEA) and the U.S. Department of Regulations.

A copy of this notice must be given to you only one time a school year, except that a copy must also be given to you:

- (1) on the first referral or the request for evaluation;
- (2) when you file your first State complaint and when you file your first due process complaint in a school year;
- (3) when a decision is made to take a disciplinary action against your child that constitutes a change of placement; and
- (4) upon your request.

This parent rights notice must include a full explanation of all of the parent rights related to the placement of your child in a private school paid for by the Ministry of Education (hereafter referred to as MOE), State complaint procedures, parental consent, IEP and prior written notice, other procedural safeguards, e.g., mediation, due process complaints, resolution process, and impartial due process hearing, disciplinary procedures, and confidentiality of information.

This information is important to you and your child because it will help you make the most of your child's educational experience. You are encouraged to speak with your child's teachers, the school principal, or staff in the special education office, if you have any questions or would like to learn more about these protections.

If you have any concerns about your child's special education services, you should contact the school personnel to discuss any problems or questions you may have. Sharing your story with school staff and working together can frequently solve the problem informally. However, if you feel you need additional assistance from outside the child's school, you should contact the Special Education Office directly, and we will help you.

All of us can work together to help your child learn and grow.

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INTRODUCTION

Parents of children with disabilities from birth through 21 are guaranteed certain rights in special education, also called Procedural Safeguards. This booklet, will help parents of children with special needs to understand these rights and how they can help you to make appropriate education decisions for your child.

To help you understand the language in each part of the booklet we will briefly summarize your rights in the shaded box at the end of each section:

In Other Words . . .

Parent Participation

Your participation in your child's educational program planning is very important! You will be invited to participate in school meetings about the identification, evaluation, eligibility, program services and placement of your child. This includes your right to be a part of the team that develops and revises your child's Individualized Education Program, or IEP, as it is called.

In Other Words . . .

To ensure that your child receives a free appropriate public education, you have the right to be fully involved in decisions regarding your child.

GENERAL INFORMATION

Prior Written Notice

34 CFR §300.503

As an active participant in the decision-making process, you have the right to prior written notice from the school when decisions are being made. The school must inform you in writing of important decisions regarding your child's special education program and you must be notified a reasonable time before the decisions are put into place. These include decisions to propose to initiate (start) or refuse in the following areas:

- Identify your child as a child with a disability
- Evaluate or reevaluate your child;
- Develop an IEP for your child, or change your child's IEP;
- Provide your child with special education services; or
- Change your child's special education placement.

Prior written notice must include:

1. A description of the action proposed or refused by the school;
2. An explanation of why the school proposed or refused the action;
3. A description of any other options that your child's individualized education team (IEP) considered and the reasons why those options were rejected;
4. A description of each evaluation procedure, assessment, record, or report the used as a basis for the action proposed or refused;
5. A description of other factors relevant to the action proposed or refused;
6. A statement that parents of a child with a disability are protected by the procedural safeguards described in this notice under Part B of IDEA;
7. Tell you how you can obtain your parent rights if the action that the school is proposing or refusing is not an initial referral for evaluation; and
8. Resources for you to contact to get help in understanding Part B of IDEA.

Notice in understandable language

The notice must be written in language understandable to the general public and provided in your native language, or other mode of communication, unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, the Ministry must take steps to ensure that:

- The notice is translated for you orally or by other means in your native language or other mode of communication;
- You understand the content of the notice; **and**
- There is written evidence that these requirements have been met.

In Other Words . . .

The school will notify you by letter if it proposes any action to change or refuses any action to change regarding your child's educational program. The notice must be simple and easy to understand.

Native Language

34 CFR §300.29

Native language, when used regarding an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with the child (including evaluation of your child), the language normally used by your child in the home or school or learning environment.

For a person with deafness or blindness, or for a person with no written language, the method that will be used to communicate with them is what the person normally uses (such as sign language, Braille, or oral communication).

Electronic Mail

34 CFR §300.505

If the MOE offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

1. Prior written notice;
2. Procedural safeguards notice; and
3. Notices related to a due process complaint.

Parental Consent - Definition

34 CFR §300.9

Consent

Consent means:

1. You have been fully informed in the native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about what the MOE plans to do which requires your consent.
2. You understand and agree in writing to that action, and the consent describes that action and lists the records (if any) that will be released and to whom; and
3. You understand that the consent is voluntary on your part and that you may cancel the consent at any time.

If you wish to cancel the consent after your child has begun receiving special education and related services, you must do so in writing. The cancellation of consent does not undo an action that has occurred after you gave the consent but before you cancelled it. In addition, the MOE is not required to change your child's education records to remove any information that your child received special education and related services after the cancellation of consent.

Consent is your informed, written permission.

Parental Consent

34 CFR §300.300

Consent for Initial (first) Evaluation:

The school must have your written consent before it can evaluate your child to determine the need for special education and related services. The school must also

inform you about the evaluation procedures to be used with your child as part of this process. This is what is meant by **“Informed” consent**.

