

# PARENT RIGHTS FOR SPECIAL EDUCATION (3 years through age 21)

## Notice of Procedural Safeguards

June 2008



Department of Defense Education Activity  
4040 North Fairfax Drive  
Arlington, Virginia 22203-1635  
[www.dodea.edu](http://www.dodea.edu)

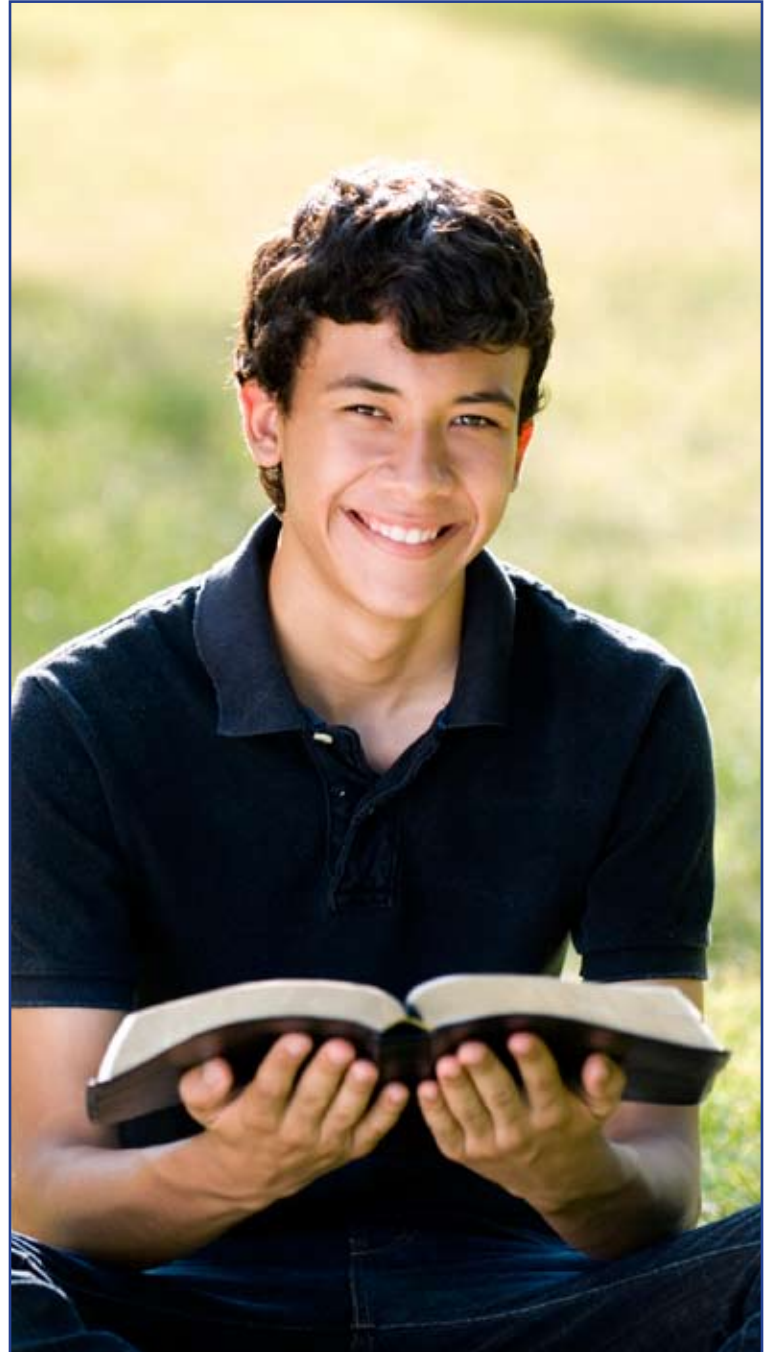
This document is available on the DoDEA Special Education Webpage at  
<http://www.dodea.edu/curriculum/specialEduc.cfm?cType=se&cid=info>

## A MESSAGE TO OUR PARENTS

The mission of the Department of Defense Education Activity (DoDEA) is to provide a quality educational program that prepares all students for success in a global environment. We believe that through equal access to a quality education, all children can be challenged to achieve their best in school, and all can be successful learners.

