

**EXCEPTIONAL CHILDREN HANDBOOK ON PARENTS' RIGHTS**

The Individuals with Disabilities Education Improvement Act (IDEA 2004) was signed into law on December 3, 2004. The provisions of the act became effective on July 1, 2005, with the exception of some elements of the definition of “highly qualified teacher” that took effect upon signing of the act. *Federal Regulations* took effect on October 13, 2006. Areas of the law in which North Carolina exceeds the requirements of the 2006 *Federal Regulations* will remain in effect until such time as *State Procedures* are reissued. The changes noted below are currently in effect.

<u>Section Title</u>	<u>Page</u>	<u>Changes in the law</u>
Parental Notice of Procedural Safeguards	6	<p>[Replace last paragraph]            This handbook must be given to you once each school year and at the following times:</p> <ul style="list-style-type: none"> <li>• Upon initial referral or parental request for evaluation;</li> <li>• Upon the first occurrence of the filing of a petition for a due process hearing and a request for a state complaint investigation;</li> <li>• Upon request by a parent;</li> <li>• Upon disciplinary actions resulting in a change of program; and</li> <li>• Upon the release of a new version of the Handbook on Parents’ Rights.</li> </ul>
Parental Consent	7-8	<p>[Replace 2<sup>nd</sup> paragraph]            You may revoke your consent at anytime.</p> <p>[Replace #4, page 8]            If you refuse consent for an initial evaluation or a reevaluation, the school may pursue the evaluations by using a due process hearing or mediation.</p> <p>If you refuse consent for initial special education and related services, the local school system can not pursue due process and cannot be charged with a violation of failure to provide a free appropriate public education (FAPE) to the student.</p>
Evaluation Procedures	10-11	<p>[Add number 13, page 11]            An evaluation between two school districts, in the event the student moves, shall be coordinated and expeditiously completed.</p> <p>[Add number 14, page 11]            The school system is prohibited from requiring a child to obtain a prescription for a medication as a condition for attending school, getting an evaluation or receiving services.</p>

Eligibility Determination	12	<p>[Add 4<sup>th</sup> bullet, page 12]</p> <ul style="list-style-type: none"> <li>▪ A student is not eligible for special education services if it is found that the lack of appropriate instruction in reading, including the essential components of reading instruction, is the determining factor in the student’s learning problems.</li> </ul>
<p>IEP</p> <ul style="list-style-type: none"> <li>- IEP Content</li> <li>- IEP Implementation for students transferring</li> </ul>	12-14	<p>[Add to first paragraph, page 12] The IEP meeting may be held by using alternate means such as a video conference or conference call if the parents and school system agree.</p> <p>[Replace number 1, bottom of page 13] A statement of your child’s present level of academic achievement and <b>functional</b> performance which will tell how the disability affects your child’s involvement in the general curriculum; or, for preschool children, how the disability affects the child’s participation in appropriate activities.</p> <p>[Replace number 2, page 14] A statement of measurable annual goals, including both academic and <b>functional</b> goals, with short term instructional objectives or benchmarks; these statements must show how they are related to:</p> <ul style="list-style-type: none"> <li>▪ meeting your child’s needs in the general education curriculum; and</li> <li>▪ meeting your child’s other educational needs resulting from the child’s disability.</li> </ul> <p>[Add number 8, page 14] The special education and related services in the IEP must be based on peer-reviewed research to the extent practicable.</p> <p>[Add number 9, page 13] If a student with an IEP transfers from one school system to another school system in the same state within the same school year, the new school shall provide comparable services, in consultation with the parents, until the new school either adopts the previous IEP or develops a new IEP.</p> <p>[Add number 10, page 13] If a student with an IEP transfers from one school system to another school system in a different state within the same school year, the new school shall provide comparable services, in consultation with the parents, until the new school conducts a new evaluation, if necessary, and develops a new IEP.</p>

