



***For Further Information Contact:
The Office of Special Education
797 Westminster Street
Providence, Rhode Island 02903
401-456-9330***

Rhode Island Special Education Procedural Safeguard Notice

Introduction

The Individuals with Disabilities Education Act (IDEA), the federal law concerning the education of students with disabilities, and the Regulations of the Rhode Island Board of Regents for Elementary and Secondary Education Governing the Education of Children with Disabilities, requires schools to provide you, the parents of a child with a disability, with a notice containing a full explanation of procedural safeguards (your rights) available under IDEA and R.I. Department of Education regulations.

A copy of the procedural safeguards notice must be given to you one time per school year and also:

1. Upon initial referral or parent request for evaluation.
2. Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 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.

The school district may place a copy of procedural safeguards notice on its internet website if a web site exists. In addition a copy of the model procedural safeguards form is available at www.ride.ri.gov.

This procedural safeguard notice includes a full explanation of all of the procedural safeguards available under:

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1. General Information

Prior Written Notice

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RHODE ISLAND REGULATIONS §300.503

Notice

Your school district must provide written notice to you within a reasonable time, 10 school days, before:

1. Proposing to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of a free appropriate public education (FAPE) to your child; **or**
2. Refusing to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

Content of notice

The written notice must:

1. Describe the action that your school district proposes or refuses to take.
2. Explain why your school district is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report your school district used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of the IDEA;
5. Inform you how to obtain a description of the procedural safeguards if the action that your school district is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for assistance in understanding Part B of the IDEA;
- 7.

Native Language

RHODE ISLAND REGULATIONS §300.29

Native language, when used with respect to 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 a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

Electronic Mail

RHODE ISLAND REGULATIONS §300.505

If your school district 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

RHODE ISLAND REGULATIONS §300.9

Consent

Consent means:

1. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving 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.

Parental Consent (Please see definition of Consent above)

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RHODE ISLAND REGULATIONS §300.300

Consent for initial evaluation

RI Special Education Procedural Safeguards Notice | 1: GENERAL INFORMATION

The school district must make reasonable efforts to obtain your 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 your 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 revoke (cancel) your consent in writing, your school district may not use the procedural safeguards (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) in order to obtain agreement or a ruling that the special education and related services (recommended by your child's IEP Team) may be provided to your child without your consent.

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 revoke (cancel) your consent in writing and the school district does not provide your child with the special education and related services for which is sought your consent, your district:

- 1.

RI Special Education Procedural Safeguards Notice | 1: GENERAL INFORMATION

Other consent requirements

Your consent is not required before your school district 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 home schooling your child, and you do not provide your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, the school district 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 equitable services (services made available to parentally-placed private school children with disabilities)

Independent Educational Evaluations

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RHODE ISLAND REGULATIONS §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 your school district.

If you request an independent educational evaluation, the school district must provide you with information about where you may obtain an independent educational evaluation and about the school district's criteria that apply to independent educational evaluations.

Definitions

Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.

Public expense means that the school district either pays for the full cost of the evaluation or ensures that the evaluation

RI Special Education Procedural Safeguards Notice | 1: CONFIDENTIALITY INFORMATION

2. If your school district requests a hearing and the final decision is that your school district's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, the school district may ask why you object to the evaluation of your child obtained by your school district. However, your school district may not require an

Participating agency” means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

Personally Identifiable

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RHODE ISLAND REGULATIONS §300.32

Personally identifiable means information that includes:

- a) Your child’s name, your name as 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;
- d) A list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

Notice to Parents

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RHODE ISLAND REGULATIONS §300.612

The Rhode Island Department of Education (RHODE ISLAND DEPARTMENT OF EDUCATION) shall give 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 the State;
2. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State 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 participate in 00v8 Tc3 mc e .TT6 1 Tf 003 Tw (Noti6902 .941)4.

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RI Special Education Procedural Safeguards Notice | 2: CONFIDENTIALITY OF INFORMATION

with your request to inspect and review any education records on your 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 ten (10) calendar days after you have made a request.

Your right to inspect and review education records includes:

- 1.** Your right to a response from the participating agency to your reasonable requests for explanations and interpretations of the records;
- 2.** Your right to request that the participating agency provides copies of the records if you cannot effectively inspect and review the records unless you receive those copies (R.I.G.L. §16-71-3(a)(3)); **and**
- 3.** Your right to have your representative inspect and review the records.