In DoDEA, students with disabilities are provided a free, appropriate education in schools where placement and service decisions are based on the individual needs of the student, in the least restrictive environment and in accordance with the system's guiding principles. DoDEA is committed to promoting inclusive education, which is defined as the participation of all students, including those with disabilities, limited English proficiency, identified gifts and talents, and other special needs in the general education program, as appropriate.

The [Parent Rights for Special Education](#) is designed to help you better understand your procedural safeguards as we work together to help your child with disabilities reach his or her maximum potential.



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## INTRODUCTION

This document provides parents of children with disabilities from preschool through age 21 an overview of their educational rights pertaining to special education. This booklet is the *DoDEA Notice of Parent Rights* for parents and surrogate parents.

This Notice of Parent Rights must be provided to you at least once per year and when:

- » You ask for a copy;
- » When You request an evaluation;
- » When you submit a due process complaint for the first time;
- » The first time your child is referred for a special education evaluation; and
- » If the school decides to take disciplinary action against your child that would change your child's the educational placement.

## FOR ADDITIONAL INFORMATION

DoDEA's special education programs and services are provided in accordance with the [Department of Defense \(DoD\) Instruction 1342.12](#), "Provision of Early Intervention and Special Education Services to Eligible DoD Dependents," dated April 11, 2005. A copy of this instruction may be obtained from the following web address:

<http://www.dodea.edu/curriculum/specialEduc.cfm?cType=se&cld=res>

The DoDEA [Case Study Committee \(CSC\)](#) refers to a multidisciplinary team of special educators, regular educators, related services personnel, administrators, and you, the parent. The required composition of a CSC depends upon the activities that must be accomplished. The CSC provides oversight of the

school special education program and all activities directly related to a student with a disability found eligible under DoD Instruction 1342.12 (referenced above). For additional information about your child's school CSC Committee, please speak with the school administrator.

Your [local school](#) is the first stop for additional information concerning your child's educational program. Your child's classroom teacher and school administrator are available to answer questions and address any concerns you may have. For questions pertaining to district special education procedures, the District Special Education Coordinator is available. This person is located in the local District Superintendent's Office.

## PARENT PARTICIPATION

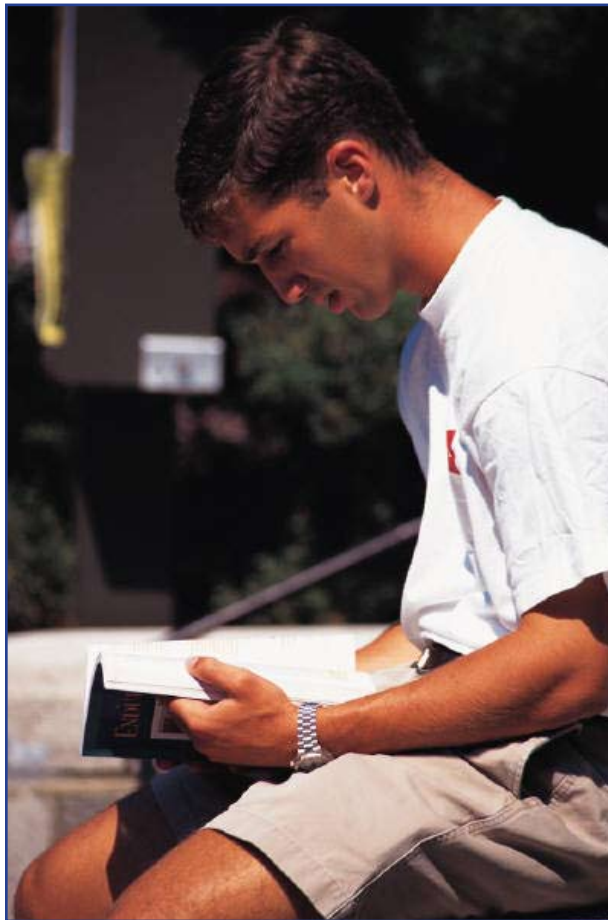
You have the right to attend any school meetings held with respect to the identification, evaluation, and educational placement of your child and to participate in the development of your child's Individualized Education Program (IEP).

