

### **3301-51-05 Procedural safeguards.**

(A) Each school district shall adopt and implement written policies and procedures approved by the Ohio department of education, office for exceptional children, to ensure that children with disabilities and their parents are provided procedural safeguards.

(B) Each school district of residence shall adopt and implement written policies and procedures approved by the Ohio department of education, office for exceptional children, to ensure that children with disabilities and their parents and public agencies are provided an opportunity to resolve disputes regarding identification, evaluation, or educational placement of a child with a disability or the provision of a free appropriate public education (FAPE).

(C) Parental consent

(1) Parental consent for initial evaluation

(a) The school district proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under the definition of “child with a disability” in rule 3301-51-01 of the Administrative Code must, after providing notice consistent with the requirements of this rule, obtain informed consent, consistent with the definition of “consent” in rule 3301-51-01 of the Administrative Code, from the parent of the child before conducting the evaluation.

(b) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.

(c) The school district must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.

(d) For initial evaluations only, if the child is a ward of the state and is not residing with the child’s parent, the school district is not required to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability if:

(i) Despite reasonable efforts to do so, the school district cannot discover the whereabouts of the parent of the child;

(ii) The rights of the parents of the child have been terminated in accordance with state law; or

(iii) 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.

(e) If the parent of a child enrolled in a school district or seeking to be enrolled in a school district does not provide consent for initial evaluation under this rule, or the parent fails to respond to a request to provide consent, the school district of residence may, but is not required to, pursue the initial evaluation of the child by utilizing the procedural safeguards in Subpart E of Part B of the Individuals with Disabilities Education Act, as amended by the Individuals with Disabilities Education Improvement Act of 2004, December 2004 (IDEA) (including the mediation procedures or the due process procedures under this rule).

The school district does not violate its obligation under rule 3301-51-03 of the Administrative Code for child find and under rule 3301-51-06 of the Administrative Code for evaluations if it declines to pursue the evaluation.

(2) Parental consent for services

(a) A school district of residence that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.

(b) The school district of residence must make reasonable efforts to obtain informed consent from the parent for the initial provision of special education and related services to the child.

(c) If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the school district of residence:

(i) Shall not use the procedures in Subpart E of Part B of the IDEA, including the mediation procedures or the due process procedures described in this rule, in order to obtain agreement or a ruling that services may be provided to the child;

(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the child with the special education and related services for which the school district of residence requests consent; and

(iii) Is not required to convene an individualized education program (IEP) team meeting or develop an IEP under rule 3301-51-07 of the Administrative Code for the child for the special education and related services for which the school district of residence requests such consent.

(3) Revocation of parental consent. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the school district:

(a) Shall not continue to provide special education and related services to the child, but shall provide prior written notice in accordance with paragraph (H) of this rule before ceasing the provision of special education and related services;

(b) Shall not use the procedures in Subpart E of Part B of the IDEA, including the mediation procedures or the due process procedures described in this rule, in order to obtain agreement or a ruling that the services shall be provided to the child;

(c) Shall not be considered to be in violation of the requirement to make FAPE available to the child for the failure to provide the child with further special education and related services; and (d) Shall not be required to convene an individualized education program (IEP) team meeting or develop an IEP pursuant to rule 3301-51-07 of the Administrative Code for the child for further provision of special education and related services.

#### (4) Parental consent for reevaluations

(a) Subject to paragraph (C)(4)(b) of this rule, each school district:

(i) Must obtain informed parental consent, in accordance with paragraph (C)(1) of this rule, prior to conducting any reevaluation of a child with a disability.

(ii) If the parent refuses to consent to the reevaluation, the school district of residence may, but is not required to, pursue the reevaluation by using the consent override procedures described in paragraph (C)(1)(e) of this rule.

(iii) The school district of residence does not violate its obligation under rule 3301-51-03 of the Administrative Code for child find and under rule 3301-51-06 of the Administrative Code for reevaluations if it declines to pursue the reevaluation.

(b) The informed parental consent described in paragraph (C)(4)(a) of this rule need not be obtained if the school district can demonstrate that:

(i) It made reasonable efforts to obtain such consent; and

(ii) The child's parent has failed to respond.

#### (5) Parental consent for a change of placement

(a) A "change of placement" means a change from one option on the continuum of alternative placements to another.

(b) Informed parental consent must be obtained before making a change of placement of a child with a disability.

(c) Informed parental consent need not be obtained before:

(i) A change of placement if the school district of residence can demonstrate that it has made reasonable efforts, as described in rule 3301-51-07 of the Administrative Code, to obtain consent, and the child's parent has failed to respond.

(ii) A change of placement of a child with a disability that is the result of a disciplinary action taken in accordance with paragraph (K)(20) of this rule.

(iii) Reviewing existing data as part of an evaluation or a reevaluation; or

(iv) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(6) Other consent requirements

(a) A school district may not use a parent's refusal to consent to one service or activity under paragraph (C)(1) or (C)(5)(b) of this rule to deny the parent or child any other service, benefit, or activity of the school district, except as required by this rule.

(b) To meet the reasonable efforts requirement in paragraphs (C)(1)(c), (C)(1)(d)(i), (C)(2)(b), (C)(4)(b)(i), and (C)(5)(c)(i) of this rule, the school district must document its attempts to obtain parental consent using the procedures in rule 3301-51-07 of the Administrative Code.

(D) Transfer of parental rights at age of majority

(1) When a child with a disability reaches the age of majority under Ohio law (eighteen years of age) that applies to all children (except for a child with a disability who has been determined to be incompetent under Ohio law):

(a) The school district of residence must provide the notice required by this rule to both the child and the parents;

(b) All rights accorded to parents under Part B of the IDEA and Chapter 3323. of the Revised Code transfer to the child; and

(c) All rights accorded to parents under Part B of the IDEA and Chapter 3323. of the Revised Code transfer to children who are incarcerated in an adult or juvenile, state or local correctional institution.

(2) When a child with a disability (except for a child with a disability who has been determined to be incompetent under Ohio law) reaches eighteen years of age, the school district of residence must notify the child and the parents of the transfer of rights.

## (E) Surrogate parents

### (1) General

Each school district must ensure that the rights of a child are protected when:

- (a) No parent (as defined in rule 3301-51-01 of the Administrative Code) can be identified;
- (b) The school district, after reasonable efforts, cannot locate a parent;
- (c) The child is a ward of the state under the laws of Ohio; or
- (d) The child is an unaccompanied homeless youth as defined in Section 725(6) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(6)), as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431.

### (2) Duties of the school district

The duties of a school district of residence under paragraph (E)(1) of this rule include the assignment of an individual to act as a surrogate for the parents. This must include a method:

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

### (3) Wards of the state

In the case of a child who is a ward of the state, the surrogate parent alternatively may be appointed by the judge overseeing the child's case, provided that the surrogate meets the requirements in paragraphs (E)(4)(c)(i), (E)(4)(c)(iv), and (E)(5) of this rule.

