

## PROCEDURAL SAFEGUARDS STATEMENT 9/1/05

*(Revised 2/1/06)*

*This Procedural Safeguards Statement reflects the Federal statute and also indicates areas in which Maine Special Education Regulations exceed the statute (shown in italics). This statement may be subject to change after the Federal regulations are issued.*

### **A. PARENTAL PARTICIPATION**

*As the parent of a child who has or may have a disability, you are entitled to participate in meetings regarding your child's eligibility determination, initial evaluation or reevaluation, educational placement or provision of a free appropriate public education.*

*A copy of this procedural safeguards statement must be given to you and an adult student upon initial referral for special education evaluation, upon each notice of a I.E.P. meeting, upon request for parental consent for reevaluation of a student with a disability and upon receipt of a request for a due process hearing. .*

[Note: The new federal law requires the school to give parents and adult students a copy of the procedural safeguards statement only 1 time a year, except that a copy must also be given to parents upon the initial referral or a parent's request for evaluation. However, Maine's regulations currently exceed this requirement.]

### **B. PRIOR WRITTEN NOTICE TO PARENTS**

Your school district must provide you with a written notice *at least seven days* prior to the date the school proposes or refuses to initiate or change the identification, evaluation, educational program, placement or the provision of a free appropriate public education to your child.

If the school is also required to have your written permission (consent) for an action, the school may provide this notice to you at the same time it requests your consent.

The notice must include:

A description of the action proposed or refused by the school, an explanation of why the school proposes or refuses to take the action, and a description of any options the school considered and the reasons why those options were rejected;

A description of each evaluation procedure, assessment, record, or report the school uses as a basis for the proposed or refused action;

A description of any other factors which are relevant to the school's proposal or refusal; and

A statement that you have the rights contained within this notice and where you may obtain a copy of these procedural safeguards if this is not an initial referral for evaluation. *[Note: Maine requires this to be provided beyond the initial referral; see above.]*

Sources you may contact for assistance in understanding your rights include the Due Process Office of the Maine Department of Education (207-624-6644), Maine Parent Federation (1-800-870-7746), The Disability Rights Center (1-800-452-1948) and Southern Maine Parent Awareness (1-800-564-9696).

You may file a complaint with the Maine Department of Education if you believe the school has violated a requirement under the Maine Special Education Regulations. (*See Department of Education Complaints in §H. below.*)

The notice must be written in language understandable to the general public. The notice must be 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, your school must take steps to insure that the notice is translated orally or by other means to you in your native language or other mode of communication, that you understand the content of the notice, and that there is written evidence that these requirements have been met.

### **C. PARENT CONSENT**

Your school must obtain your informed consent (written permission) before conducting an initial evaluation, before an initial placement of your child in a program providing special education and supportive services or before conducting any new test as part of a reevaluation of your child. Except for initial evaluation, reevaluation and initial placement, your permission may not be required as a condition for providing any special education or supportive services to you or your child. Consent for initial evaluation may not be construed as consent for initial placement.

If a child is a ward of the State and is not residing with his or her parent(s), the school must make reasonable efforts to obtain the informed consent from the parents of the child for an initial evaluation to determine whether the child is a child with a disability. The school is not required to obtain informed consent from the parent of a child for an initial evaluation to determine whether the child is a child with a disability if, despite reasonable efforts to do so, the school cannot discover the whereabouts of the parent of the child, or if the rights of the parent to make educational decisions have been subrogated by a judge in accordance with State law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the child.

If you do not provide your permission for an initial evaluation, your school may use the due process hearing or mediation procedures to determine whether your child may be evaluated without your consent. If the hearing officer orders the school to evaluate your child or if you and the school reach a mediated agreement, the school may evaluate your child.

*Generally, either parent may grant consent. In the case of divorced parents with joint custody either parent may grant consent. However, in the event that one parent grants consent and the other parent refuses, the school is obligated to initiate the action for which consent has been granted.*

If you refuse to give your consent to the receipt of special education and related services for your child, or if you fail to respond to a request for such consent, the school will not be considered to be in violation of the requirement to make available a free appropriate public education to your child, and the school will not be required to convene a I.E.P. meeting to develop an I.E.P.