If you are unable to attend a meeting in person, you may be able to participate by telephone or video conference. Normally, placement decisions will not be made without your participation unless the school has been unsuccessful in its documented attempts to obtain your participation.

## PARENT CONSENT

Your written consent is necessary for many of the actions the school personnel will undertake in the delivery of educational services, to provide a Free Appropriate Public Education (FAPE) for your child. It is important to DoDEA that you are fully informed about the activity for which your consent is sought. If you would like this notice in your native language, you should contact the school principal to see if your request can be accommodated.

**The First Evaluation For Eligibility** DoDEA must have your informed consent prior to evaluating your child. If you refuse to consent to an initial evaluation, or fail to respond to a request for consent, school personnel may pursue the initial evaluation by initiating an impartial due process hearing.



**Reevaluation** Your child must be reevaluated at least once every three years. If the Case Study Committee (CSC) decides that no formal testing is required to determine whether your child continues to be eligible for special education, you will be notified by the school and the reasons for this decision. You still have the right to request an evaluation. If the school wishes to reevaluate your child, it will request your consent. However, your consent is not required if the school can demonstrate that it took reasonable measures to obtain your consent and you have failed to respond.

**Initial Placement (Delivery of Service) in Special Education** You must give your informed consent before DoDEA can place your child in a special education program for the first time. If you refuse to consent the school shall not provide special education and related services to your child.

**Exceptions to Parent Consent** Parental consent is not required before (1) reviewing existing information as part of an evaluation or reevaluation; (2) conducting a classroom observation, (3) giving a test or evaluation that is administered to all children

unless consent is required of all children's parents before administering the test, or (4) conducting evaluation tests, procedures or instruments that are identified on the child's IEP as a measure for determining progress.

**Withdrawal of Consent** After providing DoDEA your written consent to evaluate or reevaluate your child, you may revoke your written

consent only for the evaluation activities that are not yet completed; it is not retroactive.

**Release of Records** A written request for your consent is necessary if your child's records are to be released outside of the Department of Defense except in a few cases in which, by law, the records can be released (for example, to law enforcement personnel). The request must specify to whom the records shall be released. The most typical example of this is when you move to a new school district and the new school requests copies of your child's educational records.

## PRIOR WRITTEN NOTICE

In addition to participating in meetings regarding your child's special education program, you have the right to receive written notice within a reasonable time before school personnel initiate or change, or refuse to initiate or change (a) the identification, (b) the evaluation, (c) the educational placement of your child, or (d) the provision of a free appropriate public education (FAPE).

### *The school's written notice will include:*

- » A description of the action proposed or refused by the school;
- » An explanation of why the school proposes or refuses the action;
- » A description of each evaluation procedure, assessment, record, or report the school used as a basis for the proposed or refused action;
- » A description of other options that the school considered and rejected and why they were rejected;
- » A description of any other factors relevant to the school's proposal or refusal;

- » Sources for you to contact to obtain assistance in understanding your rights; and
- » A statement of your procedural safeguards and information about where you can obtain a copy of your procedural safeguards.