RI Special Education Procedural Safeguards Notice | 2: CONFIDENTIALITY OF INFORMATION

Each participating agency may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records. A participating agency may not charge a fee to search for or to retrieve information under this part.

Amendment of Records at Parent's Request

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RHODE ISLAND REGULATIONS §300.618

If you believe that information in the education records rega

RI Special Education Procedural Safeguards Notice | 2: CONFIDENTIALITY OF INFORMATION

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

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

Consent For Disclosure of Personally Identifiable Information

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RHODE ISLAND REGULATIONS §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 the IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State 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 is going to go to, 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.

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

The information must be destroyed at your 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.

3. State Complaint Procedures

For more information and appropriate filing forms please visit the RIDE web site:

[http:// www.ride.ri.gov/Special_Populations/Dispute_resolution/](http://www.ride.ri.gov/Special_Populations/Dispute_resolution/)

Or contact the Rhode Island Department of Education Call Center at **401-222-8999**.

Difference Between Due Process Hearing Complaint and State Complaint Procedures

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The regulations for Part B of IDEA set forth separate procedures for State complaints and for due process complaints and hearings. As explained below, any individual or organization may file a State complaint alleging a violation of any Part B requirement by a school district, the Rhode Island Department of Education, or any other public agency. Only you or a school district 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 with a disability, or

the provision of a free appropriate public education (FAPE) to the child. While staff of the Rhode Island Department of Education generally must resolve a State complaint within a 60-calendar-day timeline, unless the timeline is properly extended, an impartial 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 the end of the resolution period, as described in this document under the heading Resolution Process, unless the hearing officer grants a specific extension of the timeline at your request or the school district's request. The State complaint and due process complaint, resolution and hearing procedures are described more fully below.

State Complaint Procedures

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RHODE ISLAND REGULATIONS §300.151

General

The Rhode Island Department of Education has established written procedures for:

1. Resolving any complaint, including a complaint filed by an organization or individual from another State;
- 2.

RI Special Education Procedural Safeguards Notice | 3: STATE COMPLIANT PROCEDURES

Remedies for denial of appropriate services

In resolving a State complaint in which the Rhode Island Department of Education has found a failure to provide appropriate services, the Rhode Island Department of Education must address:

1. 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**
2. Appropriate future provision of services for all children with disabilities.

State Complaint Procedures

RI Special Education Procedural Safeguards Notice | 3: STATE COMPLIANT PROCEDURES

a hearing, the State 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 (you and the school district), then the due process hearing decision is binding on that issue and the Rhode Island Department of Education must inform the complainant that the decision is binding.

RI Special Education Procedural Safeguards Notice | 4: DUE PROCESS COMPLAINT PROCEDURES

6. A proposed resolution of the problem to the extent known and available to you or the school district at the time.

Notice required before a hearing on a due process complaint

You or the school district may not have a due process hearing until you or the school district (or your attorney or the school district's attorney), files a due process complaint that includes the information listed above.

Sufficiency of complaint

In order for a due process complaint to go forward, it must be considered sufficient. The due process complaint will be considered sufficient (to have met the content requirements above) unless the party receiving the due process complaint (you or the school district) 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 the receiving party (you or the school district) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the school district in writing immediately.

Complaint amendment

You or the school district 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 school district) 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.

Local educational agency (LEA) or school district response to a due process complaint

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

1. An explanation of why the school district 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 school district used as the basis for the proposed or refused action; **and**
4. A description of the other factors that are relevant to the school district's proposed or refused action.

Providing the information in items 1-4 above does not prevent the school district from asserting that your due process complaint was insufficient.

RI Special Education Procedural Safeguards Notice | 4: DUE PROCESS COMPLAINT PROCEDURES

Other party response to a due process complaint

Except as stated under the sub-heading, **Local educational agency (LEA) or school district response to a due process complaint**, the party receiving a due process complaint must, within 10

RI Special Education Procedural Safeguards Notice | 4: DUE PROCESS COMPLAINT PROCEDURES

The State must keep a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The Rhode Island Department of Education must select mediators on a random, rotational, or other impartial basis.

The State is responsible for the cost of the mediation process, including the costs 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 school district.

If you and the school district resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and:

1. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding (court case); and
2. Is signed by both you and a representative of the school district who has the authority to bind the school district.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has the authority under State 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 State court of a State receiving assistance under Part B of IDEA.