### (4) Criteria for selection of surrogate parents

- (a) A surrogate parent shall be assigned as soon as possible but no later than thirty days of the date that it is determined that the child is in need of the surrogate.
- (b) The school district of residence maintains the ultimate responsibility for the assignment of a surrogate parent. If requested by the school district of residence and mutually agreed upon, the school district of attendance, county board of developmental disabilities (county board of DD ), or other educational agency may appoint the surrogate parent.
- (c) The school district of residence must ensure that a person selected as a surrogate parent:

- (i) Is not an employee of the Ohio department of education, the school district, or any other agency that is involved in the education or care of the child;
- (ii) Has no personal or professional interest that conflicts with the interest of the child the surrogate parent represents;
- (iii) Has knowledge and skills that ensure adequate representation of the child; and
- (iv) Has successfully completed the training prescribed by the Ohio department of education prior to acting on behalf of the child.

(5) Non-employee requirement; compensation

A person who is otherwise qualified to be a surrogate parent under paragraph (E)(4) of this rule is not an employee of the school district solely because the person is paid by the school district to serve as a surrogate parent.

(6) Civil damages

Pursuant to section 3323.051 of the Revised Code, neither the surrogate parent nor the authority that assigned the surrogate parent shall be liable in civil damages for acts of the surrogate parent unless such acts constitute willful or wanton misconduct,

(7) Appointment of surrogate by a judge

If a surrogate parent is appointed by a judge overseeing the child's case, upon the request of the judge, the school district of residence will confirm that the person appointed meets the requirements in paragraphs (E)(4)(c)(i), (E)(4)(c)(iv), and (E)(5) of this rule.

(8) Child who has reached age of majority

A child who has reached the age of majority may request a surrogate parent.

(9) Unaccompanied homeless youth

In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (E)(4)(c)(i) of this rule, until a surrogate parent can be appointed that meets all of the requirements of paragraph (E)(4) of this rule.

(10) Surrogate parent responsibilities

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

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

(F) Opportunity to examine records; parent participation in meetings

(1) Opportunity to examine records The parents of a child with a disability must be afforded, in accordance with the procedures of rule 3301-51-04 of the Administrative Code, an opportunity to inspect and review all education records with respect to:

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

(2) Parent participation in meetings

(a) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to:

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

(b) Each school district must provide notice consistent with the parent participation requirements of rule 3301-51-07 of the Administrative Code to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (F)(2)(a) of this rule.

(c) A meeting does not include informal or unscheduled conversations involving school district personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision. A meeting also does not include preparatory activities that school district personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.

(3) Parent involvement in placement decisions

(a) Each school district must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.

(b) In implementing the requirements of paragraph (F)(3)(a) of this rule, the school district must use procedures consistent with the procedures described in the parent participation requirements of rule 3301-51-07 of the Administrative Code.

(c) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the school district must use other

methods to ensure their participation, including individual or conference telephone calls, or video conferencing.

(d) A placement decision may be made by a group without the involvement of a parent, if the school district is unable to obtain the parent's participation in the decision. In this case, the school district must have a record of its attempt to ensure their involvement.

## (G) Independent educational evaluation

### (1) General

(a) The parents of a child with a disability have the right under this rule to obtain an independent educational evaluation of the child, subject to paragraphs (G)(2) to (G)(5) of this rule.

(b) Each school district of residence must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the district's criteria applicable for independent educational evaluations as set forth in paragraph (G)(5) of this rule.

(c) The following terms are defined as they are used in this rule:

(i) "Independent educational evaluation" means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of the child in question; and

(ii) "Public expense" means that the school district of residence either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with rule 3301-51-02 of the Administrative Code.

### (2) Parent right to evaluation at public expense

(a) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district of residence, subject to the conditions in paragraphs (G)(2)(b) to (G)(2)(d) of this rule.

(b) If a parent requests an independent educational evaluation at public expense, the school district of residence must, without unnecessary delay, either:

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the school district of residence demonstrates in a hearing

pursuant to paragraphs (K)(2) and (K)(7) to (K)(13) of this rule that the evaluation obtained by the parent did not meet district criteria.

(c) If the school district files a due process complaint notice to request a hearing and the final decision is that the school district's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(d) If a parent requests an independent educational evaluation, the school district of residence may ask for the parent's reason why the parent objects to the public evaluation. However, the school district may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(e) A parent is entitled to only one independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

### (3) Parent-initiated evaluations

If the parent obtains an independent educational evaluation at public expense or shares with the school district an evaluation obtained at private expense, the results of the evaluation:

(a) Must be considered by the school district of residence, if it meets district criteria, in any decision made with respect to the provision of FAPE to the child; and

(b) May be presented by any party as evidence at a hearing on a due process complaint under Subpart E of Part B of the IDEA regarding that child.

(4) Requests for evaluations by hearing officers If a hearing officer requests an independent educational evaluation as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense.

### (5) School district criteria

(a) If an independent educational 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, must be the same as the criteria that the school district of residence uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(b) Except for the criteria described in paragraph (G)(5)(a) of this rule, a school district of residence may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

(H) Prior notice by the school district; content of notice

(1) Notice

Written notice that meets the requirements of paragraph (H)(2) of this rule must be given to the parents of a child with a disability a reasonable time before the school district of residence:

- (a) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
- (b) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) Content of notice

The notice required under paragraph (H)(1) of this rule must include:

- (a) A description of the action proposed or refused by the school district;
- (b) An explanation of why the school district proposes or refuses to take the action;
- (c) A description of each evaluation procedure, assessment, record, or report the school district used as a basis for the proposed or refused action;
- (d) A statement that the parents of a child with a disability have protection under the procedural safeguards of this rule and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
- (e) Sources for parents to contact to obtain assistance in understanding the provisions of this rule;
- (f) A description of other options that the IEP team considered and the reasons why those options were rejected; and
- (g) A description of other factors that are relevant to the school district's proposal or refusal.

(3) Notice in understandable language

- (a) The notice required under paragraph (H)(1) of this rule must be:
  - (i) Written in language understandable to the general public; and
  - (ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(b) If the native language or other mode of communication of the parent is not a written language, the school district must take steps to ensure:

- (i) That the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
- (ii) That the parent understands the content of the notice; and
- (iii) That there is written evidence that the requirements in paragraphs (H)(3)(b)(i) and (H)(3)(b)(ii) of this rule have been met.

(4) Additional notice requirements

(a) Prior written notice shall be provided to the parents of a child with a suspected or confirmed disability within thirty days of the date of referral.

(b) Prior written notice shall be provided to the parents of a child with a suspected or confirmed disability prior to a change of placement that is a result of a disciplinary action.

(c) The IEP shall serve as written notice unless the parent disagrees with the IEP. If the parent disagrees, written notice shall be provided prior to the implementation of the IEP.

