



**Council for
Exceptional
Children**

**Council for Exceptional Children's
Initial Summary of Selected Provisions from
Part B Proposed Regulations for the
Individuals With Disabilities Education Act**

Procedural Safeguards

June 27, 2005

Procedural Safeguards: Due Process Procedures for Parents and Children

Note: Bold text in left column indicates language not specifically included in IDEA 2004

NPRM Language	Current Regulation	Comments
<p>§300.9 Consent. Consent means that— (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).</p>	<p>§300.500 General responsibility of public agencies; definitions (b)(1) Consent means that— (i) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (ii) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and (iii)(A) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime. (B) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).</p>	<p>Note: NPRM language is not in the statute although it is included in current regulations.</p>
<p>§300.15 Evaluation. Evaluation means procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs.</p>	<p>§300.500(b)(2) Evaluation means procedures used in accordance with §§300.530-300.536 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs; and</p>	
<p>§300.30 Parent. (a) Parent means-- (1) A natural or adoptive parent of a child; (2) A foster parent, unless State law,</p>	<p>§300.20 Parent (a) General. As used in this part, the term parent means-- (1) A natural or adoptive parent of a child;</p>	<p>OSERS discussion of proposed regulatory changes: “Proposed §300.30(a)(2) would reflect the provision regarding a State law prohibition on when a foster parent can be</p>

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<p>regulations or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent;</p> <p>(3) A guardian (but not the State if the child is a ward of the State);</p> <p>(4) An individual acting in the place of a natural or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare; or</p> <p>(5) A surrogate parent who has been appointed in accordance with sections 615(b)(2) or 639(a)(5) of the Act.</p> <p>(b)(1) Except as provided in paragraph (b)(2) of this section, the natural or adoptive parent, when attempting to act as the parent under this part and when more than one party is qualified under paragraph (a) of this section to act as a parent, must be presumed to be the parent for purposes of this section unless the natural or adoptive parent does not have legal authority to make educational decisions for the child.</p> <p>(2) If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this section, except that a public agency that provides education or care for the child may not act as the parent.</p>	<p>(2) A guardian but not the State if the child is a ward of the State;</p> <p>(3) A person acting in the place of a parent (such as a grandparent or stepparent with whom the child lives, or a person who is legally responsible for the child's welfare); or</p> <p>(4) A surrogate parent who has been appointed in accordance with §300.515.</p> <p>(b) Foster parent. Unless State law prohibits a foster parent from acting as a parent, a State may allow a foster parent to act as a parent under Part B of the Act if-</p> <p>(1) The natural parents' authority to make educational decisions on the child's behalf has been extinguished under State law; and</p> <p>(2) The foster parent-</p> <p>(i) Has an ongoing, long-term parental relationship with the child;</p> <p>(ii) Is willing to make the educational decisions required of parents under the Act; and</p> <p>(iii) Has no interest that would conflict with the interests of the child.</p>	<p>considered a parent, but would add language to recognize that similar restrictions may exist in State regulations or in contractual agreements between a State or local entity and the foster parent, and should be accorded similar deference. Proposed §300.30(b)(1) would provide that the natural or adoptive parent would be presumed to be the parent for purposes of the regulations if that person were attempting to act as the parent under proposed §300.30 and more than one person is qualified to act as a parent, unless that person does not have legal authority to make educational decisions for the child, or there is a judicial order or decree specifying some other person to act as the parent under Part B of the Act.</p> <p>Proposed §300.30(b)(2) would provide that if a person or persons is specified in a judicial order or decree to act as the parent for purposes of §300.30, that person would be the parent under Part B of the Act. Proposed §300.30(b)(2) would, however, exclude an agency involved in the education or care of the child from serving as a parent, consistent with the statutory prohibition that applies to surrogate parents in sections 615(b)(2) and 639(a)(5) of the Act. The provisions in proposed §300.30(b) should assist schools and public agencies in identifying the appropriate person to serve as the parent under Part B of the Act, especially in those difficult situations in which more than one individual wants to make educational decisions.”</p>
§300.32 Personally identifiable.	§300.500(b)(3) Personally identifiable means	

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<p>Personally identifiable means information that contains--</p> <p>(a) The name of the child, the child's parent, or other family member;</p> <p>(b) The address of the child;</p> <p>(c) A personal identifier, such as the child's social security number or student number;</p> <p>or</p> <p>(d) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.</p>	<p>that information includes—</p> <p>(i) The name of the child, the child's parent, or other family member;</p> <p>(ii) The address of the child;</p> <p>(iii) A personal identifier, such as the child's social security number or student number; or</p> <p>(iv) A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.</p>	
<p>§300.44 Ward of the State.</p> <p>(a) General. Subject to paragraph (b) of this section, ward of the State means a child who, as determined by the State where the child resides, is--</p> <p>(1) A foster child;</p> <p>(2) A ward of the State; or</p> <p>(3) In the custody of a public child welfare agency.</p> <p>(b) Exception. Ward of the State does not include a foster child who has a foster parent who meets the definition of a parent in §300.30.</p>		<p>Statutory language was incorporated into regulations.</p>
<p>§300.121 Procedural safeguards.</p> <p>(a) General. The State must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of §§300.500 through 300.536.</p> <p>(b) Procedural safeguards identified. Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.</p>	<p>§300.129 Procedural safeguards</p> <p>(a) The State must have on file with the Secretary procedural safeguards that ensure that the requirements of §§300.500-300.529 are met.</p> <p>(b) Children with disabilities and their parents must be afforded the procedural safeguards identified in paragraph (a) of this section.</p>	<p>OSERS discussion of proposed regulatory changes: “Proposed §300.121, regarding procedural safeguards, would retain the current provision in §300.129(a), but would remove the provision in §300.129(b) regarding having the safeguards on file with the Secretary, consistent with statutory changes eliminating requirements that States file documentation with the Secretary.”</p>
<p>§300.150 State educational agency</p>	<p>300.143 SEA Implementation of procedural</p>	