Impartiality of mediator

The mediator:

1. May not be an employee of the Rhode Island Department of Education or the school district that is involved in the education or care of your child; **and**
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of a school district or State agency solely because he or she is paid by the agency or school district to serve as a mediator.

Resolution Process

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[RHODE ISLAND REGULATIONS §300.510](#)

Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the school district must convene 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 your due process complaint. The meeting:

1. Must include a representative of the school district who has decision-making authority on behalf of the school district; and

RI Special Education Procedural Safeguards Notice | 4: DUE PROCESS COMPLAINT PROCEDURES

2. May not include an attorney of the school district unless you are accompanied by an attorney.

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

The purpose of the meeting is for you to discuss your due process complaint, and the facts that form the basis of the complaint, so that the school district has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

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

Resolution period

If the school district has not resolved the due process complaint to your 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 school district have both agreed to waive the resolution process or to use mediation, your 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 school district is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district'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 your home or place of employment and the results of those visits.

If the school district fails to hold the resolution meeting within 15 calendar days of receiving notice of your 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 school district 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 school district agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due

RI Special Education Procedural Safeguards Notice | 5: HEARINGS ON DUE PROCESS COMPLAINTS

3. Must be knowledgeable and understand the provisions of the IDEA, and Federal and 3. State regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; **and**
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

RI Special Education Procedural Safeguards Notice | 6: APPEALS

Parental rights at hearings

You must be given the right to:

1. Have your child present at the hearing;
2. Open the hearing to the public; **and**
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

Hearing Decisions

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RHODE ISLAND REGULATIONS §300.513

Decision of 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 your 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 school district to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (RHODEISLANDREGULATIONS §§300.500 through 300.536).

Separate request for a due process hearing

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (RHODE ISLAND REGULATIONS §§300.500 through 300.536) 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 State special education advisory panel and general public

The Rhode Island Department of Education after deleting any personally identifiable information must:

Provide the findings and decisions in the due process hearing or appeal to the State special education advisory panel;
and

Make those findings and decisions available to the public.

6. Appeals

RI Special Education Procedural Safeguards Notice | 6: APPEALS

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the school district's request; **and**
3. Bases its decision on the preponderance (majority) 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

RI Special Education Procedural Safeguards Notice | 7: PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

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 the IDEA, if the court finds that:

- 1. You, or your attorney, during the course of the action or proceeding, unreasonably 1. delayed the final resolution of the dispute;
- 2. The amount of the attorneys’ fees otherwise authorized to be awarded unreasonably 2. 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 3. the action or proceeding; **or**
- 4. The attorney representing you did not provide to the school district the appropriate 4. 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 State or school district unreasonably delayed the final resolution of the action or proceeding or there was a violation under the procedural safeguards provisions of Part B of the IDEA.

7. Procedures When Disciplining Children with Disabilities

Authority of School Personnel

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RHODE ISLAND REGULATIONS §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

To the extent that they take such action for children without disabilities, school personnel may, for not more than **10 consecutive school days**, remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not more than 10 consecutive school days in that same school year

RI Special Education Procedural Safeguards Notice | 7: PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

for separate incidents of misconduct, as long as those removals do not constitute a change of placement (see the heading **Change of Placement Because of Disciplinary Removals** for the definition).

RI Special Education Procedural Safeguards Notice | 7: PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

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 it makes the decision to make a removal that is a change of placement of your child because of a violation of a code of student conduct, the school district must notify you of that decision, and provide you with a procedural safeguards notice.

[RI Special Education Procedural Safeguards Notice | 7: PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES](#)

Change of Placement Because of Disciplinary Removals

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[RHODE ISLAND REGULATIONS §300.536](#)

The 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; 1. **or**
2. Your child has been subjected to a series of removals that are more than 10 cumulative school days in the same school year.

A change of placement, if challenged, is subject to review through due process and judicial proceedings.

Determination of Setting

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[RHODE ISLAND REGULATIONS § 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 headings **Additional authority** and **Special circumstances**, above.