### **D. EVALUATION / REEVALUATION**

The I.E.P. Team, of which you are a member, may decide that no additional information is needed to determine your child's initial or continuing eligibility for special education. If you disagree with the team's decision, you may request that the school conduct an assessment of your child. A reevaluation may occur not more than once a year, and must occur at least once every 3 years, unless you and the school agree that a reevaluation is unnecessary. If your child has a disability and has been receiving special education services, the school district must evaluate your child before determining that your child no longer requires special education services.

### **E. PARENTAL CONSENT FOR REEVALUATION**

The school must obtain your written consent before conducting a reevaluation of your child. However, if the school can show that it tried to get your consent for the reevaluation of your child and you did not

respond then the school may reevaluate your child without your consent. Your consent is not required to review existing evaluation information.

#### **F. INDEPENDENT EDUCATIONAL EVALUATION**

An independent evaluation is an evaluation conducted by a qualified person who is not an employee of the school. You have the right to an independent educational evaluation at no cost to you if you disagree with an evaluation obtained by your school. However, your school may initiate a due process hearing to show that its evaluation is appropriate. If the hearing decision is that the school's evaluation is appropriate, you still have the right to an independent educational evaluation, but at your expense. If you obtain an independent educational evaluation at your expense, the results of the evaluation must be considered by your school if it meets your school's criteria, in any decision made with respect to the provision of a free appropriate public education to your child, and may be presented by any party as evidence at a due process hearing regarding your child.

If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.

Your school must provide you, when you request it, information about where an independent educational evaluation may be obtained and the school criteria applicable for independent education evaluations.

If an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, are the same as the criteria that the school uses when it initiates an evaluation, to the extent those criteria are consistent with your (the parent's) right to an independent evaluation. A school may not impose any additional criteria regarding an independent educational evaluation.

#### **G. SUPERINTENDENT COMPLAINTS**

*You have the right to file a written complaint with the superintendent of the administrative unit responsible for the education of your son or daughter if you have reason to believe that the administrative unit is not in compliance with special education regulations. The superintendent, or a designee, must then appoint a person to investigate your complaint and to recommend to the superintendent, within 30 days of the receipt of the written complaint, any corrective action necessary to resolve your complaint.*

#### **H. DEPARTMENT OF EDUCATION COMPLAINTS**

*You have the right to file a signed, written complaint with the Commissioner of the Department of Education if you have reason to believe that the administrative unit responsible for the education of your son or daughter is not in compliance with special education regulations or if you disagree with the results of a superintendent's complaint investigation.*

The Department must initiate and complete, within 60 days of the receipt of the written complaint, an investigation and a determination of whether your school has complied with special education regulations.

If your school is determined to be in non-compliance, the Department will develop a corrective action plan to resolve the complaint.

#### **I. MEDIATION**

You or the school have the right to request the Department of Education to provide mediation services if you and the school are unable to agree upon the identification, evaluation, educational program, placement or the provision of a free, appropriate public education of your son or daughter.

The mediation must be voluntary on the part of both you and the school district. Mediation may not be used to delay or deny your right to a due process hearing. The mediation must be conducted by a qualified and impartial mediator at no cost to you or the school district.

The Department of Education maintains a list of qualified mediators available to be assigned when you and the school request the use of mediation. The mediation will be held in a timely manner and at a location that is convenient to you and the school. Any agreement reached in mediation will be put into writing. Written agreements are legally binding and are enforceable in State or federal court. The written agreement must state that all discussions that occurred during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding.

It must be signed by you and a representative of the agency who has the authority to bind such agency.

If you do not choose to participate in mediation, you may be contacted by a due process consultant from the Maine Department of Education who will discuss with you the benefits of mediation. If you would like to request mediation or would like more information about mediation, you may contact the Maine Department of Education, Special Services Team at 624-6650.

## **J. IMPARTIAL DUE PROCESS HEARING**

You or your school may initiate a hearing regarding the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child. The alleged violation(s) may not have occurred more than two years prior to the date you or the school knew or should have known about the alleged action that forms the basis of the due process complaint. The two-year timeline does not apply if you were prevented from filing a due process complaint due to specific misrepresentations by the school district that it had resolved the problem forming the basis of your complaint, or if the school district withheld information from you that they were required to provide.