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<p>implementation of procedural safeguards. The SEA (and any agency assigned responsibility pursuant to §300.149(d)) must have in effect procedures to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.</p>	<p>safeguards The State must have on file with the Secretary the procedures that the SEA (and any agency assigned responsibility pursuant to §300.600(d)) follows to inform each public agency of its responsibility for ensuring effective implementation of procedural safeguards for the children with disabilities served by that public agency.</p>	
<p>§300.500 Responsibility of SEA and other public agencies. Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§300.500 through 300.536.</p>	<p>300.500 General responsibility of public agencies; definitions (a) Responsibility of SEA and other public agencies. Each SEA shall ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§300.500-300.529.</p>	
<p>§300.501 Opportunity to examine records; parent participation in meetings. (a) Opportunity to examine records. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.610 through 300.628, an opportunity to inspect and review all education records with respect to-- (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child.</p>	<p>§300.501 Opportunity to examine records; parent participation in meetings (a) General. The parents of a child with a disability must be afforded, in accordance with the procedures of §§300.562- 300.569, an opportunity to— (1) Inspect and review all education records with respect to— (i) The identification, evaluation, and educational placement of the child; and (ii) The provision of FAPE to the child; and (2) 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.</p>	
<p>(b) Parent participation in meetings. (1) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to--</p>	<p>300.501(b) Parent participation in meetings. (1) Each public agency shall provide notice consistent with §300.345(a)(1) and (b)(1) to ensure that parents of children with</p>	

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<p>(i) The identification, evaluation, and educational placement of the child; and</p> <p>(ii) The provision of FAPE to the child.</p> <p>(2) Each public agency must provide notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with disabilities have the opportunity to participate in meetings described in paragraph (b)(1) of this section.</p> <p>(3) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.</p>	<p>disabilities have the opportunity to participate in meetings described in paragraph (a)(2) of this section.</p> <p>(2) A meeting does not include informal or unscheduled conversations involving public agency personnel and conversations on issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the child's IEP. A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal or response to a parent proposal that will be discussed at a later meeting.</p>	<p>Note: NPRM language is not in the statute although it is included in current regulations.</p>
<p>(c) Parent involvement in placement decisions.</p> <p>(1) Each public agency 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.</p> <p>(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency must use procedures consistent with the procedures described in §300.322(a) through (b)(1).</p> <p>(3) 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 public agency must use other</p>	<p>§300.501(c) Parent involvement in placement decisions.</p> <p>(1) Each public agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.</p> <p>(2) In implementing the requirements of paragraph (c)(1) of this section, the public agency shall use procedures consistent with the procedures described in §300.345(a) through (b)(1).</p> <p>(3) If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their</p>	<p>Note: NPRM language is not in the statute although it is included in current regulations.</p>

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<p>methods to ensure their participation, including individual or conference telephone calls, or video conferencing.</p> <p>(4) A placement decision may be made by a group without the involvement of a parent, if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement.</p>	<p>child, the public agency shall use other methods to ensure their participation, including individual or conference telephone calls, or video conferencing.</p> <p>(4) A placement decision may be made by a group without the involvement of the parents, if the public agency is unable to obtain the parents' participation in the decision. In this case, the public agency must have a record of its attempt to ensure their involvement, including information that is consistent with the requirements of §300.345(d).</p> <p>(5) The public agency shall make reasonable efforts to ensure that the parents understand, and are able to participate in, any group discussions relating to the educational placement of their child, including arranging for an interpreter for parents with deafness, or whose native language is other than English.</p>	<p>OSERS discussion of proposed regulatory changes: “First, proposed §300.501(c)(4) would not include the current concluding phrase requiring that public agencies keep a record of attempts to involve parents in placement decisions, including information consistent with the records that must be maintained if an IEP meeting is to be held without a parent in attendance. The phrase would be removed to provide school personnel greater flexibility in how they document attempts to involve parents. However, public agencies still must maintain documentation of their efforts in this regard. Second, the regulatory requirement in current §300.501(c)(5) would be removed as unnecessarily duplicative. The requirement that agencies make reasonable efforts to enable parents to understand and participate in discussions about placement of their child is inherent in the obligation in proposed §300.501(b)(1) that parents be afforded an opportunity to participate in meetings about the identification, evaluation, educational placement and provision of FAPE to their child.”</p>
<p>§300.502 Independent educational evaluation. (a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section.</p>	<p>§300.502 Independent Educational Evaluation (a) General. (1) The parents of a child with a disability have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of</p>	<p>Note: NPRM language is not in the statute although it is generally included in current regulations.</p>

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<p>(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.</p> <p>(3) For the purposes of this subpart--</p> <p>(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and</p> <p>(ii) Public expense means that the public agency 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 §300.103.</p> <p>(b) Parent right to evaluation at public expense.</p> <p>(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.</p> <p>(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--</p> <p>(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or</p>	<p>this section.</p> <p>(2) Each public agency shall provide to parents, upon request for an independent educational evaluation, information about where an independent educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.</p> <p>(3) For the purposes of this part—</p> <p>(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and</p> <p>(ii) Public expense means that the public agency 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 §300.301.</p> <p>(b) Parent right to evaluation at public expense.</p> <p>(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency.</p> <p>(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—</p> <p>(i) Initiate a hearing under §300.507 to show that its evaluation is appropriate; or</p> <p>(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing</p>	

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<p>(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.</p> <p>(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.</p> <p>(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or requesting a due process hearing to defend the public evaluation.</p> <p>(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation--</p> <p>(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and</p> <p>(2) May be presented by any party as evidence at a hearing on a due process</p>	<p>under §300.507 that the evaluation obtained by the parent did not meet agency criteria.</p> <p>(3) If the public agency initiates a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.</p> <p>(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.</p> <p>(c) Parent-initiated evaluations. If the parent obtains an independent educational evaluation at private expense, the results of the evaluation—</p> <p>(1) Must be considered by the public agency, if it meets agency criteria, in any decision made with respect to the provision of FAPE to the child; and</p> <p>(2) May be presented as evidence at a hearing under this subpart regarding that child.</p> <p>(d) Requests for evaluations by hearing officers. If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at public expense.</p> <p>(e) Agency criteria.</p> <p>(1) If an independent educational evaluation is at public expense, the criteria under which</p>	