Appeal

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[RHODE ISLAND REGULATIONS § 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:

RI Special Education Procedural Safeguards Notice | 7: PROCEDURES WHEN DISCIPLINING CHILDREN WITH DISABILITIES

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

The school district may file a due process complaint (see above) to request a due process hearing if it believes that

Placement During Appeals

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RHODE ISLAND REGULATIONS §300.533

When, as described above, you or the school district file a due process complaint related to disciplinary matters, your child must (unless you and the Rhode Island Department of Education or school district 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

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RHODE ISLAND REGULATIONS §300.5

General

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but the school district 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 assert any of the protections described in this notice.

Basis of knowledge for disciplinary matters

A school district must be deemed 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 1. appropriate educational agency, 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 ser2. vices under Part B of the IDEA; **or**
3. Your child’s teacher or other school district personnel expressed specific concerns 3. about a pattern of behavior demonstrated by your child directly to the school district’r7xr09(o)-1.5(n)4.1(i)3.8(ry)’r7xr09(o)dSTc-.0a 1 t2ctt(relat 4 T)6-4.5(

RI Special Education Procedural Safeguards Notice | 8: REQUIREMENTS FOR UNILATERAL PLACEMENT BY PARENTS OF CHILDREN IN PRIVATE SCHOOLS AT PUBLIC EXPENSE

However, if a request is made for an evaluation of your child during the time period in which your child is subjected to disciplinary measures, 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 school district, and information provided by you, the school district must provide special education and related services in accordance with Part B of the IDEA, including the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities

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[RHODE ISLAND REGULATIONS §300.535](#)

Part B of the IDEA does not:

1. Prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities; or
2. Prevent State 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 a school district reports a crime committed by a child with a disability, the school district:

1. Must ensure that copies of the 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 the child’s special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

8. Requirements for Unilateral Placement by Parents of Children in Private Schools at Public Expense

General

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[RHODE ISLAND REGULATIONS §300.148](#)

Part B of the IDEA does not require a school district to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if the school district made a free appropriate public education (FAPE) available to your child and you choose to place the child in a private school or facility.

However, the school district 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 under Rhode Island REGULATIONS §§300.131 through 300.144. Additionally, the school district where your child resides may be responsible to provide special education services as required by R.I.G.L. § 16-24-1.

Reimbursement for private school placement

If your child previously received special education and related services under the authority of a school district, and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by the school district, a court or a hearing officer may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by the Rhode Island Department of Education and school districts.

Limitation on reimbursement

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

1. If: (a) At the most recent individualized education program (IEP) meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by the school district to provide FAPE to your child, including stating your concerns and your intent to enroll your child in a private school at public expense; or (b) At least 10 business days (including any holidays that occur on a business day) prior to your removal of your child from the public school, you did not give written notice to the school district of that information;
2. If, prior to your removal of your child from the public school, the school district provided prior written notice to you, of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make the child available for the evaluation; or
3. Upon a court's finding that your 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 your 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 your failure to provide the required notice if: (a) You are not literate or cannot write in English; or (b) Compliance with the above requirement would likely result in serious emotional harm to the child.

Acknowledgement

This document is based upon the United States Department of Education Model Form: Procedural Safeguards Notice Revised June 2009 and has been adapted to meet the Rhode Island Board of Regents Regulations Governing the Education of Children With Disabilities, Effective July 1, 2010.

<http://idea.ed.gov/static/modelForms>

Resources

Options and Resources, Rhode Island Informal and Formal Special Education Options and Resources for Dispute Resolution

Mediation Requests
Complaint Process and Form
Request for Due Process Hearing

http://www.ride.ri.gov/Special_Populations/Dispute_resolution/

Rhode Island Department of Education, www.ride.ri.gov, 401-222-8999, TTY 1-800-745-555541 RI Special

Additional Resources:

Rhode Island Technical Assistance Project, www.ritap.org, 401-456-4600

Rhode Island Parent Information Network, www.ripin.org, 401-270-0101

Parent Support Network of RI, www.psnri.org, 401-467-6855

Rhode Island Disability Law Center, www.ridlc.org, 401-831-3150

Office for Civil Rights, <http://ed.gov/about/offices/list/ocr/index.html>, 617-289-0111

Paul V. Sherlock Center on Disabilities, www.sherlockcenter.org, 401-456-8072

Questions and Answers on Procedural Safeguards and Due Process Procedures for Parents and Children with Disabilities, Revised June 2009, <http://idea.ed.gov/explore/view/p/%2Croot%2Cdynamic%2CQaCorner%2C6%2C>