The MOE must make reasonable efforts to obtain the informed consent for an initial evaluation to decide whether your child is a child with a disability.

The consent for initial evaluation does not mean that you have also given the consent for the MOE to start providing special education and related services to your child.

What if I refuse? You can refuse to give your consent for a first evaluation. If you refuse to give your consent for a particular activity, the school cannot use your refusal to withhold other services from your child.

If your child is enrolled in a public school or you are seeking to enroll your child in a public school and you have refused to provide consent or failed to respond to a request to provide consent for an initial (first) evaluation, the MOE may not seek to conduct an initial evaluation of your child by using the IDEA's mediation or due process complaint, resolution meeting, and impartial due process hearing procedures. The MOE will not violate the law regarding locating, identifying and evaluating your child if it does not pursue an evaluation of your child in these circumstances.

Special rules for initial evaluation of wards of the State

If a child is a ward of the Republic of Palau (hereafter referred to as ROP) and is not living with his or her parent:

The MOE does not need consent from the parent for an initial evaluation to determine if the child is a child with a disability if:

1. Despite reasonable efforts to do so, the MOE cannot find the child's parent;
2. The rights of the parents have been terminated in accordance with ROP law; **or**
3. A judge has assigned the right to make educational decisions to an individual other than the parent and that individual has provided consent for an initial evaluation.

Ward of the State, as used in IDEA, means a child who, as determined by the ROP where your child lives, is:

1. A foster child;
2. Considered a ward of the ROP under ROP law; **or**
3. In the care of the Victim of Crime Abuse (VOCA) division under Public Health.

There is one exception that you should know about. Ward of the ROP does not include a foster child who has a foster parent who meets the definition of a parent as used in IDEA.

Parental consent for services

You must give your informed written consent before the school can initially provide special education and related services to your child. **Your consent is voluntary and it may be withdrawn at any time.**

The MOE must make reasonable efforts to obtain the informed consent before providing special education and related services to your child for the first time.

If you do not respond to a request to provide the consent for your child to receive special education and related services for the first time, or if you refuse to give such consent or later cancel the consent in writing, the MOE may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to get you to agree or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without the consent.

What if I refuse? You can refuse your consent for special education services for the first time. If you refuse to give your consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent or later cancel the consent in writing and the MOE does not provide your child with the special education and related services for which it was trying to obtain the consent, the MOE:

1. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; **and**
2. Is not required to have an individualized education program (IEP) meeting or develop an IEP for your child for the special education and related services for which the consent was requested.

If you cancel the consent in writing at any point after your child is first provided special education and related services, then the MOE may not continue to provide such services, but must provide you with prior written notice, as described under the heading **Prior Written Notice**, before stopping those services.

Parent Consent before reevaluations

The MOE must obtain the informed consent before it reevaluates your child, unless the MOE can demonstrate that:

1. It took reasonable steps to obtain the consent for your child's reevaluation; **and**
2. You did not respond.

If you refuse to consent to your child's reevaluation, the MOE may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation. As with initial evaluations, the MOE does not violate its obligations under Part B of IDEA if it declines to pursue the reevaluation in this manner.

Documentation of reasonable efforts to obtain parental consent:

The MOE must maintain records of what they did to get your consent for initial evaluations, to provide special education and related services for the first time, for a reevaluation, and to locate parents of wards of the MOE for initial evaluations. The documentation must include a record of the MOE's attempts in these areas, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of notes sent to you and any responses received; **and**
3. Detailed records of visits made to the home or place of employment and the results of those visits.

Other consent requirements

The consent is not required before the MOE may:

1. Review existing data as part of your child's evaluation or a reevaluation; **or**
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from parents of all children.

If you have enrolled your child in a private school at your own expense or if you are teaching your child at home, and you do not provide the consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide the consent, the MOE may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive services that are made available to some children with disabilities who are placed in private school by their parents.

In Other Words . . .

Your informed, written permission is required before your child is first evaluated, reevaluated, or provided special education services for the first time.

Independent Educational Evaluations

34 CFR §300.502

General

As described below, you have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was obtained by the MOE.

If you request an independent educational evaluation (i.e. an evaluation completed by someone outside of the MOE), the MOE must provide you with information about where you may obtain an independent educational evaluation and about the MOE's criteria that apply to independent educational evaluations.

Definitions

An independent educational evaluation (IEE) is an evaluation conducted by a qualified person who is not employed by the school or the MOE responsible for the education of your child.

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 you, following the requirements of Part B of IDEA, which allow ROP to use whatever ROP, Federal, and private sources of support are available in the ROP to meet the requirements of Part B of IDEA.