The request for the hearing must be in writing and contain the name of your child, your child's residence, the school the child is attending, a description of the problem and facts relating to the problem, and a proposed solution to the problem. In the case of a child or youth who is considered to be homeless within the meaning of the McKinney-Vento Homeless Assistance Act, the notice must include available contact information for the child and the name of the school the child is attending.

A due process complaint notice (hearing form) is available from the Maine Department of Education, your local school, or the Maine Parent Federation.

The party making the due process request may not have a hearing until a complete due process complaint notice has been provided to the other party by the filing party or their attorney. A copy of the completed form must be sent to the Department of Education at the same time.

If the school has not sent prior written notice to you regarding the subject matter contained in your due process complaint, the school must, within 10 days of receiving your written complaint, send you such notice.

The party receiving the complaint has 15 calendar days from the receipt of the request to notify the hearing officer and the other party in writing that the receiving party believes the request for hearing does not contain the required information (i.e., is not sufficient). The hearing officer, within 5 calendar days of receiving this notice, must decide if the required information has been given and immediately notify the parties of that decision. If the receiving party does not notify the hearing officer, the request for hearing would be considered to contain the required information.

The party receiving the due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.

A party can amend its request for hearing only if the other party consents in writing to the change and is given the chance to solve the issue through a resolution meeting, or the hearing officer gives permission no later than five days before the hearing begins.

If a party files an amended request for hearing, the timelines for the resolution meeting and for solving your issue(s) begin again with the filing of the amended request for hearing.

Resolution Meeting:

1. Before an impartial hearing can be held, you must meet with the school in a resolution meeting. The purpose of the resolution meeting is to discuss your concerns and the facts that form the basis of your concerns and try to resolve the complaint.
2. The school will arrange for a resolution meeting within 15 days of your request for an impartial hearing. The resolution meeting must include you as the parent of the child, a representative of the school district who has decision-making authority on behalf of the district, and the relevant member or members of the I.E.P. who have specific knowledge of the facts identified in the complaint, and may not include an attorney of the school district unless you are accompanied by an attorney. You and the school determine the relevant member(s) of the I.E.P. team to attend the meeting.
3. You and the school can, at any time, agree in writing to waive the resolution meeting and, instead, arrange for mediation to resolve the complaint, or to begin the impartial hearing without mediation.
4. If you and the school resolve the issues during this meeting, an agreement will be put in writing and signed by you and the person from the school district who has the authority to make the agreement.
5. You and the school will have 3 business days from the signing of the agreement to change your minds and void the agreement.
6. If the resolution session has not resolved the complaint to your satisfaction within 30 days of the date the complaint request was received, the due process hearing must begin.

The hearing will be conducted by an impartial hearing officer appointed by the Department and contracted to provide hearing officer services. The Department maintains a list of the persons who serve as hearing officers. The list includes a statement of the qualifications of each of those persons. A hearing officer conducting a hearing must, at a minimum, not be an employee of the Maine Department of Education or the school district involved in the education or care of your child, or a person having a personal or professional interest that conflicts with the person's objectivity in the hearing. (A person who otherwise qualifies to conduct a hearing is not an employee of the Department solely because he or she is paid by the Department of Education to serve as a hearing officer.) The hearing officer must possess knowledge of, and the ability to understand, the provisions of Federal and State regulation and legal interpretations of the law by Federal and State courts; possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

The Department must inform you of any free or low-cost legal and other relevant services available in the area if you request the information or if you or your school initiate a due process hearing.

The party that requests the hearing is not allowed to raise issues at the hearing that were not raised in the request for the hearing unless the other party agrees in writing and is given the opportunity to resolve the complaint through a resolution meeting, or if the hearing officer grants permission.

At least five business days prior to a hearing, you and any parties to the hearing must disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. If any party has failed to comply with this requirement, the hearing officer may bar you or any other party from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

The Department of Education must insure that not later than 45 days after the expiration of the 30-day resolution period, a final decision is reached and a copy of the hearing decision is mailed to each of the parties. The hearing officer may allow extra time beyond the 45-calendar day timeline at the request you or the school. You have a right to receive, at your request, an electronic copy of the findings of fact and decisions of the hearing officer.