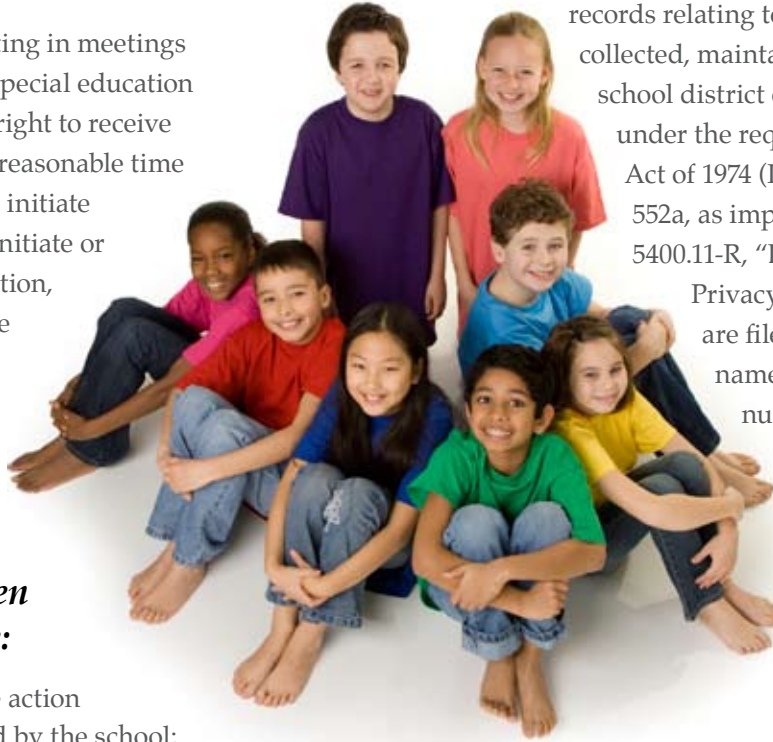
If you would like the notice in your native language, you should contact the school principal to see if your request can be accommodated.

## ACCESS TO EDUCATIONAL RECORDS

As the parent, or your authorized representative, you have the right to inspect and/or review any records relating to your child, which are collected, maintained, or used by your local school district or by the DoD school system under the requirement of the Privacy Act of 1974 (PA), as amended, 5 U.S.C. 552a, as implemented by DoD Directive 5400.11-R, "DoD Privacy Program."

Privacy Act records are those that are filed under your, or your child's name, or a personal identification number. These records include your child's confidential educational records, including any special education, registration, attendance, health, and disciplinary records maintained at the school.

- » If you are not local to the school holding your child's records or you are requesting Privacy Act records that are not maintained at the school, you may obtain a copy of those records by filing a signed written request for those records with the DoDEA FOIA/PA Officer, 4040 North Fairfax Drive, Arlington, VA 22203. Your request must contain a statement that you are the child's parent, or a copy of a court order demonstrating that you are the child's legal guardian (unless that information is contained in the student's registration file.)



- » If you are requesting information about your child that is not filed under your child’s name or personal identifier, or information that is not maintained under the requirements of the Privacy Act, you must submit a signed written request for those records to the DoDEA FOIA/PA Officer, 4040 N. Fairfax Dr., Arlington, VA 22203, under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as implemented by DoD 5400.7-R, “DoD Freedom of Information Act Program”

<http://www.dtic.mil/whs/directives>

Whenever you file a signed written request for records, you may request the records under both the Privacy Act and the Freedom of Information Act. However, you must describe the records that you are seeking in as much detail as possible to ensure that a complete records search is accomplished.

Additional information regarding access to your child’s educational records is available from your child’s local school or district office.

## INDEPENDENT EDUCATIONAL EVALUATION

An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by either the DoD school or the Educational and Developmental Intervention Service (EDIS) that conducted the school’s evaluation. You have the right to an IEE at any time, at your own expense.

If you request an IEE at DoDEA’s expense, the school system, without unnecessary delay, must either:

- » Initiate an impartial due process hearing to show that its evaluation is appropriate; or
- » Ensure DoDEA funding of any IEE that you obtain that complies with DoDEA evaluation criteria.

If you wish to obtain an IEE the school will identify providers that generally meet agency evaluation criteria. It should be noted, however:

If the school refuses to pay for the IEE and stands by its evaluation, DoDEA must initiate a due process hearing. If the decision is that the school’s evaluation is appropriate, you still have the right to an independent evaluation, but not at the expense of DoDEA.