Right to Evaluate at Public expense:

- You may request that the MOE pay for the IEE. It is helpful if your request is in writing. The MOE must respond to any such request without unnecessary delay. However, if the MOE does not agree that an IEE is necessary, the MOE may initiate a due process hearing to show:
 - (1) That its evaluation of your child is appropriate; or,
 - (2) That the evaluation of your child that you obtained did not meet the MOE criteria. If the final decision of the impartial hearing officer is that the school's evaluation is appropriate, you still have the right to an independent educational evaluation, but at your own expense.

- If you request an independent educational evaluation of your child, the MOE may ask why you object to the evaluation of your child obtained by the MOE. However, the MOE may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the MOE's evaluation of your child.
- You can only have one independent educational evaluation of your child paid for by MOE each time the MOE conducts an evaluation of your child with which you disagree.

Parent-initiated evaluations

If you obtain an independent educational evaluation at your own expense, the results of the IEE must be considered by the school and the MOE, if it meets the MOE's criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education to your child, and may be presented as evidence at a due process hearing regarding your child.

Request for evaluation by hearing officers

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at the MOE's expense.

MOE Criteria

If an independent educational evaluation is paid for by the MOE, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the evaluator, 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 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 paid for by MOE.

In Other Words . . .

You are part of the team that evaluates your child. At least once every three years, the team must consider whether any additional evaluation is needed. If you disagree with the school's evaluation of your child, you have the right to obtain an independent educational evaluation, conducted by someone other than the school staff.

EDUCATIONAL SURROGATE PARENT

When the natural parent or guardian of a child is unknown or unavailable, or if the child is a ward of the state, the Ministry must assign an individual to act as the child's parental substitute, or educational surrogate parent. The surrogate parent has all the procedural rights of a parent, and is responsible for representing the child's interest in all manners related to the child's educational program.

In Other Words . . .

Sometimes the natural parent or other family of a child is unknown or unavailable. When that happens, an educational surrogate parent is appointed to represent the child at school meetings.

TRANSFER OF PARENTAL RIGHTS

When a student with a disability becomes a legal adult at his or her 18th birthday, parent rights will transfer to the child in accordance with Palauan law, unless the child has been determined to be incompetent. This is called the "age of majority." Under the IDEA law, this would include any students with disabilities who are incarcerated in jail.

The MOE will provide you with notice of this transfer of rights at least one year prior to the actual transfer of rights. If upon reaching the age of majority a child is determined not capable of giving informed consent with respect to his or her educational program, then the MOE will appoint you the parent, or some other appropriate person, to represent the educational needs of your child.

NOTES

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NOTES

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STATE COMPLAINT PROCEDURES

34 CFR §300.611

If you have concerns about your child's special education programs, the first step is to talk to your 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 you cannot resolve your concerns informally with staff, there are further steps available to you:

- You may file a written complaint with the special education office;
- You may request an impartial mediation; or
- You may file a due process complaint.

Differences Between the Procedures for Due Process Complaints and Hearings and for State Complaints

There are separate procedures for ROP complaints and for due process complaints and hearings.

	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	Disagreement on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation, or educational placement of a child with a disability, or the provision of a free appropriate public education (FAPE) to your child
Timeline for filing?	Within one year of violation	File within two years of alleged violation
Timeline for Resolution	60-calendar days unless the timeline is properly extended	Hearing Officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45-calendar-days after end of resolution period unless the Hearing Officer grants a specific extension of the timeline at your request or the MOE's request.
Process	Investigation by MOE	Hearing conducted by an impartial hearing officer

The State complaint and due process complaint, resolution, and hearing procedures are described more fully in the following pages.

The MOE must develop model forms to help you file a due process complaint and help you or other individuals to file a State complaint as described under the heading **Model Forms**.

Adoption Of State Complaint Procedures

34 CFR §300.151

General

The MOE must have written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
2. The filing of a complaint with the MOE;
3. Widely disseminating 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:

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

Minimum State Complaint Procedures

34 CFR §300.152

Time limit; minimum procedures

The MOE must include in its State complaint procedures a time limit of 60 calendar days after a complaint is filed to:

1. Carry out an independent on-site investigation, if the MOE determines that an investigation is necessary;
2. 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;
3. Provide the MOE or other public agency the opportunity to respond to the complaint, including, at a minimum: (a) at the option of the MOE, 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;
4. 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**

5. Issue a written decision 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.

Time extension; final decision; implementation

The MOE's procedures described above also must:

1. Permit an extension of the 60 calendar-day time limit only if: (a) exceptional circumstances exist with respect to a particular State complaint; **or** (b) you 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.
2. Include procedures for effective implementation of the MOE's final decision, if needed, including: (a) technical assistance activities; (b) negotiations; **and** (c) corrective actions to achieve compliance.

State complaints and due process hearings

If a written State complaint is received that is also the subject of a due process hearing as described under the heading ***Filing a Due Process Complaint***, 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.

If an issue raised in a State complaint has previously been decided in a due process hearing involving the same parties (for example, you 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.