(I) Procedural safeguards notice

(1) General

A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents:

- (a) Upon initial referral or parent request for evaluation;
- (b) Upon receipt of the first due process complaint under paragraph (K)(7) of this rule in a school year;
- (c) In accordance with the discipline procedures in paragraph (K)(20) of this rule; and
- (d) Upon request by a parent.

(2) Internet web site

A school district may place a current copy of the procedural safeguards notice on its internet web site if a web site exists, but the school district must still provide parents a printed copy of the procedural safeguards notice.

### (3) Contents of notice

The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under rule 3301-51-02 of the Administrative Code, rule 3301-51-04 of the Administrative Code, and this rule including:

- (a) Independent educational evaluations;
- (b) Prior written notice;
- (c) Parental consent;
- (d) Access to education records;
- (e) Opportunity to present and resolve complaints through the due process complaint and state complaint procedures, including:
  - (i) The time period in which to file a complaint;
  - (ii) The opportunity for the school district of residence to resolve the complaint; and
  - (iii) The difference between the due process complaint and the state complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;
- (f) The availability of mediation;
- (g) The child's placement during the pendency of any due process complaint;
- (h) Procedures for children who are subject to placement in an interim alternative educational setting;
- (i) Requirements for unilateral placement by parents of children in nonpublic schools at public expense;
- (j) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
- (k) State-level appeals;
- (l) Civil actions, including the time period in which to file those actions; and
- (m) Attorneys' fees.

### (4) Notice in understandable language

The notice required under paragraph (I)(1) of this rule must meet the requirements of paragraph (H)(3) of this rule.

(J) Electronic mail

A parent of a child with a disability may elect to receive notices required by this rule by an electronic mail communication, if the school district makes that option available.

(K) Conflict resolution

(1) Administrative reviews

(a) Administrative reviews are recommended, but cannot be used to delay or deny an impartial due process hearing that has been requested in writing or to deny any other rights afforded under this chapter of the Administrative Code.

(b) The child's parent or educational agency other than the school district may request an opportunity to present complaints to the superintendent.

(i) Within twenty school days of receipt of a complaint, the superintendent, or the superintendent's designee, without undue delay and at a time and place convenient to all parties, shall conduct a review, may hold an administrative hearing, and shall notify all parties in writing of the decision.

(ii) Every effort should be made in the review to resolve any disagreements.

(iii) All parties have the right to invite others to participate in the administrative review, including legal counsel.

(2) Model forms

(a) The Ohio department of education must develop model forms to assist parents and public agencies in filing a due process complaint in accordance with paragraphs (K)(7)(a) and (K)(8)(a) to (K)(8)(c) of this rule and to assist parents and other parties in filing a state complaint under paragraphs (K)(4) to (K)(6) of this rule. However, the Ohio department of education or school district of residence may not require the use of the model forms.

(b) Parents, school districts, public agencies, and other parties may use the appropriate model form described in paragraph (K)(2)(a) of this rule, or another form or other document, so long as the form or document that is used meets, as appropriate, the content requirements in paragraph (K)(8)(b) of this rule for filing a due process complaint, or the requirements in paragraph (K)(6)(b) of this rule for filing a state complaint.

(3) Mediation

(a) General

The Ohio department of education shall establish state mediation procedures. Additionally, each school district must ensure that procedures are established and implemented to allow parties to disputes involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.

(b) Requirements

The procedures must meet the following requirements:

(i) The procedures must ensure that the mediation process:

(a) Is voluntary on the part of the parties;

(b) Is not used to deny or delay a parent's right to a hearing on the parent's due process complaint, or to deny any other rights afforded under Part B of the IDEA; and

(c) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(ii) A school district of residence may establish procedures to offer to parents and schools that choose not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

(a) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in the state established under Section 671 or 672 of the IDEA; and

(b) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

(iii) The Ohio department of education shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services.

(iv) The Ohio department of education shall select mediators on a random, rotational, or other impartial basis. Both parties to the mediation must be involved in selecting the mediators and agree with the selection.

(v) The Ohio department of education shall bear the cost of the mediation process, including the costs of meetings described in paragraph (K)(3)(b)(ii) of this rule.

(vi) Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties to the dispute.

(vii) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution and that:

(a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and

(b) Is signed by both the parent and a representative of the school district who has the authority to bind such school district.

(viii) A written, signed mediation agreement under this paragraph is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(ix) If the mediation requires changes in the IEP, the IEP team shall be convened to incorporate changes into the IEP within twenty school days following the mediation agreement or as agreed to in the mediation agreement.

(x) No part of the mediation discussion or sessions may be electronically recorded. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any federal court or state court of a state receiving assistance under the IDEA. The mediator may not be called as a witness in future proceedings related to the mediation sessions.

(c) Impartiality of mediator

(i) An individual who serves as a mediator under this rule:

(a) May not be an employee of the Ohio department of education or any school district or agency that is involved in the education or care of the child; and

(b) Must not have a personal or professional interest that conflicts with the person's objectivity.

(ii) A person who otherwise qualifies as a mediator is not an employee of a school district of residence or state agency that receives a subgrant under Section 611 of the IDEA solely because the person is paid by the agency to serve as a mediator.

(4) Adoption of state complaint procedures

(a) General

The Ohio department of education shall adopt written procedures for:

(i) Resolving any complaint, including a complaint filed by an organization or individual from another state, that meets the requirements of paragraph (K)(6) of this rule by:

(a) Providing for the filing of a complaint with the Ohio department of education; and

(b) At the Ohio department of education's discretion, providing for the filing of a complaint with a school district of residence and the right to have the Ohio department of education review the school district of residence's decision on the complaint; and

(ii) Widely disseminating to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities, the state procedures under paragraphs (K)(4) to (K)(6) of this rule.

(b) Remedies for denial of appropriate services

In resolving a complaint in which the Ohio department of education has found a failure to provide appropriate services, the Ohio department of education, pursuant to its general supervisory authority under Part B of the IDEA, must address:

(i) 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

(ii) Appropriate future provision of services for all children with disabilities.

(5) Minimum state complaint procedures

(a) Time limit; minimum procedures

The Ohio department of education shall include in its complaint procedures a time limit of sixty days after a complaint is filed under paragraph (K)(6) of this rule to:

(i) Carry out an independent on-site investigation, if the Ohio department of education determines that an investigation is necessary;

(ii) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;

(iii) Provide the school district of residence with the opportunity to respond to the complaint, including, at a minimum:

(a) At the discretion of the school district of residence, a proposal to resolve the complaint; and

(b) An opportunity for a parent who has filed a complaint and the school district of residence to voluntarily engage in mediation consistent with paragraph (K)(3) of this rule;

(iv) Review all relevant information and make an independent determination as to whether the school district is violating a requirement of Part B of the IDEA or of this rule; and

(v) Issue a written decision to the complainant that addresses each allegation in the complaint and contains:

(a) Findings of fact and conclusions; and

(b) The reasons for the Ohio department of education's final decision.

