

**Module 17**

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**Introduction to Procedural Safeguards**



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**NICHCY is here for you.**

This training curriculum is designed and produced by NICHCY, the National Dissemination Center for Children with Disabilities, at the request of our funder, the Office of Special Education Programs (OSEP) at the U.S. Department of Education.

We have a tremendous amount of information available on our Web site, in our library, and in the combined expertise of our staff. Please feel free to contact NICHCY for the latest information and connections in research and disabilities. We'd also love for you to visit our Web site and help yourself to all that's there.

## Background and Discussion

The 2004 Amendments to the Individuals with Disabilities Education Act (IDEA) include—as did IDEA’s predecessors—an entire section entitled Procedural Safeguards. These safeguards are designed to protect the rights of parents and their child with a disability, as well as give families and schools a mechanism for resolving disputes.

### What are Procedural Safeguards?

Ask five people and you might easily get five different answers, including at least one response of, “Huh?”

The term *Procedural Safeguards* sounds rather legalistic and perhaps even a little scary. When it comes to education, what or who needs to be safeguarded? Children? Parents? Teachers? Schools? For our purposes, *Procedural Safeguards* are a set of requirements to ensure that children with disabilities are provided with a free appropriate public education, according to the standards and mechanisms established by the IDEA and its regulations.

Stated in another way... *Procedural Safeguards* serve as an umbrella or security blanket of *educational rights and responsibilities* for children with disabilities and their parents. The public agencies responsible for the education of children with disabilities also operate beneath the umbrella of IDEA’s procedural safeguards; public agencies have certain specific rights related to these safeguards and most certainly a host of responsibili-

### How This Discussion Section is Organized

As with the other modules in this curriculum, this discussion section is organized by overhead. A thumbnail picture of each overhead is presented, along with brief instructions as to how the slide operates. This is followed by a discussion intended to provide trainers with background information about what’s on the slide. Any or all of this information might be appropriate to share with an audience, but that decision is left up to trainers.



New in  
IDEA!

You’ll note the “*New in IDEA*” icon that periodically appears in these pages as an easy tool for identifying new aspects of the regulations.<sup>1</sup>

ties. In this overview, we will introduce some prominent procedural safeguards and see how these correspond to the rights of children with disabilities and their parents, and to the rights and responsibilities of public agencies.

Procedural safeguards are in keeping with the underlying values in our nation’s special education law. Yes, procedures and processes are very much a part of the discussion on *Procedural Safeguards*, but the essence of *Procedural Safeguards* is to serve as a strong foundation for ensuring the provision of a free appropriate public education for children with disabilities.

When you consider the many discrete parts of IDEA and its regulations (e.g., initial evaluation, individualized education programs, State eligibility), each has a set of standards that define and explain specific requirements. *Procedural Safeguards* are cross-cutting, and apply to many parts of the law and regulations. In this section of the training curriculum, as we look closely at some of the individual elements that comprise *Procedural Safeguards*, we’ll see how, as a whole, they are a keystone in IDEA.



### Trainer’s Note

Throughout this training module, all references in the discussion section for a slide are provided at the *end* of that slide’s discussion.

## This Module in Time and Space

We have broken down the information into three modules in this training curriculum on the topic of procedural safeguards, as follows:

- *Introduction to Procedural Safeguards* provides an overview of many central provisions of IDEA 2004 and its regulations, including parent participation, prior written notice, the procedural safeguards notice, and more.
- *Options for Dispute Resolution* describes the alternatives available for resolving disagreements between parents and schools—methods such as writing a letter of complaint, mediation, or a due process hearing.
- *Key Issues in Discipline* focuses on the procedures and protections applied in the event of serious transgressions or violations of school codes of student conduct.

All of these modules are intended for general audiences. They've been designed so that trainers can either condense the presentation of information to the essentials, when training time is limited, or expand the training to cover specific procedural safeguards in depth. The background discussion for each module is extensive and detailed, to support trainers in adapting training to correspond to participant need and interest.

You are currently reading the background section and discussion in the module on *Introduction to Procedural Safeguards*, the first module in the series on procedural safeguards.

## Files You'll Need for This Module

Module 17 includes the following components provided in separate files. If you need or want the entire module, be sure to download each of the components in either Word® or PDF format.

- **Trainer's Guide Discussion.** The discussion text (what you're reading right now) describes how the slides operate and explains the content of each slide, including relevant requirements of the statute passed by Congress in December 2004 and the final regulations for Part B published in August 2006.