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<p>complaint under subpart E of this part regarding that child.</p> <p>(d) 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.</p> <p>(e) Agency criteria. (1) 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 public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.</p> <p>(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.</p>	<p>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 public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.</p> <p>(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.</p>	
<p>§300.503 Prior notice by the public agency; content of notice.</p> <p>(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--</p> <p>(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of</p>	<p>§300.503 Prior notice by the public agency; content of notice</p> <p>(a) Notice.</p> <p>(1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--</p> <p>(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of</p>	

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<p>FAPE to the child; or (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</p>	<p>FAPE to the child; or (ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. (2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under §300.505, the agency may give notice at the same time it requests parent consent.</p>	<p>OSERS discussion of proposed regulatory changes: “...current §300.503(a)(2) would be removed. It is not necessary to explain in the regulation that prior written notice can be provided at the same time as parental consent is requested because parental consent cannot be obtained without this notice.”</p>
<p>(b) Content of notice. The notice required under paragraph (a) of this section must include-- (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action; (4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part 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; (5) Sources for parents to contact to obtain assistance in understanding the provisions of this part; (6) A description of other options that the IEP</p>	<p>§300.503(b) Content of notice. The notice required under paragraph (a) of this section must include— (1) A description of the action proposed or refused by the agency; (2) An explanation of why the agency proposes or refuses to take the action; (3) A description of any other options that the agency considered and the reasons why those options were rejected; (4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action; (5) A description of any other factors that are relevant to the agency's proposal or refusal; (6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation,</p>	

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<p>Team considered and the reasons why those options were rejected; and (7) A description of other factors that are relevant to the agency's proposal or refusal.</p>	<p>the means by which a copy of a description of the procedural safeguards can be obtained; and (7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.</p>	
<p>(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section 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. (2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure-- (i) That the notice is translated orally or by other means to the parent in his or her 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 (c)(2)(i) and (ii) of this section have been met.</p>	<p>§300.503(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section 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. (2) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure— (i) That the notice is translated orally or by other means to the parent in his or her 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 (c)(2)(i) and (ii) of this section have been met.</p>	<p>Note: NPRM language is not in the statute although it is included in current regulations.</p>
<p>§300.504 Procedural safeguards notice. (a) 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 year, except that a copy also must be given to the parents-- (1) Upon initial referral or parent request for</p>	<p>§300.504 Procedural Safeguards Notice (a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum— (1) Upon initial referral for evaluation; (2) Upon each notification of an IEP meeting;</p>	

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<p>evaluation; (2) Upon receipt of the first State complaint under §§300.151 through 300.153 or a due process complaint under §300.507 in that school year; and (3) Upon request by a parent.</p>	<p>(3) Upon reevaluation of the child; and (4) Upon receipt of a request for due process under §300.507.</p>	<p>OSERS discussion of proposed regulatory changes: "... proposed §300.504(a)(2) would clarify that a procedural safeguards notice must be provided upon receipt of the first filing of a State complaint or request for a due process hearing in a school year, as opposed to the first request at any point in a child's school career. This should aid implementation at the school district level without unduly burdening school districts, and ensure that parents have information about the due process procedures when they are most likely to need it. "</p>
<p>(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.</p>		
<p>(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §300.148, §§300.151 through 300.153, §§300.500 through 300.536, and §§300.610 through 300.627 relating to-- (1) Independent educational evaluations; (2) Prior written notice; (3) Parental consent; (4) Access to educational records; (5) Opportunity to present and resolve complaints through the due process complaint or State complaint procedures, including-- (i) The time period in which to file a complaint; (ii) The opportunity for the agency to resolve</p>	<p>§300.504(b) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under §§300.403, 300.500-300.529, and 300.560-300.577, and the State complaint procedures available under §§300.660-300.662 relating to— (1) Independent educational evaluation; (2) Prior written notice; (3) Parental consent; (4) Access to educational records; (5) Opportunity to present complaints to initiate due process hearings; (6) The child's placement during pendency of due process proceedings; (7) Procedures for students who are subject to placement in an interim alternative</p>	

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<p>the complaint; and</p> <p>(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;</p> <p>(6) The availability of mediation;</p> <p>(7) The child's placement during pendency of hearings on due process complaints;</p> <p>(8) Procedures for students who are subject to placement in an interim alternative educational setting;</p> <p>(9) Requirements for unilateral placement by parents of children in private schools at public expense;</p> <p>(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;</p> <p>(11) State-level appeals (if applicable in that State);</p> <p>(12) Civil actions, including the time period in which to file those actions; and</p> <p>(13) Attorneys' fees.</p>	<p>educational setting;</p> <p>(8) Requirements for unilateral placement by parents of children in private schools at public expense;</p> <p>(9) Mediation;</p> <p>(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;</p> <p>(11) State-level appeals (if applicable in that State);</p> <p>(12) Civil actions;</p> <p>(13) Attorneys' fees; and</p> <p>(14) The State complaint procedures under §§300.660- 300.662, including a description of how to file a complaint and the timelines under those procedures.</p>	<p>OSERS discussion of proposed regulatory changes: “The notice also would have to explain the differences between the due process complaint and the State complaint procedures as provided for in proposed §300.504(c)(5)(iii). This change also should assist in reducing confusion about these alternatives.”</p>
<p>(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).</p>	<p>§300.504(c) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of §300.503(c).</p>	
<p>§300.505 Electronic mail. A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.</p>		
<p>§300.506 Mediation.</p>	<p>§300.506 Mediation</p>	

NPRM Language	Current Regulation	Comments
<p>(a) General. Each public agency must ensure that procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process.</p>	<p>(a) General. Each public agency shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in §300.503(a)(1) to resolve the disputes through a mediation process that, at a minimum, must be available whenever a hearing is requested under §§300.507 or 300.520-300.528.</p>	
<p>(b) Requirements. The procedures must meet the following requirements: (1) The procedures must ensure that the mediation process-- (i) Is voluntary on the part of the parties; (ii) 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 Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</p>	<p>(b) Requirements. The procedures must meet the following requirements: (1) The procedures must ensure that the mediation process-- (i) Is voluntary on the part of the parties; (ii) Is not used to deny or delay a parent's right to a due process hearing under §300.507, or to deny any other rights afforded under Part B of the Act; and (iii) Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.</p>	
<p>(b) (2) A public agency 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-- (i) 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 Act; and (ii) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.</p>	<p>(d) Meeting to encourage mediation. (1) A public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party— (i) Who is under contract with a parent training and information center or community parent resource center in the State established under section 682 or 683 of the Act, or an appropriate alternative dispute resolution entity; and (ii) Who would explain the benefits of the mediation process, and encourage the parents</p>	