(b) Time extension; final decision; implementation

The Ohio department of education's procedures described in paragraph (K)(5)(a) of this rule also shall:

(i) Permit an extension of the time limit under paragraph (K)(5)(a) of this rule only if:

(a) Exceptional circumstances exist with respect to a particular complaint; or

(b) The parent and the school district of residence involved agree to extend the time to engage in mediation pursuant to paragraph (K)(5)(a)(iii)(b) of this rule, or to engage in other alternative means of dispute resolution, including, but not limited to, an administrative review; and

(ii) Include procedures for effective implementation of the Ohio department of education's final decision, if needed, including:

(a) Technical assistance activities;

(b) Negotiations; and

(c) Corrective actions to achieve compliance.

(c) Complaints and due process hearings filed under this rule

(i) If a written complaint is received that is also the subject of a due process hearing under this rule, or contains multiple issues of which one or more are part of that hearing, the Ohio department of education shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (K)(5)(a) and (K)(5)(b) of this rule.

(ii) If an issue raised in a complaint filed under this rule has previously been decided in a due process hearing involving the same parties:

(a) The due process hearing decision is binding on that issue; and

(b) The Ohio department of education shall inform the complainant to that effect.

(iii) A complaint alleging a school district of residence's failure to implement a due process hearing decision shall be resolved by the Ohio department of education.

(6) Filing a complaint

(a) An organization or individual may file a signed written complaint under the procedures described in paragraphs (K)(4) to (K)(5) of this rule.

(b) The complaint must include:

(i) A statement that a school district of residence has violated a requirement of Part B of the IDEA or of this rule;

(ii) The facts on which the statement is based;

(iii) The signature and contact information for the complainant; and

(iv) If alleging violations with respect to a specific child:

(a) The name and address of the residence of the child;

(b) The name of the school the child is attending;

(c) In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2), as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431),

available contact information for the child, and the name of the school the child is attending;

(d) A description of the nature of the problem of the child, including facts relating to the problem; and

(e) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with paragraph (K)(4) of this rule.

(d) The party filing the complaint must forward a copy of the complaint to the school district of residence at the same time the party files the complaint with the Ohio department of education.

#### (7) Filing a due process complaint

##### (a) General

(i) A parent or a school district, county board of MR/DD, or other educational agency may file a due process complaint on any of the matters described in paragraphs (H)(1)(a) and (H)(1)(b) of this rule relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child.

(ii) The due process complaint must allege a violation that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, except that the exceptions to the timeline described in paragraph (K)(10)(f) of this rule apply to the timeline in this paragraph.

##### (b) Information for parents

The school district of residence must inform the parent of any free or low-cost legal and other relevant services available in the area if:

(i) The parent requests the information; or

(ii) The parent or the school district files a due process complaint under this rule.

(c) Hearing requested by someone other than parent If a hearing has been requested by someone other than the child's parent, the parent shall be informed in writing of the request. The parent shall be invited to participate in the proceedings and shall be provided copies of all communications between the parties.

(8) Due process complaint

(a) General

(i) The Ohio department of education shall establish state due process procedures. Additionally, the school district or public agency must have procedures that require either party, or the attorney representing a party, to provide to the other party a due process complaint (which must remain confidential).

(ii) The party filing a due process complaint must forward a copy of the due process complaint to the Ohio department of education.

(b) Content of complaint

The due process complaint required in paragraph (K)(8)(a)(i) of this rule must include:

(i) The name of the child;

(ii) The address of the residence of the child;

(iii) The name of the school the child is attending;

(iv) In the case of a homeless child or youth (within the meaning of Section 725(2) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a(2), as amended and specified in Title X, Part C, of the No Child Left Behind Act of 2001, January 2002, 42 U.S.C. 11431), available contact information for the child, and the name of the school the child is attending;

(v) A description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and

(vi) A proposed resolution of the problem to the extent known and available to the party at the time.

(c) Notice required before a hearing on a due process complaint

A party may not have a hearing on a due process complaint until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (K)(8)(b) of this rule.

(d) Appointment of hearing officer

Upon receipt of a request for a due process hearing, the Ohio department of education, office for exceptional children, will appoint an impartial hearing officer from a list of attorneys maintained by the office for exceptional children.

(e) Sufficiency of complaint

(i) The due process complaint required by this rule must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within fifteen days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (K)(8)(b) of this rule.

(ii) The appointed hearing officer shall handle all phases of the due process request, including, but not limited to, whether a determination of insufficiency should result in the amendment or dismissal of a due process complaint.

(iii) Within five days of receipt of the notification under paragraph (K)(8)(e)(i) of this rule, the hearing officer must make a determination on the face of the due process complaint of whether the due process complaint meets the requirements of paragraph (K)(8)(b) of this rule, and must immediately notify the parties in writing of that determination.

The hearing officer shall review the sufficiency issues in accordance with the following:

(a) The hearing officer shall make a determination on the face of the due process complaint no later than five days after receipt of the notification under paragraph (K)(8)(e)(i) of this rule;

(b) The hearing officer shall notify all parties of that written determination on the same date the determination is made;

(c) If the due process complaint is determined to be insufficient, the determination shall include:

(i) The reasons for the determination of insufficiency;

(ii) A statement in clear language that the case has not been dismissed;

(iii) The case cannot go to hearing until a due process notice is filed which meets the requirements of paragraph (K)(8)(b) of this rule; and

(iv) Notice of resources to assist parents without counsel in completing due process complaints and in correcting deficiencies

included in the finding of insufficiency by the hearing officer, including, but not limited to, the identity and contact information of the employee at the Ohio department of education who is qualified to answer parents' questions about the required information specified in paragraph (K)(8)(b) of this rule that must be included in a due process complaint notice.

(iv) A party may amend its due process complaint only if:

(a) The other party consents in writing to the amendment and is given the opportunity to resolve the due process complaint through a meeting held pursuant to paragraph (K)(9) of this rule; or

(b) The hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five days before the due process hearing begins.

(v) If a party files an amended due process complaint, the timelines for the resolution meeting in paragraph (K)(9)(a) of this rule and the time period to resolve in paragraph (K)(9)(b) of this rule begin again with the filing of the amended due process complaint.

(f) School district of residence response to a due process complaint

(i) If the school district of residence has not sent a prior written notice under paragraph (H) of this rule to the parent regarding the subject matter contained in the parent's due process complaint, the school district of residence must, within ten days of receiving the due process complaint, send to the parent a response that includes:

(a) An explanation of why the school district of residence proposed or refused to take the action raised in the due process complaint;

(b) A description of other options that the IEP team considered and the reasons why those options were rejected;

(c) A description of each evaluation procedure, assessment, record, or report the school district of residence used as the basis for the proposed or refused action; and

(d) A description of the other factors that are relevant to the school district of residence's proposed or refused action.

(ii) A response by a school district of residence under paragraph (K)(8)(f)(i) of this rule shall not be construed to preclude the school district from asserting that the parent's due process complaint was insufficient, where appropriate.