The discussion is provided via two PDF files, with the equivalent content also available in one accessible Word® file. Here are the files' full names and where to find them on NICHCY's Web site:

*PDF of discussion for Slides 1-16*  
[www.nichcy.org/training/17-discussionSlides1-16.pdf](http://www.nichcy.org/training/17-discussionSlides1-16.pdf)

*PDF of discussion for Slides 17-end*  
[www.nichcy.org/training/17-discussion-Slides17-end.pdf](http://www.nichcy.org/training/17-discussion-Slides17-end.pdf)

*The entire discussion in an accessible Word® file.*  
[www.nichcy.org/training/17-discussion.doc](http://www.nichcy.org/training/17-discussion.doc)

- **Handouts in English.** The handouts for this module are provided within an integrated package of handouts for the entire umbrella topic of **Theme E, Procedural Safeguards**, which includes three different modules. If you've already downloaded the handouts for other modules in Theme E, then you have what you need for this module, too. If not, then find Word® and PDF versions of these handouts as follows:

*PDF version of the Handouts.*  
[www.nichcy.org/training/E-handouts.pdf](http://www.nichcy.org/training/E-handouts.pdf)

*Word® version of the Handouts,* for participants who need an accessible version of the handouts or if you'd like to create large-print or Braille versions:  
[www.nichcy.org/training/E-handouts.doc](http://www.nichcy.org/training/E-handouts.doc)

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<sup>1</sup> Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, Final Rule, 71 Fed. Reg. 46540 (August 14, 2006) (at 34 CFR pt. 300). Available online at:

- [www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)
- <http://idea.ed.gov>

- **PowerPoint® slide show.**  
NICHCY is pleased to provide a slide show (produced in PowerPoint®) around which trainers can frame their presentations and training on specific procedural safeguards in IDEA. Find this presentation at:

[www.nichcy.org/training/17slideshow.zip](http://www.nichcy.org/training/17slideshow.zip)

*Important note:* You do NOT need the PowerPoint® software to use these slide shows. It's set to display, regardless, because the PowerPoint Viewer® is included. You may be asked to agree to Viewer's licensing terms when you first open the slideshow.



To launch the slide presentation, double-click the **PLAY.bat** file.



### **Thanks to the OGC Reviewer of This Module**

NICHCY would like to express its appreciation for the hard work and expertise of:

**Frank Lopez**, Office of General Counsel, U.S. Department of Education, for his thorough review of this module for its legal sufficiency with the statute and final Part B regulations of IDEA 2004.

We especially appreciate his gift for capturing complex language and legal concepts in simple, straightforward words, while keeping true to the training design of this curriculum. Many thanks go to Frank for an exceptional job.

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## Looking for IDEA 2004?

### *The Statute:*

- [www.nichcy.org/reauth/PL108-446.pdf](http://www.nichcy.org/reauth/PL108-446.pdf)
- <http://idea.ed.gov>

### *Final Part B Regulations:*

- [www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)
  - <http://idea.ed.gov>
- 

## Finding Specific Sections of the Regulations: 34 CFR

As you read the explanations about the final regulations, you will find references to specific sections, such as §300.173. (The symbol § means “Section.”) These references can be used to locate the precise sections in the federal regulations that address the issue being discussed. In most instances, we’ve also provided the verbatim text of the IDEA regulations so that you don’t have to go looking for them.