NPRM Language	Current Regulation	Comments
	<p>to use the process.</p> <p>(2) A public agency may not deny or delay a parent’s right to a due process hearing under §300.507 if the parent fails to participate in the meeting described in paragraph (d)(1) of this section.</p>	
<p>(3)(i) The State must 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.</p> <p>(ii) The SEA must select mediators on a random, rotational, or other impartial basis.</p>	<p>§300.506(b)(2) (i) The State 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.</p> <p>(ii) If a mediator is not selected on a random (e.g., a rotation) basis from the list described in paragraph (b)(2)(i) of this section, both parties must be involved in selecting the mediator and agree with the selection of the individual who will mediate.</p>	
<p>(4) The State must bear the cost of the mediation process, including the costs of meetings described in paragraph (b)(2) of this section.</p>	<p>§300.506(b)(3) The State shall bear the cost of the mediation process, including the costs of meetings described in paragraph (d) of this section.</p>	
<p>(5) 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.</p>	<p>(4) 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.</p>	
<p>(6) 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--</p> <p>(i) 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 arising from that dispute; and</p> <p>(ii) Is signed by both the parent and a</p>	<p>(5) An agreement reached by the parties to the dispute in the mediation process must be set forth in a written mediation agreement.</p>	<p>OSERS discussion of proposed regulatory changes: “However, each of these provisions would clarify that the limitation placed on the use of information discussed during mediation as evidence would apply only to actions arising out of the same dispute. Without this clarifying language, there could be a misperception that the Department would be attempting to restrict the powers of State courts.”</p>

NPRM Language	Current Regulation	Comments
representative of the agency who has the authority to bind such agency.		
(7) 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.		
(8) 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 proceedings arising from that dispute.	300.506(b)(6) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings, ...	
(9) The parties to mediation may be required to sign a confidentiality pledge prior to the commencement of the mediation to ensure that all discussions that occur during mediation remain confidential.	...and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.	
(c) Impartiality of mediator. (1) An individual who serves as a mediator under this part-- (i) May not be an employee of the SEA or the LEA that is involved in the education or care of the child; and (ii) Must not have a personal or professional interest that conflicts with the person's objectivity. (2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.	§300.506(c) Impartiality of mediator. (1) An individual who serves as a mediator under this part— (i) May not be an employee of— (A) Any LEA or any State agency described under §300.194; or (B) An SEA that is providing direct services to a child who is the subject of the mediation process; and (ii) Must not have a personal or professional conflict of interest. (2) A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.194 solely because he or she is paid by the agency to serve as a mediator.	OSERS discussion of proposed regulatory changes: “Proposed §300.506(c) would be similar to current §300.506(c) concerning requirements for the impartiality of the mediator. However, consistent with the language in section 615(f)(3)(A)(i)(II) regarding due process hearing officers, and the Senate Report No. 108-185, p. 37, proposed §300.506(c)(1) would permit employees of LEAs that are not involved in the education or care of the child involved in the dispute being mediated to serve as mediators.”
§300.507 Filing a due process complaint. (a) General. (1) A parent or a public agency may file a due process complaint on any of the	§300.507 Impartial due process hearing; parent notice (a) General. (1) A parent or a public agency	OSERS discussion of proposed regulatory changes: “Proposed §300.507(a)(1) would revise the current regulatory language regarding

NPRM Language	Current Regulation	Comments
<p>matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).</p> <p>(2) 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, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.</p>	<p>may initiate a hearing on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).</p>	<p>initiating a due process hearing on matters relating to the identification, evaluation, or educational placement of a child, or the provision of FAPE to the child to specify that a party could “file a due process complaint,” as opposed to “initiate,” a hearing on these matters. This change would be made in light of new language concerning the resolution process, particularly in section 615(b)(7)(B) of the Act, requiring that a sufficient due process hearing notice be provided, and section 615(f)(1)(B) of the Act, requiring that a resolution process occur (unless waived by joint agreement of the parties) before a hearing will be available.”</p>
<p>(b) Information for parents. The public agency must inform the parent of any free or low-cost legal and other relevant services available in the area if--</p> <p>(1) The parent requests the information; or</p> <p>(2) The parent or the agency requests a hearing under this section.</p>	<p>§300.507(a)(3) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if—</p> <p>(i) The parent requests the information; or</p> <p>(ii) The parent or the agency initiates a hearing under this section.</p>	
<p>§300.508 Due process complaint.</p> <p>(a) General. (1) The 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).</p> <p>(2) The party filing a due process complaint must forward a copy of the due process complaint to the SEA.</p>	<p>§300.507(c) Parent notice to the public agency.</p> <p>(1) General. The public agency must have procedures that require the parent of a child with a disability or the attorney representing the child, to provide notice (which must remain confidential) to the public agency in a request for a hearing under paragraph (a)(1) of this section.</p>	
<p>(b) Content of complaint. The due process</p>	<p>§300.507(c)(2) Content of parent notice. The</p>	

NPRM Language	Current Regulation	Comments
<p>complaint required in paragraph (a)(1) of this section must include--</p> <p>(1) The name of the child;</p> <p>(2) The address of the residence of the child;</p> <p>(3) The name of the school the child is attending;</p> <p>(4) 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)), available contact information for the child, and the name of the school the child is attending;</p> <p>(5) 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</p> <p>(6) A proposed resolution of the problem to the extent known and available to the party at the time.</p>	<p>notice required in paragraph (c)(1) of this section must include—</p> <p>(i) The name of the child;</p> <p>(ii) The address of the residence of the child;</p> <p>(iii) The name of the school the child is attending;</p> <p>(iv) 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</p> <p>(v) A proposed resolution of the problem to the extent known and available to the parents at the time.</p>	
<p>(c) Notice required before a hearing on a due process complaint. A party may not have a hearing on a due process complaint or engage in a resolution session until the party, or the attorney representing the party, files a due process complaint that meets the requirements of paragraph (b) of this section.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>(d) Sufficiency of complaint. (1) The due process complaint required by this section must be deemed sufficient unless the party receiving the due process complaint notifies the hearing officer and the other party in writing, within 15 days of receipt of the due process complaint, that the receiving party believes the due process complaint does not meet the requirements in paragraph (b) of this</p>		<p>In general, statutory language was incorporated into regulations.</p>