Related Services	14	<p>[Add to paragraph, page 14]  An assistive technology device/related service does not include a medical device that is surgically implanted or the replacement of such device.</p>
Reevaluation	15	<p>[Add to first paragraph, page 15]  However, a reevaluation shall occur not more frequently than once a year, unless the parent and the school agree otherwise; and at least once every three years.</p>
Discipline Procedures - Manifestation Determination	16-17	<p>[Replace subsection <u>Manifestation Determination</u>, page 17]  If your child has been removed for more than 10 school days within a school year and the removals constitute a change of placement, the school system must notify you of this decision, provide you with a copy of the <u>Handbook on Parents' Rights</u>, and convene a meeting with you and relevant member of the IEP team within 10 school days (of the decision to change the placement) to determine if the conduct was a manifestation of the child's disability. The IEP team will:</p> <ul style="list-style-type: none"> <li>• review all relevant information;</li> <li>• determine if the behavior was caused by, or had a direct and substantial relationship to the disability; or was the direct result of the school's failure to implement the IEP.</li> </ul> <p>If the IEP team determines that your child's behavior was not caused by the disability or the result of the IEP not being implemented, then your child may be subjected to the same disciplinary procedures that apply to non-disabled students. IDEA requires continued educational services during such removals beginning on the 11<sup>th</sup> day of removal for that school year.</p> <p>If the IEP team determines that your child's behavior was caused by his or her disability, or resulted from the IEP not being implemented, then your child must be returned to the placement from which the child was removed, unless the parent and the school system agree to a change of placement. Further, the IEP team must either: conduct a functional behavioral assessment (unless one had previously been conducted) and implement a behavior intervention plan; or if a behavior intervention plan (BIP) already has been developed, review the BIP, and modify it, as necessary, to address the behavior.</p>
Interim Alternative Education Setting (IAES)	17-18	<p>[Add to 1<sup>st</sup> paragraph, page 17]  ... a child with a disability may be removed to an interim alternative educational setting for up to forty-five (45) <b>school</b> days.</p> <p>[Add 3<sup>rd</sup> bullet, page 17]</p>

		<ul style="list-style-type: none"> <li>▪ a child inflicts serious bodily injury to another person at school, on school premises or at a school function. [Define: Serious bodily injury requires a showing of substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of function of a bodily member, organ or mental faculty].</li> </ul>
Children Not Yet Determined To be Disabled	19	Omit 2 <sup>nd</sup> bullet because the criteria that the behavior or performance of the child demonstrates need for special education has been eliminated from the law.
Private School Placement	19	<p>[Add to the end of the paragraph] Students enrolled by their parents in private schools will receive services through the school system in which the private school is located.</p> <p>Your written consent must be obtained before any confidential information about your child can be released between the school system where you reside and the school system where the private school is located.</p>
Mediation	22	<p>[Replace 2<sup>nd</sup> sentence in first paragraph] Mediation is a process offered through the Department of Public Instruction in an attempt to resolve problems. It is available even if a due process hearing has not been requested.</p> <p>[Insert as 2<sup>nd</sup> paragraph] In the case that an agreement is reached to settle the issues in the due process petition through the mediation process, the parties shall execute a legally binding agreement that documents the terms of the resolution and that:</p> <ul style="list-style-type: none"> <li>• Is signed by both the parent and a representative of the school system who has the authority to bind the local education agency; and</li> <li>• Is enforceable in any state or federal court, or through a state complaint.</li> </ul>
How to File For A Due Process Hearing	24	<p>[Replace entire section.] You must file a petition within <b>one year</b> of the date you received notice of an action with which you disagree.</p> <p>For additional information regarding filing a petition for due process hearing in a special education matter, contact the Office of Administrative Hearings at (919)733-2698 or (919)733-0926; Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.</p>