A complaint alleging the MOE's or other public agency's failure to implement a due process hearing decision must be resolved by the MOE.

Filing A State Complaint

34 CFR §300.153

An organization or individual such as you, as a parent, may file a signed written State complaint under the procedures described above.

The State complaint must include:

1. A statement that the MOE or other public agency has violated a requirement of Part B of IDEA or its implementing regulations;
2. The facts on which the statement is based;
3. Your signature and contact information as the individual filing the complaint; and
4. If alleging violations regarding your child:
 - (a) The name of your child and address of the residence of your child;
 - (b) The name of the school your 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 your 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.

The complaint must state that a violation that occurred not more than one year prior to the date that the complaint is received as described under the heading **Adoption of State Complaint Procedures**.

The individual or organization filing the State complaint must deliver or mail a copy of the complaint to the school or other public agency serving your child at the same time the party files the complaint with the MOE.

DUE PROCESS COMPLAINT PROCEDURES

Filing A Due Process Complaint

34 CFR §300.507

General

You 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 your child or the provision of a free appropriate public education (FAPE) to your child.

The due process complaint must allege a violation that happened not more than two years before you or the MOE knew or should have known about the stated action that is the reason for the due process complaint.

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

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

Information for parents

The MOE must inform you of any free or low-cost legal and other relevant services available in the ROP if you request the information, or if you or the MOE file a due process complaint.

Due Process Complaint

34 CFR §300.508

General

In order to request a hearing, you or the MOE (or your 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.

Whoever files the complaint must also provide the MOE with a copy of the complaint.

Content of the complaint

Your complaint must include:

- Your child's name and address, and the name of your 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 your 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 (you or the MOE) at the time.

Notice required before a hearing on a due process complaint

You or the MOE may not have a due process hearing until you or the MOE (or your 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 (you 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 (you 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 notify you and the MOE in writing immediately.

Changes to the due process complaint

You or the MOE may make changes to the complaint only if:

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

If the complaining party (you 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.

MOE response to a due process complaint

If the MOE has not sent a prior written notice to you, as described under the heading ***Prior Written Notice***, regarding the issue contained in the due process complaint, the MOE must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the MOE proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the MOE used as the basis for the proposed or refused action; **and**
4. A description of the other factors that is relevant to the MOE's proposed or refused action.

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.

Other party response to a due process complaint

Except as stated under the sub-heading immediately above, the **MOE response to a due process complaint**, 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.

Model Forms

34 CFR §300.509

The MOE must develop model forms to help you to file a due process complaint and to help you and other parties to file a State complaint. You may request a copy of the form from the special education office. However, the MOE may not require the use of these model forms. In fact, you 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.

Mediation

34 CFR §300.506

General

The MOE must develop procedures that make mediation available to allow you 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 you have filed a due process complaint to request a due process hearing as described under the heading **Filing a Due Process Complaint**.

Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the MOE's part;
2. 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**
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The MOE may develop procedures that offer parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to you, with an individual who has no interest regarding the issue:

1. 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**
2. 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.

The MOE is responsible for the costs of the mediation process, including the cost of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the MOE.

If you 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:

1. 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**
2. Is signed by both you and a 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:

1. May not be an employee of the MOE or the MOE that is involved in the education or care of your child; **and**
2. 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.

Resolution Process

34 CFR §300.510

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 you 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:

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

You and the MOE determine the relevant members of the IEP Team to attend the meeting.

The purpose of the meeting is for you 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:

1. You and the MOE agree in writing to waive the meeting; **or**
2. You and the MOE agree to use the mediation process, as described under the heading **Mediation**.

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, as described under the heading, **Hearing Decisions**, 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 you 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 your participation 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:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. 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 you 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 you 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 you 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, you and the MOE must enter into a legally binding agreement that is:

1. Signed by you and a representative of the MOE who has the authority to legally sign for the MOE; **and**
2. 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 you and the MOE enter into an agreement as a result of a resolution meeting, either party (you or the MOE) may cancel the agreement within 3 business days of the time that both you and the MOE signed the agreement.

HEARINGS ON DUE PROCESS COMPLAINTS

Impartial Due Process Hearing

34 CFR §300.511

General

Whenever a due process complaint is filed, you or the MOE involved in the dispute must have an opportunity for an impartial due process hearing, as described in the ***Due Process Complaint*** and ***Resolution Process*** sections.

Impartial hearing officer

- An impartial hearing officer will be appointed to conduct the hearing.
- A hearing officer may not be a person who is an employee of the MOE or any public agency that is involved in the education or care of your child, or 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 agency to serve as a hearing officer.
- The individual selected to be a hearing officer must have knowledge 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 which are 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 (you 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

You 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 you could not file a due process complaint because:

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

Due Process Hearing Rights

34 CFR §300.512

General

You have the right to represent yourself at a due process hearing (including a hearing related to disciplinary procedures). Any party has certain rights, including the right to:

- Bring an attorney who can give you 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, you 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

As parents, your right include:

- Having your child present;
- Having an open public hearing, if you choose; and
- Having the record of the hearing, the findings of fact and decisions provided to you at no cost.