NPRM Language	Current Regulation	Comments
<p>section.</p> <p>(2) Within five days of receipt of notification under paragraph (d)(1) of this section, 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 (b) of this section, and must immediately notify the parties in writing of that determination.</p> <p>(3) A party may amend its due process complaint only if--</p> <p>(i) 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 §300.510; or</p> <p>(ii) 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.</p> <p>(4) If a party files an amended due process complaint, the timelines for the resolution meeting in §300.510(a) and the time period to resolve in §300.510(b) begin again with the filing of the amended due process complaint.</p>		
<p>(e) LEA response to a due process complaint.</p> <p>(1) If the LEA has not sent a prior written notice under §300.503 to the parent regarding the subject matter contained in the parent's due process complaint, the LEA must, within 10 days of receiving the due process complaint, send to the parent a response that includes—</p> <p>(i) An explanation of why the agency proposed or refused to take the action raised in the due</p>		<p>In general, statutory language was incorporated into regulations.</p>

NPRM Language	Current Regulation	Comments
<p>process complaint;</p> <p>(ii) A description of other options that the IEP Team considered and the reasons why those options were rejected;</p> <p>(iii) A description of each evaluation procedure, assessment, record, or report the agency used as the basis for the proposed or refused action; and</p> <p>(iv) A description of the other factors that are relevant to the agency's proposed or refused action.</p> <p>(2) A response by an LEA under paragraph (1) of this section shall not be construed to preclude the LEA from asserting that the parent's due process complaint was insufficient, where appropriate</p>		
<p>(f) Other party response to a due process complaint. Except as provided in paragraph (e) of this section, the party receiving a due process complaint must, within 10 days of receiving the due process complaint, send to the other party a response that specifically addresses the issues raised in the due process complaint.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>§300.509 Model forms. Each SEA must develop model forms to assist parents in filing a due process complaint in accordance with §§300.507(a) and 300.508(a) through (c) and in filing a State complaint under §300.151 through 300.153.</p>	<p>§300.507(c)(3) Model form to assist parents. Each SEA shall develop a model form to assist parents in filing a request for due process that includes the information required in paragraphs (c)(1) and (2) of this section.</p>	
<p>§300.510 Resolution process. (a) Resolution meeting. (1) Within 15 days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing under §300.511, the LEA</p>		<p>In general, statutory language was incorporated into regulations.</p>

NPRM Language	Current Regulation	Comments
<p>must convene a meeting with the parents and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint that--</p> <p>(i) Includes a representative of the public agency who has decision-making authority on behalf of that agency; and</p> <p>(ii) May not include an attorney of the LEA unless the parent is accompanied by an attorney.</p> <p>(2) The purpose of the meeting is for the parents of the child to discuss their due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.</p> <p>(3) The meeting described in paragraph (a)(1) and (2) of this section need not be held if--</p> <p>(i) The parents and the LEA agree in writing to waive the meeting; or</p> <p>(ii) The parents and the LEA agree to use the mediation process described in §300.506.</p> <p>(4) The parents and the LEA determine the relevant members of the IEP Team to attend the meeting.</p>		
<p>(b) Resolution period. (1) If the LEA has not resolved the due process complaint to the satisfaction of the parents within 30 days of the receipt of the due process complaint, the due process hearing must occur.</p> <p>(2) The timeline for issuing a final decision under §300.515 begins at the expiration of this 30-day period.</p>		<p>Note: NPRM language is not in the statute.</p>

NPRM Language	Current Regulation	Comments
<p>(3) Except where the parties have jointly agreed to waive the resolution process or to use mediation, notwithstanding paragraphs (b)(1) and (2) of this section, the failure of a 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.</p>		
<p>(c) Written settlement agreement. If a resolution to the dispute is reached at the meeting described in paragraphs (a)(1) and (2) of this section, the parties must execute a legally binding agreement that is-- (1) Signed by both the parent and a representative of the agency who has the authority to bind the agency; and (2) Enforceable in any State court of competent jurisdiction or in a district court of the United States.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>(d) Agreement review period. If the parties execute an agreement pursuant to paragraph (c) of this section, a party may void the agreement within 3 business days of the agreement's execution.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>§300.511 Impartial due process hearing. (a) General. Whenever a due process complaint is filed under §300.507, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing, consistent with the procedures in §§300.507 through 300.508, and §300.510.</p>		
<p>(b) Agency responsible for conducting the due process hearing. The hearing described in paragraph (a) of this section must be conducted</p>	<p>300.507(b) Agency responsible for conducting hearing. The hearing described in paragraph (a) of this section must be</p>	

NPRM Language	Current Regulation	Comments
by the SEA or the public agency directly responsible for the education of the child , as determined under State statute, State regulation, or a written policy of the SEA.	conducted by the SEA or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the SEA.	
<p>(c) Impartial hearing officer.</p> <p>(1) At a minimum, a hearing officer--</p> <p>(i) Must not be--</p> <p>(A) An employee of the SEA or the LEA that is involved in the education or care of the child; or</p> <p>(B) A person having a personal or professional interest that conflicts with the person's objectivity in the hearing;</p> <p>(ii) Must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;</p> <p>(iii) Must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and</p> <p>(iv) Must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.</p> <p>(2) A person who otherwise qualifies to conduct a hearing under paragraph (c)(1) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.</p> <p>(3) 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.</p>	<p>300.508 Impartial hearing officer</p> <p>(a) A hearing may not be conducted—</p> <p>(1) By a person who is an employee of the State agency or the LEA that is involved in the education or care of the child; or</p> <p>(2) By any person having a personal or professional interest that would conflict with his or her objectivity in the hearing.</p> <p>(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.</p> <p>(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.</p>	
(d) Subject matter of due process hearings. The party requesting the due process hearing may		