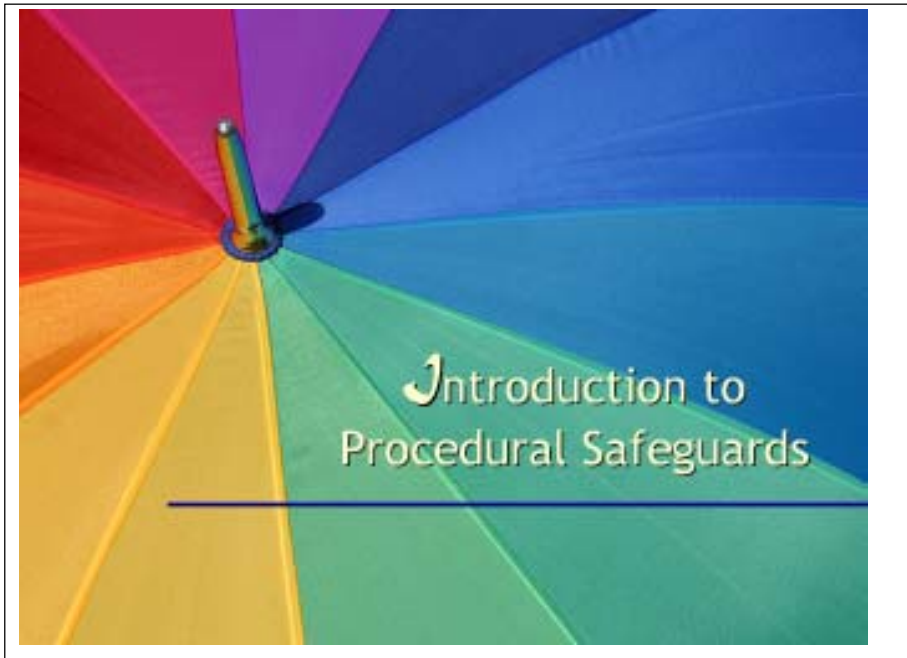
The final Part B regulations are codified in Title 34 of the *Code of Federal Regulations*. This is more commonly referred to as 34 CFR or 34 C.F.R. It’s not unusual to see references to specific sections of IDEA’s regulations include this—such as 34 CFR §300.173. We have omitted the 34 CFR in this training curriculum for ease of reading.

## Citing the Regulations in This Training Curriculum

You’ll be seeing a lot of citations in this module—and all the other modules, too!—that look like this: 71 Fed. Reg. at 46738

This means that whatever is being quoted may be found in the *Federal Register* published on August 14, 2006—Volume 71, Number 156, to be precise. The number at the end of the citation (in our example, 46738) refers to the page number on which the quotation appears in that volume. Where can you find Volume 71 of the *Federal Register*? NICHCY is pleased to offer it online at:

[www.nichcy.org/reauth/IDEA2004regulations.pdf](http://www.nichcy.org/reauth/IDEA2004regulations.pdf)



*How to Operate the Slide:*

Slide presents completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Use Slide 1 to orient your audience to the broad focus of this training session: An overview of IDEA's procedural safeguards. You may wish to ask your audience, "What *are* procedural safeguards?" and see what they say. Can they name any specific safeguards they know? You also might take a moment to look at how the Merriam-Webster dictionary defines these two words:

*Procedural*—of or relating to procedure especially of courts or other bodies administering substantive law<sup>1</sup>

*Safeguard*—1: convoy, escort; 2: a precautionary measure or stipulation, to make safe, protect<sup>2</sup>

Where might issues arise between schools and parents with respect to a child with a disability and his or her special education? You can discuss this briefly with the audience, taking a few ideas to illustrate where protections under the law might be important.



<sup>1</sup> Merriam-Webster Online. (2007). *Procedural*. Retrieved August 10, 2007, from <http://www.m-w.com/dictionary/procedural>

<sup>2</sup> Merriam-Webster Online. (2007). *Safeguard*. Retrieved August 10, 2007, from <http://www.m-w.com/dictionary/safeguard>

Modules in the Procedural Safeguards series



**Overview of Procedural Safeguards**

Options for Dispute Resolution

Key Issues in Discipline

Slide loads completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

This slide shows gives the audience the Big Picture of the modules comprising Theme E of *Building the Legacy*. You can use the slide to make participants aware that:

- there are other themes around which important IDEA-related issues can be (and are!) meaningfully grouped (see the list of themes in this training curriculum in the box at the right); and
- there's more to know about procedural safeguards than what's covered in this specific module.

The topics that *will* be covered in this module are listed on the next slide.

**Themes in**  
*Building the Legacy*

**Theme A**  
Welcome to IDEA

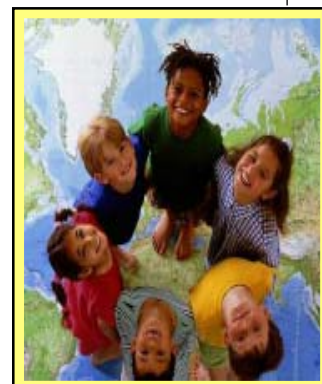
**Theme B**  
IDEA  
and General Education

**Theme C**  
Evaluating Children  
for Disability

**Theme D**  
Individualized Education  
Programs (IEPs)

**Theme E**  
Procedural Safeguards

Available online at:  
[www.nichcy.org/training/contents.asp](http://www.nichcy.org/training/contents.asp)