Hearing Decisions

34 CFR §300.513

Decision of the hearing officer

A hearing officer's decision on whether your child received a free appropriate public education (FAPE) must be based on evidence and arguments that directly relate to FAPE.

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

1. Interfered with your child's right to a free appropriate public education (FAPE);
2. Significantly interfered with the opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to your child; **or**
3. Caused your 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 you 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:

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

APPEALS

Finality of Decision; Appeal; Impartial Review

34 CFR §300.514

Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that you or the MOE may appeal the hearing officer decision in the Republic of Palau court , as described under the heading ***Civil Actions, Including the Time Period in Which to File Those Actions.***

Timelines and Convenience of Hearings and Reviews

34 CFR §300.515

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

1. A final decision is reached in the hearing; **and**
2. 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 (you or the MOE).

Each hearing must be conducted at a time and place that is reasonably convenient to you and your child.

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

34 CFR §300.516

General

Any party (you 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 (you 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:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the MOE's request; **and**
3. 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.

Your Child's Placement While The Due Process Complaint And Hearing Are Pending

34 CFR §300.518

During the course of any resolution process, due process hearing, or civil court appeal, your child will remain in his or her current educational placement. This is known as the “stay put” rule and applies unless:

- You and the MOE agree to another placement;
- Your child is applying for initial admission to a public school and you consent to your child's placement in the public school program until the completion of the hearing; or
- Your 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 you that a change of placement is appropriate, that placement must be treated as your child's current educational placement where your child will remain while waiting for the decision of any impartial due process hearing or court proceeding.

Attorney's Fees

34 CFR §300.517

General

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 you, if you win.

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 State Educational Agency or school district, to be paid by your attorney, if the attorney: (a) filed a complaint or court case that the court finds is frivolous, unreasonable, or without foundation; **or** (b) continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; **or**

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, as described under the heading **Resolution Process** 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. You, 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 you did not provide to the MOE the appropriate information in the due process request notice as described under the heading ***Due Process Complaint***.

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.

In Other Words . . .

If you cannot resolve a disagreement with your child's school through informal means, you may choose the State Complaint process, mediation, or if necessary a due process complaint and hearing conducted by an impartial person.

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CONFIDENTIALITY OF INFORMATION

34 CFR §300.611

Definitions

As used under the heading **Confidentiality of Information**:

- *Destruction* means physical destruction or removal of personal identifiers from 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 the regulations implementing the Family Educational Rights and Privacy Act of 1974 (FERPA).
- *Participating agency* means the MOE that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of IDEA.

Personally Identifiable

34 CFR § 300.32

Personally identifiable means information that includes:

- (a) Your child’s name, the name of the parent, or the name of another family member;
- (b) Your child’s address;
- (c) A personal identifier, such as your 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 your child right away.

Notice To Parents

34 CFR § 300.612

The MOE must give notice 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 the ROP;
2. A description of the children on whom personally identifiable information is maintained, the types of information they are asking for, the methods the MOE 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 ROP schools and agencies must follow regarding storage, sharing information with 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.

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

Access Rights To Education Records

34 CFR §300.613

You, or someone who has your permission have the right to review any educational records related to your child that are collected, maintained, or used by your child’s school, or elsewhere by the MOE.

If you ask to see your child’s school records, the MOE must comply:

- Without unnecessary delay;
- Before any meeting about your child’s IEP;
- Before any impartial due process hearing (including a resolution meeting or a hearing regarding discipline) relating to your child; and, in no case,
- More than 45 calendar days after you have made a request.

Your right to inspect and review educational 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 have your representative inspect and review the records; and,
3. The right to request that the MOE provide copies of the records containing information, if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The MOE will presume that you have authority to inspect and review records relating to your child unless the MOE has been advised that you do not have the authority under Republic of Palau law governing such matters as guardianship, separation, and divorce.

Record Of Access

34 CFR §300.614

The MOE must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of 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

34 CFR §300.615

If any education record includes information on more than one child, you have the right to inspect and review only the information relating to your child or to be informed of the specific information.

List Of Types And Locations Of Information

34 CFR §300.616

The MOE must provide you on request, a list of the types and location of all educational records collected, maintained, or used by the MOE regarding your child.

Fees

34 CFR §300.617

The MOE may not charge a fee to search for or to retrieve information on your child, but may charge a fee for copies of records which are made for parents, if the fee does not prevent parents from exercising their right to inspect and review those records.

Amendment Of Records At Parent's Request

34 CFR §300.618

If you believe that information in your child's educational records is inaccurate or misleading, or violates the privacy or other rights of your child, you may ask the MOE to amend the information.