NPRM Language	Current Regulation	Comments
<p>not raise issues at the due process hearing that were not raised in the due process complaint filed under §300.508(b), unless the other party agrees otherwise.</p>		
<p>(e) Timeline for requesting a hearing. A parent or 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, or if the State has an explicit time limitation for requesting such a due process hearing under this part, in the time allowed by that State law.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>(f) Exceptions to the timeline. The timeline described in paragraph (e) of this section does not apply to a parent if the parent was prevented from filing a due process complaint due to-- (1) Specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or (2) The LEA's withholding of information from the parent that was required under this part to be provided to the parent.</p>		<p>In general, statutory language was incorporated into regulations.</p>
<p>§300.512 Hearing rights. (a) General. Any party to a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534, or an appeal conducted pursuant to §300.514, has the right to-- (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;</p>	<p>§300.509 Hearing rights (a) General. Any party to a hearing conducted pursuant to §§300.507 or 300.520-300.528, or an appeal conducted pursuant to §300.510, has the right to— (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; (2) Present evidence and confront, cross-</p>	

NPRM Language	Current Regulation	Comments
<p>(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;</p> <p>(3) 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;</p> <p>(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and</p> <p>(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.</p>	<p>examine, and compel the attendance of witnesses;</p> <p>(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least 5 business days before the hearing;</p> <p>(4) Obtain a written, or, at the option of the parents, electronic, verbatim record of the hearing; and</p> <p>(5) Obtain written, or, at the option of the parents, electronic findings of fact and decisions.</p>	
<p>(b) Additional disclosure of information. (1) At least five business days prior to a hearing conducted pursuant to §300.511(a), 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.</p> <p>(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.</p>	<p>(b) Additional disclosure of information. (1) At least 5 business days prior to a hearing conducted pursuant to §300.507(a), each party shall 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.</p> <p>(2) A hearing officer may bar any party that fails to comply with paragraph (b)(1) of this section from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.</p>	
<p>(c) Parental rights at hearings. Parents involved in hearings must be given the right to--</p> <p>(1) Have the child who is the subject of the hearing present;</p> <p>(2) Open the hearing to the public; and</p> <p>(3) Have the record of the hearing and the findings of fact and decisions described in</p>	<p>(c) Parental rights at hearings.</p> <p>(1) Parents involved in hearings must be given the right to—</p> <p>(i) Have the child who is the subject of the hearing present; and</p> <p>(ii) Open the hearing to the public.</p> <p>(2) The record of the hearing and the findings of fact and decisions described in paragraphs</p>	<p>Note: NPRM language is not in the statute although it is included in current regulations.</p>

NPRM Language	Current Regulation	Comments
paragraphs (a)(4) and (a)(5) of this section provided at no cost to parents.	(a)(4) and (a)(5) of this section must be provided at no cost to parents.	
<p>§300.513 Hearing decisions.</p> <p>(a) Decision of hearing officer. (1) Subject to paragraph (a)(2) of this section, a hearing officer must make a decision on substantive grounds based on a determination of whether the child received a FAPE.</p> <p>(2) In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies--</p> <p>(i) Impeded the child's right to a FAPE;</p> <p>(ii) Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or</p> <p>(iii) Caused a deprivation of educational benefit.</p> <p>(3) Nothing in paragraph (a) of this section shall be construed to preclude a hearing officer from ordering an LEA to comply with procedural requirements under §300.500 through 300.536.</p>		In general, statutory language was incorporated into regulations.
(b) Construction clause. Nothing in §§300.507 through 300.513 shall be construed to affect the right of a parent to file an appeal of the due process hearing decision with the SEA under §300.514(b), if a State level appeal is available.		
(c) Separate request for a due process hearing. Nothing in §§300.500 through 300.536 shall be construed to preclude a parent from filing a separate due process complaint on an issue separate from a due process complaint already		

NPRM Language	Current Regulation	Comments
filed.		
<p>(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, must--</p> <p>(1) Transmit the findings and decisions referred to in §300.512(a)(5) to the State advisory panel established under §300.167; and</p> <p>(2) Make those findings and decisions available to the public.</p>	<p>§300.509(d) Findings and decision to advisory panel and general public. The public agency, after deleting any personally identifiable information, shall—</p> <p>(1) Transmit the findings and decisions referred to in paragraph (a)(5) of this section to the State advisory panel established under §300.650; and</p> <p>(2) Make those findings and decisions available to the public.</p>	
<p>§300.514 Finality of decision; appeal; impartial review.</p> <p>(a) Finality of hearing decision. A decision made in a hearing conducted pursuant to §§300.507 through 300.513 or §§300.530 through 300.534 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.516.</p>	<p>300.510 Finality of decision; appeal; impartial review</p> <p>(a) Finality of decision.</p> <p>A decision made in a hearing conducted pursuant to §§300.507 or 300.520-300.528 is final, except that any party involved in the hearing may appeal the decision under the provisions of paragraph (b) of this section and §300.512.</p>	
<p>(b) Appeal of decisions; impartial review.</p> <p>(1) If the hearing required by §300.511 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.</p> <p>(2) If there is an appeal, the SEA must conduct an impartial review of the findings and decision appealed. The official conducting the review must--</p> <p>(i) Examine the entire hearing record;</p> <p>(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;</p> <p>(iii) Seek additional evidence if necessary. If</p>	<p>(b) Appeal of decisions; impartial review.</p> <p>(1) General. If the hearing required by §300.507 is conducted by a public agency other than the SEA, any party aggrieved by the findings and decision in the hearing may appeal to the SEA.</p> <p>(2) SEA responsibility for review. If there is an appeal, the SEA shall conduct an impartial review of the hearing. The official conducting the review shall—</p> <p>(i) Examine the entire hearing record;</p> <p>(ii) Ensure that the procedures at the hearing were consistent with the requirements of due process;</p> <p>(iii) Seek additional evidence if necessary. If</p>	