	<p>The parent who is requesting a due process hearing must file the petition with the Superintendent of their school system <b>and</b> the Office of Administrative Hearings (OAH), with a copy to the Department of Public Instruction, Exceptional Children Division. The petition must contain the following information:</p> <ul style="list-style-type: none"> <li>• The name of the child, address of the residence of the child, and name of the school the child is attending;</li> <li>• In the case of a homeless child or youth, available contact information for the child and the name of the school the child is attending;</li> <li>• A description of the nature of the problem, including facts relating to the problem(s); and</li> <li>• A proposed resolution of the problem to the extent known and available to the party at the time.</li> </ul> <p>The timelines begin upon the Superintendent’s receipt of the petition.</p> <p>A party may not have a due process hearing until the above requirements are met.</p> <p>The due process petition shall be found to be sufficient unless the party receiving the petition notifies the Administrative Law Judge and the other party, in writing, that the petition has not met the requirements outlined above.</p> <p>If the school system has not sent a prior written notice (DEC 5) to the parent regarding the subject matter contained in the petition, the school shall, within 10 days of receiving the petition, send to the parent a response that must include the following:</p> <ul style="list-style-type: none"> <li>• An explanation of why the school proposed or refused to take the action raised in the petition;</li> <li>• A description of other options that the IEP team considered and the reasons why those options were rejected;</li> <li>• A description of factors relevant to the school’s proposal or refusal.</li> </ul> <p>Within 10 days of receiving the petition, the responding party shall send the other party a response that specifically addresses the issues raised in the petition that was not addressed within a previously issued DEC 5.</p> <p>Within 5 days of receipt of a motion that the petition is insufficient, i.e. fails to contain the required information listed above, the Administrative Law Judge shall make a determination of whether it meets the content requirements, and shall immediately notify the parties in writing of such determination.</p>
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		The timeline for a due process hearing under this part shall begin at the time the party files an amended petition.
Resolution Sessions	24	<p>[Replace information under heading “After the Petition is Filed”</p> <p>Prior to the scheduling of a due process hearing, the school system shall convene a meeting (“resolution session”) with the parents and the relevant members of the IEP team who have specific knowledge of the facts identified in the due process petition:</p> <ul style="list-style-type: none"> <li>• Within 15 days of receiving notice of the petition for a hearing;</li> <li>• Which shall include a representative of the school system who has decision-making authority on behalf of the local education agency;</li> <li>• Which may not include a school attorney unless the parent is accompanied by an attorney; and</li> <li>• Where the parents and the school representatives meet to discuss the issues in the petition, and the school is given an opportunity to resolve those issues, unless both agree in writing to waive the meeting, or agree to use the mediation process.</li> <li>• When a resolution is reached to settling the issues in the petition, the parent and school representatives shall create a legally binding agreement that is: signed by the parent and the representative authorized to bind the school system, and enforceable in state or federal court, or through a state complaint investigation.</li> <li>• Any agreement reached at the resolution session can be voided within 3 business days of the meeting.</li> </ul> <p>If the school system has not resolved the issues in the petition to the satisfaction of the parents within 30 days of receipt of the petition, the due process hearing may occur, and the 45-day timeline shall begin.</p>
Child’s Status While the Case Is Being Decided	24	<p>[Add sentence at end.]</p> <p>If the due process hearing involves a change in placement following a discipline incident, the student must remain in the interim alternative educational setting pending the ALJ’s decision or until the expiration of the specified time period.</p>
Attorneys’ Fees	25-26	<p>[Replace the last paragraph on page 26.]</p> <p>The court, in its discretion, may also award reasonable attorneys’ fees as part of the costs:</p> <ul style="list-style-type: none"> <li>• To a prevailing party who is an SEA or an LEA against the attorney of a parent who files a request for a due process hearing 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</li> </ul>

	<ul style="list-style-type: none"><li>• To a prevailing SEA or LEA against the attorney of a parent, or against the parent, if the parent's complaint 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.</li></ul> <p>Attorneys' fees may not be awarded for participation in IEP team meetings, resolution sessions, or mediation.</p>
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