Within a reasonable period of time after receiving your request, the school or the MOE must decide whether to amend the information. If the MOE decides to refuse to amend the information as you requested, it must inform you of the refusal and why and of your right to a hearing, as described under the heading, ***Opportunity For a Hearing***, to challenge the information in your child's educational records.

Opportunity For A Hearing

34 CFR §300.619

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

Hearing Procedures

34 CFR §300.621

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

34 CFR §300.620

If, as a result of the hearing, it is decided that the information is inaccurate, misleading or otherwise violates the privacy or other rights of your child, the MOE must amend the information and inform you in writing that it has done so.

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

The MOE must keep your explanation as part of the records of your child as long as the record or contested portion is maintained in the record. If the MOE discloses records of your child, or the contested information to anyone, the explanation must also be given to that party.

Consent For Disclosure Of Personally Identifiable Information

34 CFR §300.622

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), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your 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 IDEA.

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

If your child is in, or will be attending, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

Safeguards

34 CFR §300.623

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

One official at the MOE must assume responsibility for ensuring the confidentiality of any personally identifiable information.

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

The MOE must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have the right to inspect or review personally identifiable information.

Destruction Of Information

34 CFR §300.624

The MOE must inform you when personally identifiable information collected, maintained, or used under Part B of IDEA is no longer needed to provide educational services to your child.

The information must be destroyed at the request. However, a permanent record of your 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.

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General

34 CFR §300.148

Some parents choose to enroll their children in private schools, even if they are eligible for special education services in a public school. The Ministry is not required to pay for the cost of education, including special education and related services, at a private school or facility if the Ministry offered your child a free appropriate public education (**FAPE**) in a public school and you still chose to place your child in a private school or facility instead. However, the MOE where the private school is located must include your child in the population whose needs are addressed under the Part B provisions regarding children who have been placed by their parents in a private school.

When Reimbursement May be Required

A court or a hearing officer may require the MOE to reimburse parents for the cost private school placement made without the consent of or referral by the MOE only if:

- The child received special education and related services in a public school before enrolling in the private school; and
- A court or hearing officer finds that at that time the MOE did not make a FAPE available to your child in a timely manner prior to enrollment in a private school and that the private placement is appropriate; and
- The parent provided notice that the child was being removed public school; and,
- The hearing officer or court finds the private placement to be appropriate even if the placement does not meet the MOE standards that apply to education provided by the MOE.

When Reimbursement May be Reduced or Denied

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an evaluation upon notice from the school before removing your child from public school.

You may also be denied reimbursement if at the most recent individualized education program (IEP) meeting that you attended prior to the removal of your child from the public school, you did not inform the IEP Team that you were rejecting the special education placement proposed by the school and gave notice of your concerns and intent to enroll your child in a private school at the MOE's expense.

Your notice to the school district must be given either:

- At the most recent IEP meeting you attended before removing your child from the public school, or

- In writing to the school district at least 10 business days (including holidays that occur on a business day) before removing your child from the public school.
- The cost of reimbursement may also be reduced or denied if upon a court's finding that the actions were unreasonable.

However, the cost of reimbursement:

1. Must not be reduced or denied for failure to provide the notice if: (a) The school prevented you from providing the notice; (b) You had not received notice of the responsibility to provide the notice described above; or (c) Compliance with the requirements above would likely result in physical harm to your child; **and**
2. May, in the discretion of the court or a hearing officer, not be reduced or denied for the failure to provide the required notice if: (a) You are not read or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to your child.

Limited Services

Some limited special education services are provided by the MOE to children enrolled in private schools. Your child may be eligible for these services. If so, special education staff will meet with you and the private school staff to develop what is called a 'services plan'.

- These services plan describes the services that will be provided to your child. Services may be provided on-site at the private school or at a public school. If the services are offered at a public school, the MOE must offer transportation for your child to access these services.
- No child placed in a private school by a parent has an individual right to receive some or all of the special education and related services that he or she would receive if enrolled in a public school.

In Other Words . . .

- Children placed in private schools by their parents do not have the same rights to special education services that public school children do.
- The MOE does make some limited services available to eligible children in private schools.
- The MOE is generally not responsible for the educational costs of children placed in private schools by their families. Under specific certain circumstances, a parent could be awarded reimbursement for moving their child from a public school to a private school.

NOTES

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NOTES

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PROCEDURES WHEN DISCIPLINING YOUR CHILD WITH A DISABILITY

There may be instances when your child's behavior requires the school to use special methods of discipline. If this occurs, there are certain procedures, in addition to those for all students, which the school must follow if your child is receiving special education services. These procedures can be difficult to understand at times. In many of these situations, you have the right as a parent to be part of team decisions about the disciplinary action to be taken with your child.