NPRM Language	Current Regulation	Comments
<p>a hearing is held to receive additional evidence, the rights in §300.512 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.</p>	<p>a hearing is held to receive additional evidence, the rights in §300.509 apply; (iv) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (v) Make an independent decision on completion of the review; and (vi) Give a copy of the written, or, at the option of the parents, electronic findings of fact and decisions to the parties.</p>	
<p>(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, must-- (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.167; and (2) Make those findings and decisions available to the public.</p>	<p>(c) Findings and decision to advisory panel and general public. The SEA, after deleting any personally identifiable information, shall— (1) Transmit the findings and decisions referred to in paragraph (b)(2)(vi) of this section to the State advisory panel established under §300.650; and (2) Make those findings and decisions available to the public.</p>	
<p>(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.516.</p>	<p>(d) Finality of review decision. The decision made by the reviewing official is final unless a party brings a civil action under §300.512.</p>	
<p>§300.515 Timelines and convenience of hearings and reviews. (a) The public agency must ensure that not later than 45 days after the expiration of the 30 day period under §300.510(b)-- (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties.</p>	<p>§300.511 Timelines and convenience of hearings and reviews (a) The public agency shall ensure that not later than 45 days after the receipt of a request for a hearing— (1) A final decision is reached in the hearing; and (2) A copy of the decision is mailed to each of the parties.</p>	<p>Note: NPRM language is not in the statute although it is included in current regulations.</p>
<p>(b) The SEA must ensure that not later than 30 days after the receipt of a request for a review--</p>	<p>(b) The SEA shall ensure that not later than 30 days after the receipt of a request for a review—</p>	

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(1) A final decision is reached in the review; and (2) A copy of the decision is mailed to each of the parties.	(1) A final decision is reached in the review; and (2) 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 (a) and (b) of this section at the request of either party.	(c) A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs (a) and (b) of this section 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.	(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.	
§300.516 Civil action. (a) General. Any party aggrieved by the findings and decision made under §§300.507 through 300.513 or §§300.530 through 300.534 who does not have the right to an appeal under §300.514(b), and any party aggrieved by the findings and decision under §300.514(b), has the right to bring a civil action with respect to the request for a due process hearing under §300.507 or §§300.530 through 300.532. 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.	300.512 Civil action (a) General. Any party aggrieved by the findings and decision made under §§300.507 or 300.520-300.528 who does not have the right to an appeal under §300.510(b), and any party aggrieved by the findings and decision under §300.510(b), has the right to bring a civil action with respect to the complaint presented pursuant to §300.507. 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 90 days from the date of the decision of the hearing officer to file a civil action , or, if the State has an explicit time limitation for bringing civil actions under Part B of the Act, in the time allowed by that State law.		
(c) Additional requirements. In any action brought under paragraph (a) of this section, the	(b) Additional requirements. In any action brought under paragraph (a) of this section,	

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court-- (1) Receives the records of the administrative proceedings; (2) Hears additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, grants the relief that the court determines to be appropriate	the court-- (1) Shall receive the records of the administrative proceedings; (2) Shall hear additional evidence at the request of a party; and (3) Basing its decision on the preponderance of the evidence, shall grant 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 Act without regard to the amount in controversy.	(c) Jurisdiction of district courts. The district courts of the United States have jurisdiction of actions brought under section 615 of the Act without regard to the amount in controversy.	
(e) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, 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 Act, the procedures under §§300.507 and 300.514 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.	(d) Rule of construction. Nothing in this part restricts or limits the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, 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 Act, the procedures under §§300.507 and 300.510 must be exhausted to the same extent as would be required had the action been brought under section 615 of the Act.	Note: NPRM language is not in the statute although it is included in current regulations.
§300.517 Attorneys' fees. (a) In general. (1) In any action or proceeding brought under section 615 of the Act, 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;	§300.513 Attorneys' fees (a) In any action or proceeding brought under section 615 of the Act, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party.	In general, statutory language was incorporated into regulations.
(ii) To a prevailing party who is an SEA or		

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<p>LEA 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 SEA or LEA 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. (2) Nothing in this subsection shall be construed to affect section 327 of the District of Columbia Appropriations Act, 2005.</p>		
<p>(b) Prohibition on use of funds. (1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to any action or proceeding under section 615 of the Act and subpart E of this part. (2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.</p>	<p>§300.513(b)(1) Funds under Part B of the Act may not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the Act and subpart E of this part. (2) Paragraph (b)(1) of this section does not preclude a public agency from using funds under Part B of the Act for conducting an action or proceeding under section 615 of the Act.</p>	<p>Note: NPRM language is not in the statute although it is included in current regulations.</p>
<p>(c) Award of fees. A court awards reasonable attorneys' fees under section 615(i)(3) of the Act consistent with the following: (1) Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or proceeding</p>	<p>§300.513(c) A court awards reasonable attorney's fees under section 615(i)(3) of the Act consistent with the following: (1) Determination of amount of attorneys' fees. Fees awarded under section 615(i)(3) of the Act must be based on rates prevailing in the community in which the action or</p>	<p>In general, statutory language was incorporated into regulations.</p>

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<p>arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this paragraph.</p> <p>(2)(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if--</p> <p>(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 10 days before the proceeding begins;</p> <p>(B) The offer is not accepted within 10 days; and</p> <p>(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.</p> <p>(ii) 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 §300.506 that is conducted prior to the filing of a request for due process under §300.507 through 300.513 or §§300.530 through 300.534.</p> <p>(iii) A meeting conducted pursuant to §300.510 shall not be considered--</p> <p>(A) A meeting convened as a result of an administrative hearing or judicial action; or</p> <p>(B) An administrative hearing or judicial</p>	<p>proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection.</p> <p>(2) Prohibition of attorneys' fees and related costs for certain services.</p> <p>(i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under section 615 of the Act for services performed subsequent to the time of a written offer of settlement to a parent if—</p> <p>(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 10 days before the proceeding begins;</p> <p>(B) The offer is not accepted within 10 days; and</p> <p>(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.</p> <p>(ii) 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 §300.506 that is conducted prior to the filing of a request for due process under §§300.507 or 300.520-300.528.</p> <p>(3) Exception to prohibition on attorneys' fees and related costs. Notwithstanding paragraph (c)(2) of this section, an award of attorneys'</p>	

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<p>action for purposes of this section.</p> <p>(3) Notwithstanding paragraph (c)(2) of this section, 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.</p> <p>(4) Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that--</p> <p>(i) The parent, or the parent's attorney, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;</p> <p>(ii) 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;</p> <p>(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or</p> <p>(iv) The attorney representing the parent did not provide to the LEA the appropriate information in the due process request notice in accordance with §300.508.</p> <p>(5) The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.</p>	<p>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.</p> <p>(4) Reduction of amount of attorneys' fees. Except as provided in paragraph (c)(5) of this section, the court reduces, accordingly, the amount of the attorneys' fees awarded under section 615 of the Act, if the court finds that—</p> <p>(i) The parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy;</p> <p>(ii) 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;</p> <p>(iii) The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or</p> <p>(iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with §300.507(c).</p> <p>(5) Exception to reduction in amount of attorneys' fees. The provisions of paragraph (c)(4) of this section do not apply in any action or proceeding if the court finds that the State or local agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of section 615 of the Act.</p>	
<p>§300.518 Child's status during proceedings.</p>	<p>§300.514 Child's status during proceedings</p>	<p>Note: NPRM language is not in the statute</p>