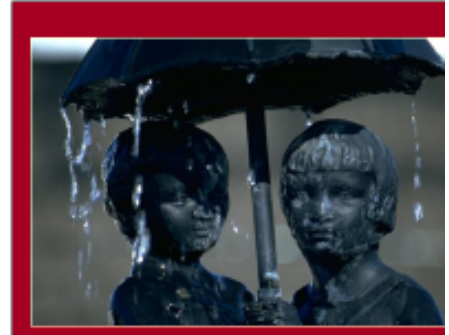


**Opening View**

Slide loads with Bullets 1, 2, and 3 (the major topics to be covered in this module).

**This module looks at...**

- Parent participation
- Written notices
- Selected other concepts and definitions



- Overview of dispute procedures

**Click 1**

**This module looks at...**

- Parent participation
- Written notices
- Selected other concepts and definitions
- Overview of options for resolving disputes



- Overview of dispute procedures

Click 1: Bullets 4 and 5 (the "overview" topics on the agenda) appear.

CLICK AGAIN to advance to next slide.

(discussion on next page)



Slide 3 is an advance organizer for the audience as to what content they're going to hear and discuss in this module. The module is divided into three major sections followed by two, very brief overview. The topics that will be treated in some depth are as follows:

- *Parent participation*—provisions that help to ensure that parents have the opportunity to participate in meetings crucial to their child's education;
- *Written notices*, the requirements related to prior written notice and the procedural safeguards notice;
- *Selected other concepts and definitions*—specifically, independent educational evaluation (IEE), surrogate parents, and the transfer of rights at the age of majority.

The two topics that will be treated very briefly, to ensure that participants are aware that procedural safeguards also include these topics, are:

- *Options for dispute resolution*, which will look briefly and in overview at how conflicts are resolved (a stand-alone module is available to examine this critical topic in much greater detail); and
- *Overview of IDEA's discipline procedures* (also examined in a stand-alone module).

**View I**

## Closer Look at Parent Participation

- *Access to* educational records



Parents must have opportunity to inspect and review all education records related to:

- their child's identification, evaluation, and educational placement; and

Topic: Access to educational records.

Slide loads with this view, including Bullet 1.

**Click I**

## Closer Look at Parent Participation

- *Access to* educational records



Parents must have opportunity to inspect and review all education records related to:

- their child's identification, evaluation, and educational placement; and
- the provision of FAPE to their child

Click 1: This bottom bullet loads.

(continued on next page)

# Closer Look at Parent Participation

Click 2

- Access to educational records



The right to inspect and review includes:

- the right to a response from the school to the parents' reasonable request for explanations and interpretations of the records;

More info on access to educational records.

Click 2: Picture and text changes as part of taking a look at the "right to inspect and review."

# Closer Look at Parent Participation

Clicks 3-4

- Access to educational records



The right to inspect and review includes:

- the right to a response from the school to the parents' reasonable request for explanations and interpretations of the records;
- the right to request copies of records; and
- the right to have a representative inspect and review the records.

Click 3: Bullet 2 loads.

Click 4: Final bullet loads.

CLICK AGAIN to advance to next slide.

(discussion on next page) 

## Slide 4: Background and Discussion

Slides 4 and 5 begin the discussion of “A Closer Look at Parent Participation” by looking at the opportunity that IDEA and its regulations afford parents to examine their child’s records (Slide 4) and if they believe they are misleading or inaccurate, or that they violate their child’s rights, they may request that the records be amended (Slide 5). This is a large topic that can be treated briefly or in great detail. Accordingly, we have provided a substantial amount of background discussion across these two slides to support you in how detailed you wish your training session to be.

It is important to note that another federal law is also relevant to this discussion—the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations at 34 CFR Part 99.

### Access to Educational Records

Refer your audience to **Handout E-1**, as appropriate.

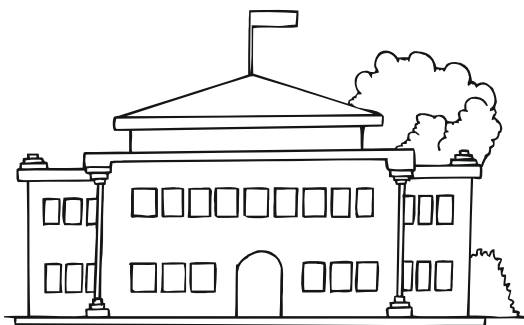
Access to a child’s education records is frequently a concern of parents. The IDEA and its regulations guarantee parents the right to inspect and review all education records relating to their child that the public agency collects, maintains, or uses. This might include schoolwork examples in the file, evaluations, reports, and other records related to the child’s evaluation, educational placement, identification as a child with a disability,

and the provision of a free appropriate public education (FAPE) to the child.