Authority Of School Personnel

34 CFR §300.530

Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

General

Short Term Removals. If your child violates school rules, the school may suspend your child from his or her current placement for up to 10 school days in a row, just as it does when disciplining any other student. The school is not required to provide educational services during the first 10 days of suspensions. Additional suspensions of up to 10 school days are allowed for separate incidents of misconduct. However, if a series of short-term removals become a pattern that excludes your child from services, they are considered a change of placement and the requirements for longer removals must be followed (See the heading **Change of Placement Because of Disciplinary Removals** for the definition).

Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, the MOE must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**.

Longer Removals. Longer removals include expulsion, and any suspensions of more than 10 consecutive school days, or a 'pattern of exclusion' of shorter removals that add up to more than 10 school days.

Factors that are considered in determining a 'pattern of exclusion' include the length of each suspension, the total amount of time your child is removed, and the closeness of the suspensions to each other.

When the suspensions exceed or become a pattern, it is called a 'change of placement' and your child has certain additional rights to services. When a longer removal for violation of conduct is being considered, the MOE must have an IEP meeting, with you and other qualified personnel included, to make what is called a 'manifestation determination'.

Additional authority

If the behavior that broke the school rule was not directly related to your child's disability (see the subheading ***Manifestation determination***), and the disciplinary change of placement would be more than **10 school days** in a row, school personnel may apply the disciplinary procedures to your child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under **Services**. Your child's IEP Team determines the interim alternative educational setting for such services.

Services

The MOE does not provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for **10 school days or less** in that school year.

A child with a disability who is removed from your his or her current placement for **more than 10 school days** and the behavior is not directly related to your child's disability (see subheading, ***Manifestation determination***) or who is removed under special circumstances (see the subheading, ***Special circumstances***) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable your child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in your child's IEP; **and**
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for 10 school days in a row or less **and** if the removal is not a change of placement (see definition below), **then** school personnel, in consultation with at least one of your child's teachers, determine the extent to which services are needed to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in your child's IEP.

If the removal is a change of placement (see the heading, ***Change of Placement Because of Disciplinary Removals***), your child's IEP Team determines the appropriate services to enable your child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in your child's IEP.

Manifestation determination

Whenever a 'longer removal' for violations of conduct that apply to all students is being considered, then the school must:

- Notify you of this situation and provide you with a copy of these procedural safeguards immediately after the decision is made;
- Hold an IEP meeting within 10 school days and invite you to participate as part of the IEP and other relevant members of the IEP Team (as determined by you and the MOE) to determine:
 1. If the conduct in question was caused by, or had a direct and extensive relationship to, your child's disability; **or**
 2. If the conduct in question was the direct result of the MOE's failure to implement your child's IEP.

The IEP Team must determine the relationship between your child's disability and the misconduct by reviewing:

- Relevant information in your child's file including your child's IEP;
- Information provided by you or other family members;
- Any teacher observations of your child;

If the MOE, you, and other relevant members of your child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of your child's disability.

If the MOE, you, and other relevant members of your child's IEP Team determine that the conduct in question was the direct result of the MOE's failure to implement the IEP, the MOE must take immediate action to correct those deficiencies.

If the IEP team determines that the behavior is **NOT** a manifestation of your child's disability, then the school may apply the same disciplinary procedure that would be applicable to any student in this situation.

However, beginning on the 11th day of any such removal, the school or the MOE must provide your child with services to the extent necessary to allow your child to appropriately progress in the general curriculum and advance toward achieving your child's IEP goals. This applies even when your child is expelled, suspended, or placed in a disciplinary alternative education setting. As a student receiving special education services, your child still has right to educational services, although they may be provided in a different setting.

Determination that behavior was a manifestation of your child's disability

If the MOE, you, and other relevant members of the IEP Team determine that the conduct was a demonstration of your child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the MOE had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for your child; **or**
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and change it, as necessary, to address the behavior.

Except as described below under the sub-heading ***Special circumstances***, the MOE must return your child to the placement from which your child was removed, unless you and the school agree to a change of placement as part of the changes to the behavioral intervention plan.

Special circumstances

Whether or not the behavior was a demonstration of your child's disability, school personnel may move your child to an interim alternative setting (IAS) for not more than 45 school days if:

1. Your child carries a weapon (see definition below) to school or has a weapon at school, on school grounds, or at a school function;
2. Your child knowingly possesses or uses illegal drugs (see the definition below), or sells or solicits the sale of drugs, (see the definition below), while at school, on school grounds, or at a school activity sponsored by the MOE; **or**
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school grounds, or at a school activity sponsored by the MOE.

Definitions

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)).

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 that Act 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.

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.

Notification

On the date the school makes the decision to make a removal that is a change of placement of your child because he/she broke a school rule, the MOE must notify you of that decision, and provide you with a procedural safeguards notice.