A decision made by a hearing officer must be made on substantive grounds based on a determination of whether the child received a free appropriate public education. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies: impeded your child's right to a free appropriate public education; significantly impeded your opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to your child; or caused a deprivation of educational benefit.

The decision made in a due process hearing is final, unless you or the school brings a civil action under the procedures described below.

#### **K. DUE PROCESS HEARING RIGHTS**

Any party to a hearing has the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of students with disabilities; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; obtain written findings of fact and decisions; obtain a written or electronic verbatim record of the hearing; and obtain written findings of fact and decision. After deleting any personally identifiable information, the Department will transmit those findings and decisions to the State advisory panel and make them available to the public.

As the parent, you have the following additional rights: you may have your child present at the hearing; you may open the hearing to the public; and you may obtain the findings of fact, decision and record of the hearing at no cost to you. Each hearing must be conducted at a time and place which is reasonably convenient to you and your child.

#### **L. CIVIL ACTION**

Any party aggrieved by the findings and decision made as the result of a due process hearing who does not have the right to an appeal, and any party aggrieved by the findings and decision, has the right to bring a civil action with respect to the complaint presented at the hearing. The action may be brought in any State court of competent jurisdiction or in a district court of the United States, without regard to the amount of controversy. The party bringing the action has 90 days in federal court or 30 days in State court from the date of the decision of the hearing officer to bring such an action.

If you have any questions regarding this requirement, they should be directed to David Stockford, Director of the Special Services Team, or to the Due Process Office at 624-6650.

#### **M. MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT**

Except in matters involving a violation of a code of student conduct, your child will remain in the then-current educational placement during the pendency of any proceedings, unless you and the school agree otherwise; or, if applying for initial admission to public school, your child will, with your consent, be placed in the public school program until all such proceedings have been completed.

## **N. AWARD OF ATTORNEYS' FEES**

The court, in its discretion, may award reasonable attorneys' fees as part of the costs: to you if you are the prevailing party; to the school if it prevails against your attorney who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or who continued to litigate after litigation clearly became frivolous, unreasonable, or without foundation; or to the school against you or your attorney, if your complaint or subsequent cause of action was presented for improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation. Fees must be awarded based on rates prevailing in the 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 awarded fees.

Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to you, the parent, if: the offer is made at any time more than 10 days before the proceeding begins; the offer is not accepted within 10 days; and the court or administrative hearing officer find that the relief you obtained is not more favorable to you than the offer of settlement. An award of attorneys' fees and related costs may be made to you if you are the prevailing party and you were substantially justified in rejecting the settlement offer.

Attorneys' fees may not be awarded relating to any meeting of the I.E.P. team unless the meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation. A resolution meeting is not considered to be a meeting convened as a result of an administrative hearing or judicial action.

An award of attorneys' fees and related costs may be made to you if you are the prevailing party and were substantially justified rejecting the settlement offer. The award of attorneys' fees may be reduced if you or your attorney unreasonably delay the final resolution of the controversy; the amount of attorneys' fees unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; the time spent on legal services furnished were excessive considering the nature of the action or proceeding; or your attorney did not provide the school the appropriate information in the notice of the complaint. This provision will not apply in any action or proceeding if the court finds that the State or the school unreasonably protracted the final resolution of the action or proceeding or if there was a violation of this section.

## **O. SURROGATE PARENTS**

Each school must ensure that an individual is assigned to act as a surrogate for the parent of a child when no parent can be identified, the school, after reasonable efforts, cannot discover the whereabouts of a parent, or the child is a ward of the State; or the child is an unaccompanied homeless youth as defined under the McKinney-Vento Homeless Assistance Act. The Department must have a method for determining whether a child needs a surrogate parent, and for assigning a surrogate parent to the child.

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

The Department may select a surrogate parent in any way permitted under State law, but must ensure that a person selected as a surrogate parent is not an employee of an agency which is involved in the education or care of the child, has no interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. (An individual is not disqualified as an agency employee from appointment as a surrogate parent solely because he or she is paid by the Department to serve as a surrogate parent.)

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

The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child.