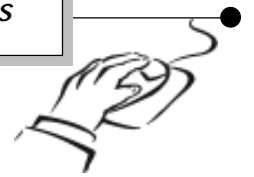
What are some of the specifics of IDEA’s regulatory provisions? Framed from a perspective of the umbrella of protections, the information in the bullets below pulls highlights from the regulations for discussion purposes. The precise location of IDEA’s regulatory provisions is included for each of these procedural safeguards, for clarity’s sake and to help you direct participants, as appropriate, to the exact language in **Handout E-1**.

### Parents’ Rights

- Parents can inspect and review educational records with respect to their child’s evaluation, identification, and placement; and the provision of FAPE. [§300.501(a)]
- Parents can request explanations and interpretations of the records. [§300.613(b)(1)]
- Parents can request copies of the records if not receiving copies would effectively prevent the parents from exercising their right to inspect and review those records. [§300.613(b)(2)]



4 Clicks



- Parents can request that their representative be given access to inspect and review the records. [§300.613(b)(3)]

### Schools’ Rights and Responsibilities

- Schools must comply with a parent’s request to inspect and review records without unnecessary delay before any meeting—regarding an IEP, a hearing or resolution session, and in no case more than 45 days after the request has been made. [§300.613(a)]
- Schools must respond to reasonable requests for explanations and interpretations of the records. [§300.613(b)(1)]
- Schools can charge a fee for copies of records made for parents, if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. [§300.617(a)]
- Schools may not charge a fee for searching for, or retrieving, a child’s records for parents. [§300.617(b)]

### Segue to Slide 5

And what happens if, upon inspecting their child’s records, parents believe that those records contain misleading or inaccurate information, or that the records violate their child’s rights? Proceed to the next slide and find out.

View 1

Slide loads with this view.

## Closer Look at Parent Participation

Parents have the right to:

- request that their child’s records be amended; or



- *Content* of educational records

Click 1

Click 1: Bullet 2 appears.

## Closer Look at Parent Participation


Parents have the right to:

- request that their child’s records be amended; or
- attach their explanation to their child’s records if not amended



- *Content* of educational records

CLICK AGAIN to advance to next slide.

(discussion on next page) 

## Slide 5: Background and Discussion

Linked to parents' rights to inspect their child's records is the right examined on this slide. Suppose that, when parents have inspected their child's records, they believe that those records contain misleading or inaccurate information, or that the records violate their child's privacy or other rights. What options do parents have?

### Changes to Educational Records

Now let us pull selected highlights from the regulations regarding *changing* a child's educational records.

#### Parents' Rights

A parent who believes that information in their child's educational record is inaccurate, misleading, or violates the privacy or other rights of their child may request that the information be amended. [§300.618(a)]

#### Schools' Rights and Responsibilities

- The school must decide whether to amend the information as requested by the parent within a reasonable period of time after receiving the request. [§300.618(b)]
- If the school refuses to amend the information as requested by the parent, it must inform the parent of the refusal and advise the parent of the right to a hearing. [§300.618(c)] (Note: This hearing is not the same as a due process hearing under §300.511.)

### Additional Information on Selected Items

Time to expand a bit on elements of the rights and responsibilities listed above and on Slide 4.

#### Cross-Reference of Provisions

Section 300.501(a) affords parents the opportunity to inspect and review their child's educational records in accordance with the procedures contained in the confidentiality provisions at §§300.613 through 300.621, which are also included on **Handout E-1** for full clarity. One of these provisions provides the right to request that the public agency provide copies of the child's educational records to the parent *if not doing so* would effectively prevent the parent from exercising the right to inspect and review the child's records—as would be the case for a parent who “lives outside of commuting distance of the agency” (71 Fed. Reg. at 46688).

I Click



#### Consistency with FERPA

As in other sections of IDEA, this provision is intended to be consistent with the FERPA and its implementing regulations—specifically, the one at 34 CFR §99.10(d)(1). For your information, this FERPA regulatory provision is provided in the box below.