If you have already obtained an IEE, DoDEA may avoid funding that IEE if it demonstrates in an impartial due process hearing that the independent evaluation you obtained did not meet DoDEA criteria. In such cases, you, the parents, are responsible for the cost of the evaluation.

**Consideration of the IEE Findings** If you obtain an independent evaluation at public or private expense, the school will consider that evaluation in any decision made concerning your child’s FAPE. However, obtaining an IEE does not mean that the school must make a decision consistent with the findings of your IEE. The CSC must consider all available information in making a decision affecting a child’s eligibility, placement, IEP, services, or free appropriate public education.

## SCHOOL DISCIPLINE AND PLACEMENT IN INTERIM ALTERNATE EDUCATIONAL SETTING

**Manifestation Determination** A manifestation meeting will be held if your child was involved in an incident that may result in your child being removed from school for more than 10 consecutive school days. During the meeting, all relevant information including evaluation results, observations of your child, information provided by you, your child’s IEP, and current placement will be reviewed.

***You will be invited to a meeting to determine if the:***

- a. Conduct in question was caused by, or had a direct and substantial relationship to your child’s disability; or

- b. Conduct in question was a direct result of the school's failure to implement your child's IEP.

If either a) or b) above is determined applicable to your child, the conduct shall be determined to be a manifestation of your child's disability.

**Conduct Not A Manifestation** If the conduct is found not to be a manifestation of your child's disability, DoDEA disciplinary procedures applicable to children without disabilities may be applied, including placement in an alternate educational setting. The school continues to have a duty to provide your child with FAPE.



**Conduct Is A Manifestation** If the conduct in question is found to be a manifestation of your child's disability; the CSC will conduct a functional behavioral assessment and implement a behavior intervention plan, if it has not already done so prior to the behavior that resulted in the decision to change your child's placement. The CSC will review and modify, if necessary, any established behavior plan. Except as provided under special circumstances, the school must not remove your child from his or her current educational setting to an alternate setting or suspension for more than 10 consecutive school days and, at the expiration of such removal, will return your child to his/her current educational placement (i.e., your child's placement prior to the disciplinary removal).

**Special Circumstances** A school has limited authority to remove a child from his/her current placement for more than 10 consecutive school days.

Upon giving you notice immediately after making the decision to take disciplinary action against your child, the school may remove your child to an interim alternate educational setting for not more than 45 school days without regard to manifestation in cases where, while at school, on school premises, or to a school function under the jurisdiction of the school, your child:

- a. Carries or possesses a weapon;
- b. Possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance; or
- c. Inflicts serious bodily injury upon another person.

**Continuation of Services Involving Removal Over 10 School Days in a School Year** The school shall continue to provide your child with educational services so as to enable your child to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in your child's IEP. Your child may receive, as appropriate, a functional behavioral assessment, behavioral intervention services, and modifications designed to address the behavior violation so that it does not recur.

**Expedited Due Process Hearing** An expedited due process hearing may be requested if:

- a. You disagree with any decision regarding your child's placement or the manifestation determination, or
- b. The school district believes that maintaining your child's current placement is substantially likely to result in injury to your child or to others.

An expedited due process hearing must be convened within 20 school days of the filing of the petition requesting the expedited hearing. The Hearing Officer will issue a decision within 10 school days after the hearing. Unless the Hearing Officer orders otherwise, you and the school must follow the



procedures described above for the filing of prior written notice, response to the petition, objections to the sufficiency of the petition, the Resolution Session, and the appointment of a Hearing Officer, except that the applicable timelines are halved. The Hearing Officer may return a child with a disability to the placement from which he/she was removed, or order a change in placement to an appropriate interim alternate setting for not more than 45 school days if the Hearing Officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

**Disciplinary Appeals Stay-Put** Unless you and the school agree otherwise, the stay-put for a child who has been placed in an alternate educational setting shall be the interim alternate educational setting pending an order of a Hearing Officer pursuant to an expedited due process hearing, or until the end of the 10<sup>th</sup> consecutive school day, or the 45<sup>th</sup> consecutive school day when special circumstances apply.