## **P. TRANSFER OF RIGHTS**

In general, when your child reaches age 18 (or has been emancipated), these procedural safeguards will transfer to your child. A court may appoint a legal guardian for your child if your child has been determined, consistent with State procedures, to be unable to provide informed consent.

At least one year before your child turns 18, the school district will inform your child of the rights, if any, that will be transferred to your child. The school will inform both you and your child when these rights are transferred to your child.

As the parent of an adult child with a disability, both you and your child will continue to receive notice of I.E.P. meetings, prior written notice and the notice of procedural safeguards.

## **Q. DISCIPLINARY PROCEDURES**

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a child with a disability who violates a code of student conduct. If your child has violated a code of student conduct, the school may remove your child from the current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities.)

If the school seeks to change your child's placement for more than 10 school days and the behavior that gave rise to the violation of the school code is determined to not to be a manifestation of your child's disability (see below), your child is subject to the same disciplinary procedures in the same manner and for the same amount of time that would be applied to a child who is not disabled, although it may be provided in an interim alternative educational setting.

If a child with a disability is removed from the current placement for up to 45 school days (irrespective of whether the behavior is determined to be a manifestation of your child's disability) or more than 10 days for behavior that is determined not to be a manifestation of your child's disability, your child must continue to receive educational services so as 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 the IEP; and receive, as appropriate, a functional behavioral assessment, behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

In general, within 10 school days of any decision to change the placement of a child with a disability because of a violation of the code of student conduct, the school, the parent and relevant members of the I.E.P. (as determined by the parent and the school) must review all relevant information in the student's file, including the I.E.P., any teacher observations, and any relevant information provided by the parent to determine if the conduct in question was caused by, or had a direct and substantial relationship to, your child's disability; or if the conduct in question was the direct result of the school's failure to implement the I.E.P. If the parent, the school and relevant members of the I.E.P. determine that either of these causes is applicable for your child, the conduct shall be determined to be a manifestation of your child's disability.

If the conduct is determined to be a manifestation of your child's disability, the I.E.P. must:

1. Conduct a functional behavioral assessment, and implement a behavioral intervention plan for the child, provided the school had not conducted such assessment prior to such determination before the behavior that resulted in the change of placement;
2. In the situation where the behavioral intervention plan already has been developed, review the plan, and modify it, as necessary, to address the behavior; and

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

*If the determination is made that the behavior is related to the child's disability, the child may not be suspended, expelled or removed from the current educational placement for more than 10 school days (except in the case of weapons, drugs or bodily injury) unless the I.E.P. develops a new I.E.P. and decides upon a new placement.*

School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability if, while at school, on school premises or at a school function, possesses or carries a weapon, knowingly possesses or uses illegal drugs, sells or solicits the sale of a controlled substance, or inflicts serious bodily injury on another person.

No later than the date on which the decision to take the disciplinary action is made, the school must notify the parent of that decision and provide them with a copy of the procedural safeguards statement.

The I.E.P. team will determine the interim alternative educational setting.

#### **R. PLACEMENT DURING THE PENDENCY OF DUE PROCESS PROCEDURES – DISCIPLINARY ACTIONS**

When a hearing or appeal has been requested by either you or the school regarding a disciplinary change in placement, your child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period for the disciplinary change in placement (more than 10 consecutive days) or special circumstances (not more than 45 days), whichever comes first, unless you and the school agree otherwise.

The Department of Education or your school must arrange for an expedited 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.

#### **S. PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES**

A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for this part if the school had knowledge that your child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A district must be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred: the parent of the child expressed concerns in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; the parent requested an evaluation of the child, or the teacher of the child or other personnel in the district expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or to other supervisory personnel in accordance with the school's established child find or special education referral system.

A school would not be deemed to have knowledge that a child is a child with a disability if the parent of the child had not allowed an evaluation of the child or has refused services, or if the child has been evaluated and determined to not be a child with a disability.

## **T. PRIVATE SCHOOL PLACEMENTS BY PARENTS**

The school district may be required to reimburse the costs of a private school placement if you can prove at a due process hearing that the school district has failed or is unable to provide your child with a free appropriate public education and that the private placement is appropriate.