#### §99.10 What rights exist for a parent or eligible student to inspect and review education records?

(a)...

(b)...

(c)...

(d) If circumstances effectively prevent the parent or eligible student from exercising the right to inspect and review the student's education records, the educational agency or institution, or SEA or its component, shall—

(1) Provide the parent or eligible student with a copy of the records requested...



## Parental Options if Parents' Request to Amend Child's Records is Refused

As noted above, parents may ask that their child's records be amended if they believe that information in the records is inaccurate, misleading, or violates the privacy or other rights of their child. This right is set out at §300.618(a) and is mentioned in the bulleted list above.

The public agency must:

- decide to accept or refuse this request within a reasonable period of time; and
- inform the parent if it refuses.

The agency must also provide parents with information regarding the parent's right to a hearing on this matter. [§300.618(b)-(c)]

*What type of hearing, one might wonder, and with what possible outcomes?*

Answers to both questions are contained within the subsequent provisions at §§300.619 through 300.621, which are presented in the box at the right and on Handout E-1.

We provide these for the sake of thoroughness and to identify that, when parents' request to have their child's records

amended is refused by the public agency, parents still have recourse to the hearing as a means of addressing their objections to information in their child's records.

The hearing that parents may request to challenge the agency's refusal to amend their child's records must be conducted according to the FERPA regulatory procedures in 34 CFR

§99.22 [see also §300.621]. For trainers' information, these provisions are presented in *Resource E-1*. These may be of interest to share with your audience, as may the following commentary by the Department of Education (Department) in the Analysis



### §300.619 Opportunity for a hearing.

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

### §300.620 Result of hearing.

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

(b) If, as a result of the hearing, the agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must inform the parent of the parent's right to place in the records the agency maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any explanation placed in the records of the child under this section must—

(1) Be maintained by the agency as part of the records of the child as long as the record or contested portion is maintained by the agency; and

(2) If the records of the child or the contested portion is disclosed by the agency to any party, the explanation must also be disclosed to the party.

### §300.621 Hearing procedures.

A hearing held under §300.619 must be conducted according to the procedures in 34 CFR 99.22.



of Comments and Changes that accompanied publication of the final Part B regulations:

The parent is not required, under the Act and these regulations, to follow the procedures that are applicable to filing a due process complaint under §§300.507 through 300.510. This is because the hearing authorized under §300.619 is for the explicit purpose of giving a parent the opportunity to challenge the information in education records when a parent believes the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child... The procedures used for these hearings vary from State to State, and we believe it is best to give States the flexibility to develop their own procedures for such hearings, as long as they meet the requirements in §300.621. (71 Fed. Reg. 46736)

Section 300.620 details two possible outcomes of the hearing that parents in this situation may appreciate knowing:

- *Outcome 1:* Parents' request is upheld in the final decision, and the information must be amended in the child's records, and parents must be so informed in writing.
- *Outcome 2:* Parents' request is not upheld in the final decision. The public agency must inform the parents of their right to place in the records a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

What is interesting in these last two items is that: (a) the parent's request for this type of hearing does not invoke procedures applicable to filing a due process complaint; and (b) regardless of the outcome of the hearing, the parent's viewpoint on specific information in their child's educational records will be addressed in the records, either with the amending of the records as they requested or via their own statement that must be incorporated in the records and maintained there by the agency for as long as it maintains the child's records or the contested part. If the latter case, the parent explanation must also be disclosed to any party with which the public agency discloses the student's records or the contested portion. [§300.620(c)]



View 1

## Closer Look at Parent Participation

Parents have the **right to participate in meetings** related to the:

- identification, evaluation, and educational placement of their child; and
- the provision of FAPE to their child, including IEP meetings



Slide loads with this view. Subject: The parents' right to participate in meetings.

Click 1


## Closer Look at Parent Participation

Parents are **members** of:

- the group that determines whether their child is a “child with a disability”
- the IEP Team of their child
- any group that makes educational placement decisions for their child...



Click 1: Screen is wiped clean, and a new subject is addressed as shown: The 3 different groups in which parents are members.