Change Of Placement Because Of Disciplinary Removals

34 CFR §300.536

A removal of your child with a disability from your child’s current educational placement is a change of placement if:

1. The removal is for more than 10 school days in a row; or
2. Your child has been experiencing a series of removals that constitute a pattern because:
 - (a) The series of removals total more than 10 school days in a school year;
 - (b) Your child’s behavior is significantly similar to your child’s behavior in previous incidents that resulted in the series of removals; and
 - (c) Of such additional factors as the length of each removal, the total amount of time your child has been removed, and how close the removals are to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by the MOE and, if challenged, is subject to review through due process and court proceedings.

Determination Of Setting

34 CFR §300.531

The individualized education program (IEP) Team determines the interim alternative educational setting for removals that are **changes of placement**, and removals under the subheadings **Additional authority** and **Special circumstances**.

Interim Alternative Educational Setting: An interim alternative educational setting must be determined by your child’s IEP Team and must meet the requirements that follow:

- Enable your child to continue to progress in the general curriculum, although in a different setting;
- Allow your child to continue to receive these services and modifications, including those described in your child's IEP to enable your child to meet these goals; **and**
- Include services and modifications designed to address your child's behavior.

You have the right to be part of the IEP team that determines the interim alternative educational setting for your child.

Appeal

34 CFR §300.532

General

You may file a due process complaint (see the heading ***Due Process Complaint Procedures***) to request a due process hearing if you disagree with:

1. Any decision regarding placement made under these discipline provisions; **or**
2. The manifestation determination described above.

The MOE may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

Authority of hearing officer

A hearing officer that meets the requirements described under the subheading ***Impartial hearing officer*** must conduct the due process hearing and make a decision. The hearing officer may:

1. Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the heading ***Authority of School Personnel***, or that your child's behavior was a demonstration of your child's disability; **or**
2. Order a change of placement of your 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 your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated, if the MOE believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

Whenever you or the MOE files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings ***Due Process Complaint Procedures*** and ***Hearings on Due Process Complaints*** except as follows:

1. The MOE must arrange for a speedy or quick due process hearing, which must occur within **20** school days of the date the hearing is requested and must result in a determination within **10** school days after the hearing.
2. Unless you and the MOE agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15** calendar days of receipt of the due process complaint.
3. The MOE may establish different procedural rules for speedy or quick due process hearings than it has established for other due process hearings, but except for the timelines, those rules must be consistent with the rules in this document regarding due process hearings.

You or the MOE may appeal the decision in a speedy due process hearing in the same way as for decisions in other due process hearings (see the heading **Appeal**).

Placement During Appeals

34 CFR §300.533

When, as described above, you or the MOE file a due process complaint related to disciplinary matters, your child must (unless you and the MOE agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading ***Authority of School Personnel***, whichever occurs first.

Protections For Children Not Yet Eligible For Special Education And Related Services

34 CFR §300.534

General

If your child has not been determined eligible for special education and related services and breaks a school rule, but the MOE had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred, that your child was a child with a disability, then your child may be protected as described in this notice.

Basis of knowledge for disciplinary matters

The MOE will be determined to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the MOE, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; **or**
3. Your child's teacher or other MOE personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the MOE's special education coordinator or to other supervisory personnel of the MOE.

Exception

The MOE would not be determined to have such knowledge if:

1. You have not allowed an evaluation of your child or have refused special education services; **or**
2. Your child has been evaluated and determined to not be a child with a disability under Part B of IDEA.

Conditions that apply if there is no basis of knowledge

If prior to taking disciplinary measures against your child, the MOE does not have knowledge that your child is a child with a disability, as described above under the sub-headings ***Basis of knowledge for disciplinary matters and Exception***, your child will experience the same disciplinary measures that are applied to children without disabilities who engage in similar behaviors.

However, if a request is made for an evaluation of your child during the time period in which they are applying the disciplinary procedures to your child, the evaluation must be conducted in an expedited manner.

Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.

If your 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 you, the MOE must provide special education and related services in accordance with Part B of IDEA, including the disciplinary requirements described above.

Referral To And Action By Law Enforcement And Judicial Authorities

34 CFR §300.535

Part B of IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent ROP law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and ROP 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, the MOE:

1. Must ensure that copies of your child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; **and**
2. May transmit copies of your child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

In Other Words . . .

Discipline is an important factor in the learning process at any school. School personnel and the IEP Team, which includes you, will need to determine the appropriate disciplinary procedures if your child's behavior results in misconduct.

In the event your child is removed from school for longer than ten days, the MOE still has to provide services to your child, if your child is receiving special education services.

You have the right to appeal any disciplinary decisions made by the school through an expedited due process hearing if you feel the process has not been properly followed.

NOTES

[illegible]



SPECIAL EDUCATION RIGHTS OF PARENTS IN PALAU

(Notice of Procedural Safeguards)

MINISTRY OF EDUCATION
REPUBLIC OF PALAU

FOR MORE INFORMATION, CONTACT:

Special Education Coordinator
Ministry of Education
Republic of Palau
P.O. Box 189
Koror, Palau 96940
Phone: (680) 488-2568/5298

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