NPRM Language	Current Regulation	Comments
<p>(a) Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a request for a due process hearing under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.</p> <p>(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.</p> <p>(c) If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.</p>	<p>(a) Except as provided in §300.526, during the pendency of any administrative or judicial proceeding regarding a complaint under §300.507, unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.</p> <p>(b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.</p> <p>(c) If the decision of a hearing officer in a due process hearing conducted by the SEA or a State review official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State or local agency and the parents for purposes of paragraph (a) of this section.</p>	<p>although it is generally included in current regulations.</p>
<p>§300.519 Surrogate parents.</p> <p>(a) General. Each public agency must ensure that the rights of a child are protected when--</p> <p>(1) No parent (as defined in §300.30) can be identified;</p> <p>(2) The public agency, after reasonable efforts, cannot locate a parent;</p> <p>(3) The child is a ward of the State under the laws of that State;</p> <p>or</p> <p>(4) The child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act</p>	<p>§300.515 Surrogate Parents</p> <p>(a) General. Each public agency shall ensure that the rights of a child are protected if—</p> <p>(1) No parent (as defined in §300.20) can be identified;</p> <p>(2) The public agency, after reasonable efforts, cannot discover the whereabouts of a parent; or</p> <p>(3) The child is a ward of the State under the laws of that State.</p>	

NPRM Language	Current Regulation	Comments
(42 U.S.C. 11434a(6)).		
<p>(b) Duties of public agency. The duties of a public agency under paragraph (a) of this section include the assignment of an individual to act as a surrogate for the parents. This must include a method-- (1) For determining whether a child needs a surrogate parent; and (2) For assigning a surrogate parent to the child.</p>	<p>(b) Duty of public agency. The duty of a public agency under paragraph (a) of this section includes the assignment of an individual to act as a surrogate for the parents. This must include a method— (1) For determining whether a child needs a surrogate parent; and (2) For assigning a surrogate parent to the child.</p>	
<p>(c) 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 (d)(2)(i) and (e) of this section.</p>		
<p>(d) Criteria for selection of surrogate parents. (1) The public agency may select a surrogate parent in any way permitted under State law. (2) Public agencies must ensure that a person selected as a surrogate parent-- (i) Is not an employee of the SEA, the LEA, 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 he or she represents; and (iii) Has knowledge and skills that ensure adequate representation of the child.</p>	<p>(c) Criteria for selection of surrogates. (1) The public agency may select a surrogate parent in any way permitted under State law. (2) Except as provided in paragraph (c)(3) of this section, public agencies shall ensure that a person selected as a surrogate— (i) Is not an employee of the SEA, the LEA, or any other agency that is involved in the education or care of the child; (ii) Has no interest that conflicts with the interest of the child he or she represents; and (iii) Has knowledge and skills that ensure adequate representation of the child. (3) A public agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraphs (c)(2)(ii) and (iii) of this section.</p>	

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<p>(e) Non-employee requirement; compensation. A person otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.</p>	<p>(d) Non-employee requirement; compensation. A person who otherwise qualifies to be a surrogate parent under paragraph (c) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.</p>	<p>Note: NPRM language is not in the statute although it is included in current regulations.</p>
<p>(f) 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 surrogates without regard to paragraph (d)(2)(i) of this section, until a surrogate can be appointed that meets all of the requirements of paragraph (d) of this section.</p>		<p>Note: All NPRM language is not in the statute.</p>
<p>(g) Surrogate parent responsibilities. The surrogate parent may represent the child in all matters relating to-- (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child.</p>	<p>(e) Responsibilities. The surrogate parent may represent the child in all matters relating to— (1) The identification, evaluation, and educational placement of the child; and (2) The provision of FAPE to the child.</p>	<p>Note: NPRM language is not in the statute although it is included in current regulations.</p>
<p>(h) SEA responsibility. The SEA must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate.</p>		
<p>§300.520 Transfer of parental rights at age of majority. (a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a</p>	<p>§300.517 Transfer of parental rights at age of majority (a) General. A State may provide that, when a student with a disability reaches the age of majority under State law that applies to all students (except for a student with a disability</p>	

NPRM Language	Current Regulation	Comments
<p>disability who has been determined to be incompetent under State law)--</p> <p>(1)(i) The public agency must provide any notice required by this part to both the individual and the parents; and</p> <p>(ii) All other rights accorded to parents under Part B of the Act transfer to the child;</p> <p>(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and</p> <p>(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the individual and the parents of the transfer of rights.</p> <p>(b) Special rule. If, under State law, a State has a mechanism to determine that a child with a disability who has reached the age of majority under State law that applies to all children and has not been determined incompetent under State law, does not have the ability to provide informed consent with respect to his or her educational program, the State must establish procedures for appointing the parent, or, if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student's eligibility under Part B of the Act.</p>	<p>who has been determined to be incompetent under State law)—</p> <p>(1)(i) The public agency shall provide any notice required by this part to both the individual and the parents; and</p> <p>(ii) All other rights accorded to parents under Part B of the Act transfer to the student; and</p> <p>(2) All rights accorded to parents under Part B of the Act transfer to students who are incarcerated in an adult or juvenile, State or local correctional institution.</p> <p>(3) Whenever a State transfers rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency shall notify the individual and the parents of the transfer of rights.</p> <p>(b) Special rule. If, under State law, a State has a mechanism to determine that a student with a disability, who has reached the age of majority under State law that applies to all children and has not been determined incompetent under State law, does not have the ability to provide informed consent with respect to his or her educational program, the State shall establish procedures for appointing the parent, or, if the parent is not available another appropriate individual, to represent the educational interests of the student throughout the student’s eligibility under Part B of the Act.</p>	