(continued on next page) 

Click 2

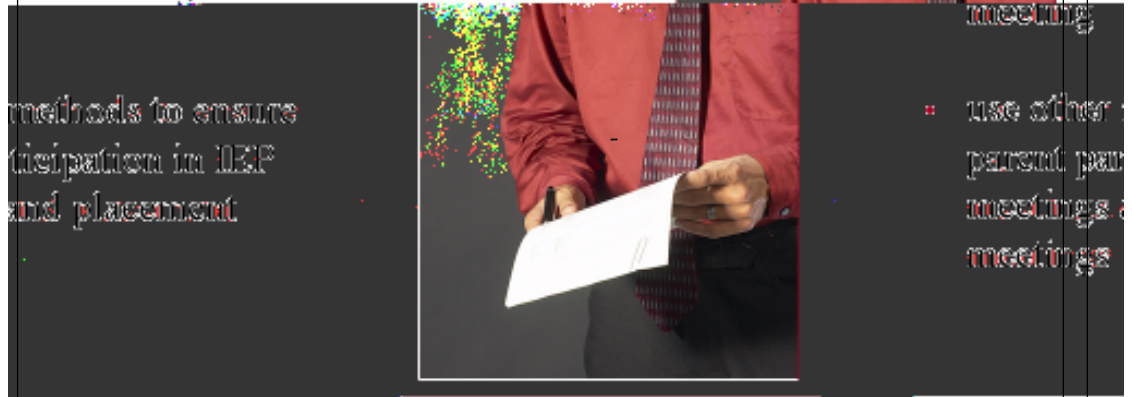
## Closer Look at Parent Participation

Public agencies must:

- provide parents with appropriate notice of a



Click 2:  
Screen again wipes clean, and a new subject is addressed: Two things public agencies must do to ensure parent participation in meetings.



CLICK to advance to next slide.

### Slide 6: Background and Discussion

2 Clicks



Slide 6 continues the discussion of "A Closer Look at Parent Participation" by examining specific regulatory provisions of IDEA governing parent participation. Again, this is a large topic that can be treated briefly or in great detail. Accordingly, we have provided a substantial amount of background discussion to support you in how detailed you wish your training session to be.

What are some of the specifics of IDEA's regulatory provisions? The box on the next page provides an at-a-glance look at the key provisions associated with both the parents' rights and public agency responsibilities mentioned on the slide. Below the box, a series of bullets pull highlights from the regulations for discussion purposes. The precise location of IDEA's regulatory provisions is included for each of these procedural safe-

guards, for clarity's sake and to help you direct participants, as appropriate, to IDEA regulation's exact language in **Handout E-1**. Additional information and discussion on selected procedural safeguards is provided after the bulleted list.

*continued on next page* →



## At a Glance: Parent Participation

### Parents' Rights

**In which meetings do parents have the right to participate?**

Parents have the right to participate in meetings related to the:

- evaluation, identification, and educational placement of their child; and
- provision of FAPE to their child, including IEP meetings.

**In which groups are parents members?**

Parents are members of:

- the group that determines whether their child is a child with a disability;
- the IEP Team for their child; and
- any group that makes educational placement decisions for their child.

### Public Agency Responsibilities

Public agencies must:

- provide parents with an appropriate notice of a meeting; and
- use other methods to ensure parent participation in IEP meetings and placement meetings.

### Public Agency Rights

Public agencies may:

- hold the IEP meeting and the meeting where the child's placement is determined without the parents in attendance if unable to convince the parents to attend and if efforts to secure their participation are documented.

All right, now let's look at the above more slowly, citing the applicable regulations of IDEA. You'll be interested to see that some regulations appear under both the parents' rights and the public agency's rights/responsibilities, which amply demonstrates how interconnected these two elements of IDEA's procedural safeguards can be.

### Parent Participation in Meetings/Right to Group Membership

- Parents have the right to participate in meetings related to the evaluation, identification, and educational placement of, and the provision of FAPE to, their child. [§300.501(b)]

- Parents are entitled to be members of any group that decides whether their child is a child with a disability. [§300.306(a)(1)]
- Parents are entitled to be members of the IEP Team that develops, reviews and revises the IEP for their child. [§300.321(a)(1)]
- If neither parent can participate in an IEP meeting, the school must use other methods to ensure parent participation,

including individual or conference calls. [§300.322(c)]

- Parents are members of any group that makes placement decisions for their child. [§§300.501(c) and 300.327]
- If neither parent can participate in a meeting related to the placement decision, the school must use other methods to ensure their participation, including individual or conference calls, or video conferencing. [§300.501(c)(3)]