(g) Other party response to a due process complaint

Except as provided in paragraph (K)(8)(f) of this rule, the party receiving a due process complaint must, within ten 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.

(9) Resolution process

(a) Resolution meeting

(i) Within fifteen days of receiving notice of the parent's due process complaint, and prior to the initiation of a due process hearing under paragraph (K)(10) of this rule, the school district of residence must convene a meeting with the parent and the relevant member or members of the IEP team who have specific knowledge of the facts identified in the due process complaint that:

(a) Includes a representative of the school district of residence who has decision-making authority on behalf of that district; and

(b) May not include an attorney of the school district of residence unless the parent is accompanied by an attorney.

(ii) The purpose of the meeting is for the parent of the child to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the school district of residence has the opportunity to resolve the dispute that is the basis for the due process complaint.

(iii) Discussions that occur during a resolution session shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil proceeding.

(iv) The meeting described in paragraphs (K)(9)(a)(i) and (K)(9)(a)(ii) of this rule need not be held if:

(a) The parent and the school district of residence agree in writing to waive the meeting; or

(b) The parent and the school district of residence agree to use the mediation process described in paragraph (K)(3) of this rule.

(v) The parent and the school district of residence determine the relevant members of the IEP team to attend the meeting.

(b) Resolution period

(i) If the school district has not resolved the due process complaint to the satisfaction of the parent within thirty days of the receipt of the due process complaint, the due process hearing may occur.

(ii) Except as provided in paragraph (K)(9)(c) of this rule, the timeline for issuing a final decision under paragraph (K)(15) of this rule begins at the expiration of this thirty-day period.

(iii) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (K)(9)(b)(i) and (K)(9)(b)(ii) of this rule, the failure of the parent filing a due process complaint to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until the meeting is held.

(iv) If the school district of residence is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made (and documented using the procedures in rule 3301-51-07 of the Administrative Code), the school district of residence may, at the conclusion of the thirty-day period, request that a hearing officer dismiss the parent's due process complaint.

(v) If the school district of residence fails to hold the resolution meeting specified in paragraph (K)(9)(a) of this rule within fifteen days of receiving notice of a parent's due process complaint or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) Adjustments to thirty-day resolution period

The forty-five-day timeline for the due process hearing in paragraph (K)(15)(a) of this rule starts the day after one of the following events:

(i) Both parties agree in writing to waive the resolution meeting;

(ii) After either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible;

(iii) If both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or school district of residence withdraws from the mediation process.

(d) Written settlement agreement

If a resolution to the dispute is reached at the meeting described in paragraphs (K)(9)(a)(i) and (K)(9)(a)(ii) of this rule, the parties must execute a legally binding agreement that:

(i) States that all discussions that occurred during the resolution process shall be confidential and shall not be used as evidence in any subsequent due process hearing or civil procedure;

(ii) Is signed by both the parent and a representative of the school district of residence who has the authority to bind the district; and

(iii) Is enforceable in any state court of competent jurisdiction or in a district court of the United States.

(e) Agreement review period

If the parties execute an agreement pursuant to paragraph (K)(9)(d) of this rule, a party may void the agreement within three business days of the agreement's execution.

#### (10) Impartial due process hearing

(a) General

Whenever a due process complaint is received under paragraph (K)(7) or (K)(22) of this rule, the parents or the school district of residence involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in paragraphs (K)(7) to (K)(9) of this rule.

(b) School district responsible for conducting the due process hearing

The hearing described in paragraph (K)(10)(a) of this rule must be conducted by the school district of residence as provided by section 3323.05 of the Revised Code, the provisions of this rule, and procedures of the Ohio department of education.

(c) Impartial hearing officer

(i) At a minimum, a hearing officer:

(a) Must not be:

(i) An employee of the Ohio department of education or the school district that is involved in the education or care of the child; or

(ii) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;

(b) Must possess knowledge of, and the ability to understand, the provisions of the IDEA, federal and state regulations pertaining to the IDEA, and legal interpretations of the IDEA by federal and state courts;

(c) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice;

(d) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice; and

(e) Must be an attorney licensed to practice law in Ohio who has successfully completed all training required by the Ohio department of education.

(ii) A person who otherwise qualifies to conduct a hearing under paragraph (K)(10)(c)(i) of this rule is not an employee of the school district solely because the person is paid by the school district of residence to serve as a hearing officer.

(iii) Each public agency must keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.

(iv) The Ohio department of education, office for exceptional children may require any and all current hearing or state level review officers to reapply for eligibility to remain on the list. Training sessions are a mandatory requirement to remain eligible for appointments. In addition, being on the list of possible hearing or state level review officers should not be considered a guarantee or expectation of appointment.

(d) Subject matter of due process hearings

The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint filed under paragraph (K)(8)(b) of this rule, unless the other party agrees otherwise.

(e) Timeline for requesting a hearing

A parent or public agency must request an impartial hearing on their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint.

(f) Exceptions to the timeline

The timeline described in paragraph (K)(10)(e) of this rule does not apply to a parent if the parent was prevented from filing a due process complaint due to:

(i) Specific misrepresentations by the school district that it had resolved the problem forming the basis of the due process complaint; or

(ii) The school district's withholding of information from the parent that was required under this rule to be provided to the parent.

#### (11) Hearing rights

##### (a) General

Any party to a hearing conducted pursuant to paragraphs (K)(2) and (K)(7) to (K)(13) of this rule or paragraphs (K)(20) to (K)(24) of this rule, or an appeal conducted pursuant to paragraph (K)(14) of this rule, has the right to:

(i) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;

(ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(iii) 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;

(iv) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and

(v) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.

##### (b) Additional disclosure of information

(i) At least five business days prior to a hearing conducted pursuant to paragraph (K)(10)(a) of this rule, each party 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.

(ii) A hearing officer may bar any party that fails to comply with paragraph (K)(11)(b)(i) of this rule from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

##### (c) Parental rights at hearings

Parents involved in hearings must be given the right to:

(i) Have the child who is the subject of the hearing present;

(ii) Open the hearing to the public; and

(iii) Have the record of the hearing and the findings of fact and decisions described in paragraphs (11)(a)(iv) and (11)(a)(v) of this rule provided at no cost to parents.

(12) Responsibility of hearing officer

The impartial hearing officer has the responsibility of:

(a) Notifying all parties of the date, time and location of the hearing;

(b) Arranging a disclosure conference at least five business days prior to the hearing to assure that information to be presented at the hearing is disclosed;

(c) Issuing a subpoena or a subpoena duces tecum when relevant, necessary, and material, with fees and mileage paid by the party requesting the subpoena;

(i) Either party may request subpoenas to compel the attendance of witnesses at the hearing. Either party may request subpoenas duces tecum to compel the witnesses to bring specified documents to the hearing. Requests for subpoenas duces tecum are submitted to the hearing officer. The hearing officer signs the subpoenas.