## UNILATERAL PLACEMENT

A unilateral placement occurs when you make a decision to enroll your child in a home-school program, in a private school, or in a host nation or state-operated school. This placement is considered unilateral when a DoD school is available to serve a DoD dependent child entitled to an education at DoD expense (i.e., an entitled child). If no DoD school is available for an entitled child and DoDEA authorizes you to place your entitled child in a private or home-school program, the provisions of this section do not apply.

If you unilaterally enroll or place your child in any home-school program or a private school, DoDEA is not required to fund the costs of your unilateral decision, unless a Hearing Officer orders DoDEA to fund that placement. In order for you to obtain a Hearing Officer decision directing DoDEA to pay for your unilateral placement decision, you must prove that the DoDEA program failed to provide your

child with a FAPE, that you gave the school at least 10 business days notice of your intent to remove your child from the DoD school and the school was unable to mitigate your concerns, and that your unilateral private school placement was appropriate for your child.



A Hearing Officer may reduce or deny reimbursement if, prior to removing your child from the school, you were notified by the school of its intent to evaluate your child (including a statement of the purpose of the evaluation), but you failed to make your child available for the evaluation. If you remove your child with disabilities from the DoD school without providing the school at least 10 school days advance notice of your dissatisfaction with the school's program and of your intent to remove your child to enroll him or her in an alternate program, you may not be able to recover the costs of such alternative placement.

## AGE OF MAJORITY

In DoDEA, your child reaches the age of majority at 18. The rights accorded to you, the parent(s), are transferred to your child at age 18 unless your child consents in writing that you continue to exercise parental rights, or a competent authority determines that your child is unable to provide informed consent with respect to his/her educational program. The notice of disciplinary proceedings will be sent to you even when your child reaches the age of majority.

## RIGHT TO LEGAL COUNSEL / REPRESENTATION

You may, at any time, consult with legal counsel or with individuals with special knowledge or training with respect to children with disabilities. Your choice of a representative may accompany you and present your case to the school and/or Hearing Officer. At the due process hearing, you or your representative may present evidence and cross-examine witnesses.

## RESOLVING DISAGREEMENTS

If you have any concerns related to your child's special education program, the first step is to talk with your child's regular or special education teacher. The school administrator is also available to assist in resolving issues at the school level. It is always best to communicate and work at the lowest level with your child's school to attempt to resolve any issues. In the event that concerns are not resolved, you can take further steps to address them, including a formal conference, mediation, and/or requesting a due process hearing.

**Conference** A conference generally includes a school administrator and your child's teachers or service providers. Remember, the purpose of any communication with the school, whether with the teacher or in a conference, is to clarify the issues and resolve concerns. These conferences and other communications with the school are facilitated when you can articulate the facts that are the basis of your concerns and the specific relief you are seeking. You should work closely with school personnel to clearly define the areas of disagreement and possible solutions.

When a conference produces mutually agreeable solutions, the school will prepare a memorandum for the record that outlines the disagreements and explains how the disagreements were amicably resolved. If the conference fails to produce a mutually agreeable solution, either you or school personnel may request mediation in writing; or

execute a waiver of mediation process, and request a formal due process hearing.



**Mediation** You may request DoDEA to arrange for mediation with the assistance of a neutral third person to help you and the school reach agreement over disputes regarding your child's special education services. This mediation process is voluntary, and conducted by an independent, trained mediator who is appointed by DoDEA at no cost to you. The mediator is not like an arbitrator that makes findings and imposes duties upon the parties. Mediation leaves the parties in full control of the process and permits them to achieve agreements to which they are both fully committed.

Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The meeting or meetings will be scheduled at mutually agreeable times and places. If you reach an agreement through mediation, DoD Instruction 1342.12 requires the parties to execute a written agreement that is enforceable in a court of law.