If you plan to place your child with a disability in a private school and seek reimbursement from the school district, you must inform the school district at a I.E.P. Team meeting or provide the school district with written notice at least 10 business days (excluding weekends) prior to the withdrawal of your child from public school. You must inform the school about your disagreement with the school's I.E.P., the placement proposed by the school, your intention to enroll your child in a private school and your intention to request reimbursement.

If the school has provided you with a written notice that the school intends to evaluate your child before you remove your child from the public school, you must make your child available to the school for evaluation.

A court or hearing officer could decide to reduce or deny reimbursement for your private school placement if you fail to inform the school of your intention to make a private school placement at public expense, fail to make your child available for evaluation, or take other unreasonable actions. The cost of reimbursement for a unilateral placement may not be reduced or denied for failure to provide notice to your school if:

- (a.) You are illiterate and cannot write in English;
- (b.) Providing notice would likely result in physical or serious emotional harm to your child;
- (c.) The school prevented you from providing notice; or
- (d.) You had not received notice that you are required to notify the school if you plan to make a unilateral placement of your child in a private school.

## **U. ACCESS TO RECORDS**

Your school must permit you to inspect and review all education records relating to your child with respect to the identification, evaluation, and educational placement of your child, and the provision of a free appropriate public education to your child, which are collected, maintained, or used by the school. The school must comply with a request without unnecessary delay and before any meeting regarding an individualized education program or hearing relating to the identification, evaluation, placement or provision of appropriate services to your child, and in no case more than 45 days after the request has been made.

Your right to inspect and review education records under this section includes: the right to a response from the participating school to reasonable requests for explanations and interpretations of the records; your right to have your representative inspect and review the records; and your right to request that the school provide copies of the records containing the information if failure to provide those copies would effectively prevent you from exercising your right to inspect and review the records.

The school may presume that you have authority to inspect and review records relating to your child unless the school has been advised that you do not have the authority under applicable Maine law governing such matters as guardianship, separation, and divorce.

The school must keep a record of who (other than authorized employees of the school and the parent) has had access to your child's records, including the person's name, date, and purpose for the access.

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 that specific information.

The school must provide you on request a list of the types and locations of education records collected, maintained, or used by the school.

## **V. FEES FOR SEARCHING, RETRIEVING AND COPYING RECORDS**

The school may not charge a fee to search for or to retrieve information under this section, but may charge you a fee for copies of records which are made for you under this rule if the fee does not effectively prevent you from exercising your right to inspect and review those records.

## **W. RECORD OF ACCESS**

The school must keep a record of parties obtaining access to education records collected, maintained, or used under these rules (except access by parents and authorized employees of the participating school), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

## **X. AMENDMENT OF RECORDS AT PARENT'S REQUEST**

If you believe that information in education records collected, maintained, or used under these rules is inaccurate or misleading or violates the privacy or other rights of your child, you may request the school that maintains the information to amend the information.

The school must decide whether to amend the information in accordance with your request within a reasonable period of time of receipt of the request. If the school decides to refuse to amend the information in accordance with the request, it must inform you of the refusal and of your right to a hearing as set forth below.

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

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must amend the information accordingly and so inform you in writing.

If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of the right to place in the records it maintains on your child a statement commenting on the information or setting forth any reasons you disagree with the decision of the school. Any explanation placed in your child's records under this section must be maintained by the school as part of the records of your child as long as the record or contested portion is maintained by the school; if the records of your child or the contested portion is disclosed by the school to any party, the explanation must also be disclosed to the party.

## **Y. ELECTRONIC MAIL**

A parent of a child with a disability may elect to receive notices required under this section by an electronic mail (e-mail) communication, if the agency makes such option available.

## **DEFINITIONS**

"Consent" means that: (a) You have been fully informed of all information relevant to the activity for which consent is sought, in your native language or other mode of communication; (b) You understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and you understand that the granting of consent is voluntary on your part and may be revoked at any time.

"Evaluation" means procedures used in accordance with these rules to determine whether a child has a disability and the nature and extent of the special education and supportive services that the child needs.

The term means procedures used selectively with an individual child, and does not include basic tests administered to or procedures used with all students in a school, grade, or class.

"Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school responsible for the education of the child in question. "Independent educational evaluation at public expense" means that the school either pays for the full cost of the evaluation or insures that the evaluation is otherwise provided at no cost to you.