(ii) A subpoena may be served by an attorney at law, or by any person who is not a party and over the age of eighteen. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, or by leaving it at the person's usual place of residence. Service of subpoenas is solely the responsibility of the party requesting the subpoena and shall not be assumed by the impartial hearing officer.

(d) Ruling on procedural issues presented at the hearing; and

(e) Arriving at a written decision based solely on evidence and testimony presented at the hearing and mailing such decision, by certified mail, to the parties involved and the Ohio department of education, office for exceptional children.

(13) Hearing decisions

(a) Decision of hearing officer on the provision of FAPE

(i) Subject to paragraph (K)(13)(a)(ii) of this rule, a hearing officer's determination of whether a child received FAPE must be based on substantive grounds.

(ii) In matters alleging a procedural violation, a hearing officer may find that a child did not receive FAPE only if the procedural inadequacies:

(a) Impeded the child's right to FAPE;

(b) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the parent's child; or

(c) Caused a deprivation of educational benefit.

(iii) Nothing in paragraph (K)(13)(a) of this rule shall be construed to preclude a hearing officer from ordering a school district to comply with procedural requirements under this rule.

(b) Construction clause

Nothing in paragraphs (K)(2) and (K)(7) to (K)(13) of this rule shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the Ohio department of education.

(c) Separate request for a due process hearing

Nothing in this rule shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already filed.

(d) Findings and decision to advisory panel and general public

The Ohio department of education, after deleting any personally identifiable information, must:

(i) Transmit the findings and decisions referred to in paragraph (K)(11)(a)(v) of this rule to the state advisory panel which is hereby established and shall be maintained in accordance with section 3323.06 of the Revised Code; and

(ii) Make those findings and decisions available to the public.

(14) Finality of decision; appeal; impartial review

(a) Finality of hearing decision

A decision made in a hearing conducted pursuant to this rule is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraphs (K)(14)(b) and (K)(17) of this rule.

(b) Appeal of decisions; impartial review

(i) Any party aggrieved by the findings and decision in the hearing may appeal the findings and decision in writing to the Ohio department of education within forty-five days of receipt of the hearing decision.

(a) The notice shall set forth the order appealed and the grounds of the party's appeal; and

(b) A party filing an appeal shall notify the other party of the filing of the appeal.

(ii) If there is an appeal, the Ohio department of education must conduct an impartial review of the findings and decision appealed. Upon receipt of an appeal, the Ohio department of education shall appoint a state level review officer who will conduct the review.

(iii) The official conducting the review must:

(a) Examine the entire hearing record;

(b) Ensure that the procedures at the hearing were consistent with the requirements of due process;

(c) Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, the rights in paragraph (K)(11) of this rule apply;

(d) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(e) Make an independent decision on completion of the review;

and

(f) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.

(c) Findings and decision to advisory panel and general public

The Ohio department of education, after deleting any personally identifiable information, must:

(i) Transmit the findings and decisions referred to in paragraph (K)(14)(b)(iii)(f) of this rule to the state advisory panel established under this rule and maintained in accordance with section 3323.06 of the Revised Code; and

(ii) Make those findings and decisions available to the public.

(d) Finality of review decision

The decision made by the reviewing official is final unless a party brings a civil action under paragraph (K)(17) of this rule.

(15) Timelines and convenience of hearings and reviews

(a) The Ohio department of education must ensure that not later than forty-five days after the expiration of the thirty-day period under paragraph (K)(9)(b) of this rule, or the adjusted time periods described in paragraph (K)(9)(c) of this rule:

(i) A final decision is reached in the hearing; and

(ii) A copy of the decision is mailed to each of the parties.

(b) The Ohio department of education must ensure that not later than thirty days after the receipt of a request for a review:

(i) A final decision is reached in the review; and

(ii) A copy of the decision is mailed to each of the parties.

(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (K)(15)(a) and (K)(15)(b) of this rule at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place that is reasonably convenient to the parents and child involved.

(16) Cost of hearings

(a) The school district of the child's residence shall provide one copy of the written, or at the option of the parents, an electronic verbatim record of the hearing and findings of fact and decisions to the parent at no cost.

(b) All other cost incurred in impartial due process hearings requested by the parent shall be assumed by the school district of the child's residence, except as follows:

(i) Expert testimony, outside medical evaluation, witness fees, subpoena fees, and cost of counsel will be paid by the party requesting the services; and

(ii) If requested by the parents or their attorney, additional copies of the record of the hearing and findings of fact and decisions.

(c) When a school district, county board of MR/DD, or other educational agency providing special education and related services to a child requests the impartial due

process hearing, the district, county board of MR/DD, or other educational agency will share equally the costs of the hearing with the school district of residence, except those costs included in paragraph (K)(16)(b) of this rule.

(d) School districts shall compensate hearing officers upon invoice at an hourly rate not higher than that established for special counsel for the state of Ohio. School districts shall compensate hearing officers for no more than fifty hours of actual hearing time, excluding work done outside of the hearing, for any due process request unless the hearing officer submits to the Ohio department of education, office for exceptional children a written rationale for a hearing to exceed fifty hours of hearing time.

(e) The Ohio department of education shall compensate state level review officers upon invoice at an hourly rate not higher than that established for special counsel for the state of Ohio.

#### (17) Civil action

##### (a) General

Any party aggrieved by the findings and decision under paragraph (K)(14)(b) of this rule, has the right to bring a civil action with respect to the due process complaint notice requesting a due process hearing under paragraph (K)(7) or paragraphs (K)(20) to (K)(22) of this rule. 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 in controversy.

##### (b) Time limitation

The party bringing the action shall have ninety days from the date of the decision of the state review official, to bring a civil action in the district court of the United States, or shall within forty-five days of notification of the decision of the state review official, appeal the final order to the common pleas court of the county of the child's district of residence as provided by section 3323.05 of the Revised Code.

##### (c) Additional requirements

In any action brought under paragraph (K)(17)(a) of this rule, the court:

- (i) Receives the records of the administrative proceedings;
- (ii) Hears additional evidence at the request of a party; and
- (iii) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate.

##### (d) Jurisdiction of district courts

The district courts of the United States have jurisdiction of actions brought under Section 615 of the IDEA without regard to the amount in controversy.

(e) Rule of construction

Nothing in this rule restricts or limits the rights, procedures, and remedies available under the United States Constitution, the Americans with Disabilities Act of 1990, January 1990, Title V of the Rehabilitation Act of 1973 as amended by the Rehabilitation Act Amendments of 1998, August 1998, or other federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under Section 615 of the IDEA, the procedures under paragraphs (K)(7) and (K)(14) of this rule must be exhausted to the same extent as would be required had the action been brought under Section 615 of the IDEA.