A list of mediators is available from the office of the District Superintendent and from the Office of Dispute Resolution, located in the Office of the Director, Defense Office of Hearings and Appeals (DOHA).

**Initiating a Due Process Hearing** When you and the school have been unable to resolve a disagreement involving your child's identification, evaluation, placement, IEP, or your child's right to a FAPE, you or the school may request a due process hearing.

When a due process complaint (petition) is filed with the Director of the Defense Office of Hearings and Appeals (DoHA), an independent Hearing Officer will be appointed. The Hearing Officer will convene a due process hearing in the location where you and your child reside, will manage the exchange of information and preparation for the hearing, and will conduct the hearing.

The following steps must be followed to initiate and resolve a dispute using these procedures.



**Notice/Petition/Complaint** A party wishing to initiate a hearing must notify the other party and the DoHA Director of the desire for the appointment of a Hearing Officer to conduct a formal due process hearing by filing a petition (also called a notice or complaint) with the Director of the Defense Office of Hearings and Appeals (DOHA), Post Office Box 3656, Arlington, Virginia 22203. You must also provide a copy of the petition to the school. The Director, DOHA, will appoint a DOHA Administrative Judge as a Hearing Officer within 10 business days of receiving your due process notice.

<http://www.dodea.edu>

**Time Limit to File** You or the school may request an impartial due process hearing within 2 years of the date you or the school knew or should have known about the alleged action that forms the basis of the complaint. You may be able to obtain additional time to request a due process hearing if you can prove that you were prevented from requesting the hearing due to:

- » Specific misrepresentations by the school that it [the school] had resolved the problem that is the basis of your complaint; or
- » The school withheld information that was required to be provided to you.

### ***Information Required to be in the Petition***

- » The written petition must include:
  - » Your child's name;
  - » His/her address; and
  - » The name of the school your child attends.
- » It must also include:
  - » A description of the nature of each identified problem;
  - » A description for each of the proposed or denied initiations or changes to your child's educational program; and
  - » Facts relating to each identified problem.

A sample complaint form is available from your school principal and on the DoDEA website at:

<http://www.dodea.edu/curriculum/specialEduc.cfm?cType=se&cld=info>

In order to ensure your due process petition is understood by the Hearing Officer and the responding school, you should clearly state the nature of your disagreement with school personnel, why you think it makes a difference to your child's education, and describe the specific relief you are requesting.

**Written Notice and Response** Within 10 business days of Director, DoHA's receipt of the petition:

- » DoDEA must send you (the parent) a response that specifically addresses the issues raised in the complaint.
- » Unless you (the parent) have already received written notice regarding these facts, the response must include: an explanation of why the school system proposed or refused to take the action you raised in your complaint, a description of the other options the CSC considered and the reasons why those options were rejected, a description of each evaluation, procedure, assessment, record or report that they used as the basis for that decision, and a description of the factors relevant to the proposal or refusal.



**Insufficient Petition** A party has the right to file with the DoHA Hearing Officer a notification that the petition (also known as complaint or notice) fails to provide enough information to make the petition legally sufficient, as described above. The Hearing Officer is required to rule on any challenge to the sufficiency of the due process notice within 5 business days of its filing. The fact that a party has provided a response to the petition does not compromise the ability to challenge the sufficiency of a petition before the Hearing Officer.

**Resolution Session (Meeting)** The IDEA gives you the opportunity to meet with the school to explain your due process complaint, and gives DoDEA and its school the opportunity to resolve your complaint. Within 15 business days of receipt

by the Director, DoHA of your petition (also known as a notice or complaint) requesting due process, a school must hold a Resolution Session. This session is a meeting of you (the parents), relevant members of your child's CSC who have specific knowledge of the facts identified in the complaint, and a representative of DoDEA who has authority to make a decision concerning your petition. The Resolution Session must occur, unless both you and the school agree in writing to waive the Resolution Session or to participate in mediation instead of the Resolution Session. At the end of 30 business days of the Director's receipt of a petition, if resolution has not been reached, the Hearing Officer may convene a due process petition.

- » **Failure to Participate** If you fail to participate in the Resolution Session, and both you and the school have not agreed to waive the Resolution Session or to use the mediation process as a substitute for the Resolution Session, the due process hearing may not convene.
- » **Attorneys** No attorney fees are authorized for attorney participation in the resolution session. The school may have an attorney present only if the parent is accompanied by an attorney.
- » **Enforceable Resolution Agreement** If you and the school reach mutual agreement at the resolution session, you and the school representative will put this agreement into writing. It is a binding agreement, enforceable in court when signed by both parties. Even after signing, however, each party has the right to review the agreement and to void that agreement within 3 business days after signing the agreement.

**Conducting the Due Process Hearing** Before proceeding with a due process hearing, please consult DoD Instrucion 1342.12, identified on page 2 of this document, for a detailed discussion of rights and responsibilities.

- » **Evaluation and Other Required Disclosures:** At least 10 business days before a formal due process hearing, you and the school must disclose to each other the identity and expected testimony of all experts

intended to testify. Within 5 business days, the parties must exchange all evaluations and reports concerning a child that will be used in the due process hearing.

- » **Discovery:** Each party may request that the other produce such documents or other evidence, including a list of witnesses, that witnesses that the party intends to rely upon at the due process hearing. Failure to disclose evidence requested by an opposing party may result in the Hearing Officer denying the use of that evidence at the due process hearing.



- » The dispute may be resolved either through a formal oral hearing in front of the Hearing Officer with both parties presenting their respective cases, or the case can be submitted to the Hearing Officer for decision based on the written record. You must notify the Hearing Officer in writing if you prefer to have a decision based on a written record rather than having a formal oral hearing.
- » **Hearing Decision:** The Hearing Officer may orally announce a decision at the end conclusion of the due process hearing, or may issue a written decision within 50 business days of being assigned the case. The Hearing Officer may also extend the time for issuing a decision in response to a party's request for additional time, or for other good cause. The Hearing Officer will decide the issues in the case based on the

record produced during the due process hearing procedures.

**Verbatim Record** At the conclusion of the due process hearing you may obtain a written or electronic record of the hearing.

## **ADMINISTRATIVE APPEAL OF HEARING DECISION:**

A party has a right to appeal a Hearing Officer's decision to the DoHA Appeal Board within 30 business days of receiving the Hearing Officer's decision. The Appeal must be filed with the Director, DoHA, at the address specified above for the filing of a petition. The Director, DoHA will assign the case to the Appeal Board for consideration. Each party will have the opportunity to file written statements of their issues and arguments. The Appeal Board may order the parties to give oral argument in support of the party's position. The Appeal Board will issue a decision within 45 business days of receiving the party's written arguments.

## CIVIL ACTIONS

Any party (the parent or the school) aggrieved by the decision of the DoHA Appeal Board has the right to file a civil action with respect to the matter that was the subject of the due process hearing (including a hearing relating to disciplinary procedures). The action may be brought in a district court of the United States. The civil action must be filed within 90 calendar days of the date you receive the Appeal Board's decision. To ensure compliance with applicable filing and other rules of procedure so that you do not forfeit your right to file a civil action, you should, at a minimum, consult the Federal Rules of Civil Procedure, local court rules, and with legal counsel.

## ATTORNEY FEES

A U.S. Federal Court may award reasonable attorney fees to a prevailing party in any administrative action or court proceeding authorized by the IDEA.

## CONCLUSION

We at DoDEA hope this guide has provided you, the parent, additional clarification of the many rights afforded to you and your child. DoDEA is committed to creating an educational partnership with you with the goal of providing quality special education services to your child in accordance with DoD Instruction 1342.12. If at anytime you have additional questions regarding your child's educational program, please do not hesitate to speak with your child's classroom teacher and/or special educator, and school administrator.