(18) Attorneys' fees

(a) In general

In any action or proceeding brought under Section 615 of the IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to:

- (i) The prevailing party who is the parent of a child with a disability;
- (ii) To a prevailing party who is the Ohio department of education or a school district against the attorney of a parent who files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation, or against the attorney of a parent who continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation; or
- (iii) To a prevailing Ohio department of education or school district against the attorney of a parent, or against the parent, if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose, such as to harass, to cause unnecessary delay, or to needlessly increase the cost of litigation.

(b) Prohibition on use of funds

- (i) Funds under Part B of the IDEA may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under Section 615 of the IDEA and Subpart E of Part B of the IDEA.
- (ii) Paragraph (K)(18)(b)(i) of this rule does not preclude the Ohio department of education or a school district from using funds under Part B of the IDEA for conducting an action or proceeding under Section 615 of the IDEA.

(c) Award of fees

A court awards reasonable attorneys' fees under Section 615(i)(3) of the IDEA consistent with the following:

(i) Fees awarded under Section 615(i)(3) of the IDEA must be 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 fees awarded under this paragraph.

(ii) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under Section 615 of the IDEA for services performed subsequent to the time of a written offer of settlement to a parent if:

(a) The offer is made within the time prescribed by rule 68 of the "Federal Rules of Civil Procedure" or, in the case of an administrative proceeding, at any time more than ten days before the proceeding begins;

(b) The offer is not accepted within ten days; and

(c) The court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(iii) Attorneys' fees may not be awarded relating to any meeting of the IEP 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 described in paragraph (K)(3) of this rule.

(iv) A meeting conducted pursuant to paragraph (K)(9) of this rule shall not be considered:

(a) A meeting convened as a result of an administrative hearing or judicial action; or

(b) An administrative hearing or judicial action for purposes of this rule.

(v) Notwithstanding paragraph (K)(18)(c)(ii) of this rule, an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(vi) Except as provided in paragraph (K)(18)(c)(vii) of this rule, the court reduces, accordingly, the amount of the attorneys' fees awarded under Section 615 of the IDEA, if the court finds that:

(a) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;

(b) The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience;

(c) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or

(d) The attorney representing the parent did not provide to the school district the appropriate information in the due process request notice in accordance with paragraph (K)(8) of this rule.

(vii) The provisions of paragraph (K)(18)(c)(vi) of this rule do not apply in any action or proceeding if the court finds that the state or school district unreasonably protracted the final resolution of the action or proceeding or there was a violation of Section 615 of the IDEA.

(19) Child's status during proceedings

(a) Except as provided in paragraph (K)(23) of this rule, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under paragraph (K)(7) of this rule, unless the state or school district of residence and the parents of the child agree otherwise, the child involved in the complaint must remain in the child's current educational placement.

(b) If the complaint involves an application for initial admission to the school district, the child, with the consent of the parents, must be placed in the school district until the completion of all the proceedings.

(c) If the complaint involves an application for initial services under this rule from a child who is transitioning from Part C of the IDEA to Part B of the IDEA and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services under rule 3301-51-06 of the Administrative Code, then the school district must provide those special education and related services that are not in dispute between the parent and the school district of residence.

(d) If the state level review officer in an administrative appeal conducted by the Ohio department of education agrees with the child's parents that a change of placement is

appropriate, that placement must be treated as an agreement between the state and the parents for purposes of paragraph (K)(19)(a) of this rule.

(20) Authority of school personnel

(a) Case-by-case determination

School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this rule, is appropriate for a child with a disability who violates a code of student conduct.

(b) General

(i) School personnel under this rule may remove a child with a disability who violates a code of student conduct from the child's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than ten consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than ten consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under paragraph (K)(26) of this rule).

(ii) After a child with a disability has been removed from the child's current placement for ten school days in the same school year, during any subsequent days of removal the school district must provide services to the extent required under paragraph (K)(20)(d) of this rule.

(c) Additional authority

For disciplinary changes in placement that would exceed ten consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (K)(20)(e) of this rule, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (K)(20)(d) of this rule.

(d) Services

(i) A child with a disability who is removed from the child's current placement pursuant to paragraph (K)(20)(c) or (K)(20)(g) of this rule must:

(a) Continue to receive educational services, as provided in rule 3301-51-02 of the Administrative Code, so as to enable the 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 child's IEP; and

(b) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

(ii) The services required by paragraphs (K)(20)(d)(i), (K)(20)(d)(iii), (K)(20)(d)(iv), and (K)(20)(d)(v) of this rule may be provided in an interim alternative educational setting.

(iii) A school district is only required to provide services during periods of removal to a child with a disability who has been removed from the child's current placement for ten school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.

(iv) After a child with a disability has been removed from the child's current placement for ten school days in the same school year, if the current removal is for not more than ten consecutive school days and is not a change of placement under this rule, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in rule 3301-51-02 of the Administrative Code, so as to enable the 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 child's IEP.

(v) If the removal is a change of placement under this rule, the child's IEP team determines appropriate services under paragraph (K)(20)(d)(i) of this rule.

(e) Manifestation determination

(i) Within ten school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the school district, the parent, and relevant members of the child's IEP team (as determined by the parent and the school district) must review all relevant information in the child's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

(a) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(b) If the conduct in question was the direct result of the school district's failure to implement the IEP.

(ii) The conduct must be determined to be a manifestation of the child's disability if the school district, the parent, and relevant members of the child's

IEP team determine that a condition in either paragraph (K)(20)(e)(i)(a) or (K)(20)(e)(i)(b) of this rule was met.

(iii) If the school district, the parent, and relevant members of the child's IEP team determine the condition described in paragraph (K)(20)(e)(i)(b) of this rule was met, the school district must take immediate steps to remedy those deficiencies.

(f) Determination that behavior was a manifestation

If the school district, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team must:

(i) Either:

(a) Start to conduct a functional behavioral assessment within ten days of the manifestation determination and complete the assessment as soon as practicable, unless the school district had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or

(b) If a behavioral intervention plan already has been developed, within ten days of the manifestation determination, review the behavioral intervention plan and the implementation of the plan, and modify it, as necessary, to address the behavior subject to disciplinary action; and

(ii) Except as provided in paragraph (K)(20)(g) of this rule, return the child to the placement from which the child was removed, unless the parent and the school district agree to a change of placement as part of the modification of the behavioral intervention plan.

(g) Special circumstances

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

(i) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of the Ohio department of education or a school district;

(ii) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of the Ohio department of education or a school district; or

(iii) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the Ohio department of education or a school district.

(h) Notification

On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the school district must notify the parents of that decision and provide the parents the procedural safeguards notice described in paragraph (I) of this rule.

(i) The following terms are defined as they are used in this rule:

(a) “Controlled substance” means a drug or other substance identified under schedules I, II, III, IV, or V in Section 202(c) of the Controlled Substances Act as amended and specified in the Anabolic Steroids Control Act of 1990, November 1990, 21 U.S.C. 812(c).

(b) “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.

(c) “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.

(d) “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.

(21) Determination of setting

The child’s IEP team determines the interim alternative educational setting for services under paragraph (K)(20) of this rule.

(22) Appeal

(a) General

The parent of a child with a disability who disagrees with any decision regarding placement under paragraphs (K)(20) and (K)(21) of this rule, or the manifestation determination under paragraph (K)(20)(e) of this rule, or a school district that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The

hearing is requested by filing a complaint pursuant to paragraphs (K)(7) and (K)(8) of this rule.

(b) Authority of hearing officer

(i) A hearing officer under paragraph (K)(10) of this rule hears and makes a determination regarding an appeal.

(ii) In making the determination under paragraph (K)(22)(b)(i) of this rule, the hearing officer may:

(a) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of paragraph (K)(20) of this rule or that the child's behavior was a manifestation of the child's disability; or

(b) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than forty-five 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.

(iii) The procedures under paragraphs (K)(22)(a), (K)(22)(b)(i), and (K)(22)(b)(ii) of this rule may be repeated, if the school district believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing

(i) Whenever a hearing is requested under paragraph (K)(22)(a) of this rule, the parents or the school district involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of this rule, except as provided in paragraphs (K)(7), (K)(8)(a) to (K)(8)(d), and (K)(9) to (K)(14) of this rule.

(ii) The Ohio department of education or the school district of residence is responsible for arranging the expedited due process hearing, which must occur within twenty school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within ten school days after the hearing.

(iii) Unless the parents and school district of residence agree in writing to waive the resolution meeting described in paragraph (K)(22)(c)(iii)(a) of this rule, or agree to use the mediation process described in paragraph (K)(3) of this rule:

(a) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and

(b) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen days of the receipt of the due process complaint.

(iv) The Ohio department of education may establish different state-imposed procedural rules for expedited due process hearings conducted under this rule than it has established for other due process hearings, but, except for the timelines as modified in paragraph (K)(22)(c)(iii) of this rule, the state must ensure that the requirements in paragraphs (K)(9) to (K)(14) of this rule are met.

(v) The decisions on expedited due process hearings are appealable consistent with paragraph (K)(14) of this rule.

(d) Procedures for expedited due process hearings

(i) If a parent requests an expedited due process hearing, school district of residence personnel must contact the Ohio department of education, office for exceptional children, before the end of the next business day following receipt of the parent's request.

(ii) If a school district initiates an expedited due process hearing under this rule, school district of residence personnel must contact the Ohio department of education, office for exceptional children, on the day the expedited due process hearing is requested. The school district shall provide the parents with notification of the request for the hearing and procedural safeguards no later than the end of the next business day.

(iii) An impartial hearing officer will be appointed by the Ohio department of education, office for exceptional children, before the end of the next business day from the day the school district of residence informs the office for exceptional children.

(a) The impartial hearing officer shall meet the qualifications set forth in paragraph (K)(10)(c) of this rule.

(b) The impartial hearing officer shall contact both parties of the hearing.

(iv) The expedited due process hearing shall be conducted in accordance with paragraphs (K)(12) and (K)(15) of this rule, except that no extensions of time shall be granted, and the hearing will occur within twenty school days of the date the complaint requesting the hearing was filed. The hearing officer's decision will be completed within ten days of the conclusion of the hearing.

(v) The decision of the hearing officer is final, unless a party to the expedited due process hearing appeals the decision to the Ohio department of education, within forty-five calendar days of the notification of the decision. In consideration of the issues that are the basis of the expedited appeal, the appeal should be filed as soon as possible.

(a) The state level review officer will be appointed in accordance with paragraph (K)(14)(b) of this rule;

(b) The state level review will be conducted in accordance with paragraphs (K)(14) and (K)(15) of this rule, except that no extensions of time shall be granted, and the written decision shall be issued no later than thirty days from the date the Ohio department of education receives the request.

(c) The final order of the state level review officer may be appealed to the courts in accordance with paragraph (K)(17) of this rule.

#### (23) Placement during appeals

When an appeal under paragraph (K)(22) of this rule has been made by either the parent or the school district of residence, the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified in paragraph (K)(20)(c) or (K)(20)(g) of this rule, whichever occurs first, unless the parent and the Ohio department of education or school district agree otherwise.

#### (24) Protections for children not determined eligible for special education and related services

##### (a) General

A child who has not been determined to be eligible for special education and related services under this chapter of the Administrative Code and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this rule if the school district had knowledge (as determined in accordance with paragraph (K)(24)(b) of this rule) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

##### (b) Basis of knowledge

A school 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:

(i) The parent of the child expressed concern in writing 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;

(ii) The parent of the child requested an evaluation of the child pursuant to rule 3301-51-06 of the Administrative Code; or

(iii) The teacher of the child, or other personnel of the school district, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the school district or to other supervisory personnel of the school district.

(c) Exception

A school district would not be deemed to have knowledge under paragraph (K)(24)(b) of this rule if:

(i) The parent of the child:

(a) Has not allowed an evaluation of the child pursuant to rule 3301-51-06 of the Administrative Code; or

(b) Has refused services under this chapter of the Administrative Code;  
or

(ii) The child has been evaluated in accordance with rule 3301-51-06 of the Administrative Code and determined to not be a child with a disability under this chapter.

(d) Conditions that apply if no basis of knowledge

(i) If a school district does not have knowledge that a child is a child with a disability (in accordance with paragraphs (K)(24)(b) and (K)(24)(c) of this rule) prior to taking disciplinary measures against the child, the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors consistent with paragraph (K)(24)(d)(ii) of this rule.

(ii) If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (K)(20) of this rule, the evaluation must be conducted in an expedited manner.

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

(iv) If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school district of residence and information provided by the parents, the school district of residence must provide special education and related services in accordance with

this chapter of the Administrative Code, including the requirements of paragraphs (K)(20) to (K)(26) of this rule and Section 612(a)(1)(A) of the IDEA.

(25) Referral to and action by law enforcement and judicial authorities Rule of construction. Nothing in this rule prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents 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 shall be done in accordance with paragraph (R)(2) of rule 3301-51-04 of the Administrative Code.

(26) Change of placement because of disciplinary removals

(a) For purposes of removals of a child with a disability from the child's current educational placement under paragraphs (K)(20) to (K)(25) of this rule, a change of placement occurs if:

(i) The removal is for more than ten consecutive school days; or

(ii) The child has been subjected to a series of removals that constitute a pattern:

(a) Because the series of removals total more than ten school days in a school year;

(b) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(c) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

(b) The school district determines on a case-by-case basis whether a pattern of removals constitutes a change of placement. This determination is subject to review through due process and judicial proceedings.

Effective: 04/24/2010

R.C. 119.032 review dates: 07/01/2013

Promulgated Under: 119.03

Statutory Authority: 3301.07 (J), 3323.05

Rule Amplifies: 3323.04, 3323.05, 3323.051

Prior Effective Dates: 7/1/02, 7/1/08