## Public Agency Rights and Responsibilities for Parent Participation in Meetings and Membership in Groups

- The school must provide appropriate *notice* so that parents can participate in meetings related to the evaluation, identification, and educational placement of, and the provision of FAPE to, their child. [§300.501(b)(2)]
- If neither parent can participate in an IEP meeting, the school must use other methods to ensure parent participation, including individual or conference calls. [§300.322(c)]
- The eligibility meeting and the IEP Team meeting may be conducted without a parent in attendance if the school cannot convince the parents that they should attend and keeps a record of its attempts to arrange a mutually agreed on time and place, such as records of calls, copies of letters sent, records of visits and any results from these attempts. [§300.322(d)]
- The school must ensure that the placement decision is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options. [§300.116]
- If neither parent can participate in a meeting related to the placement decision,



the school must use other methods to ensure their participation, including individual or conference calls, or video conferencing. [§300.501(c)(3)]

- A placement decision can be made without the parents' involvement if the school is unable to obtain their participation and has a record of its attempt to ensure their involvement. [§300.501(c)(4)]
- When conducting IEP meetings, placement meetings, and meetings to carry out administrative matters under the procedural safeguards section (such as scheduling, exchange of witness lists, and status conferences), the parent and school may agree to use alternative means of meeting participation, such as video conferences and conference calls. [§300.328]

### Discussion

Parent participation in “meetings”—generally—falls under Procedural Safeguards, at §300.501(b), which states that parents must be afforded the opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child. As noted in the bulleted list above, the public agency must provide parents with notice consistent with §300.322(a)(1) and (b)(1) to ensure that parents of children with



disabilities have the opportunity to participate in the meetings. These notice provisions are discussed on the next slide, so you do not need to delve into them now, merely mention them as you review the specifics of public agency responsibilities.

The last bullet point, that the public agency must make available alternative means of parent participation, is an obligation that is found in the regulations both for Procedural Safeguards and for IEPs. The other methods that the public agency must use to ensure parent participation in placement meetings—which include individual and conference calls, or video conferencing [§300.501(c)(3)]—are similar to the reference in the IEP section for ensuring parent participation in IEP meetings by other methods including individual or conference telephone calls [§300.322(c)]. That provision is discussed in the *Meetings of the IEP Team* module. In addition, the regulations allow the parent and public agency to *agree* to use such use alternative means of meeting participation when conducting IEP meetings, placement meetings, and meetings to carry out administrative matters under the Procedural Safeguards section (such as scheduling, exchange of witness lists, and status conferences). [§300.328]

Although there are some parallels in the regulatory provisions allowing a placement decision to be made without parental participation and allowing an IEP meeting to be conducted without a parent in attendance, there is an important difference in the specific documentation a public agency must keep describing its attempts to involve the parents. An IEP Team meeting may be conducted without the parents if the public agency is unable to convince the parents to attend. However, the agency must keep a record of its attempts to arrange for the meeting at a mutually agreed on time and place—such as detailed records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to the parents and any responses received; and detailed records of visits made to the parent’s home or place of employment and the results of those visits. [§300.322] (The provisions at §300.322 are presented as part of **Handout E-1**.) In response to public comments suggesting that the regulatory provision at §300.501(c)(4) use the same language that is in the IEP provision to describe the record of attempts to ensure the parent’s involvement in an educational placement meeting, the Department rejected that proposal and observed that:

As a matter of practice, public agencies use a variety of methods to contact parents depending on the ways they find to be most efficient and effective for a particular situation. Public agencies take seriously their obligation to include parents in placement decisions and are in the

best position to determine the records they need to demonstrate that they have taken appropriate steps to include parents in placement decisions before holding a placement meeting without a parent in attendance. (71 Fed. Reg. 46689)

*What is not a “meeting”?* The regulations, at §300.501(b)(3), are careful to clarify what does *not* constitute a “meeting” covered by the procedural safeguard provisions of “notice” and opportunity for “parent participation.” This regulation is presented in the box on this page and also appears on **Handout E-1**. If you have time in the training and the provision would be pertinent to your audience,



make sure you mention the provision, which enumerates what is *not* to be considered a meeting of which parents must be notified and afforded the opportunity to attend.

### **Additional Information in Other Modules**

This slide has framed the discussion of parent participation in meetings and important decision-making groups as part of IDEA’s procedural safeguards. Parent participation is addressed in other modules in this curriculum as well, including:

- Parent participation and input into the evaluation of their child is addressed at §300.305 and in the modules on *Introduction to Evaluation* and *Initial Evaluation and Reevaluation*.
- Parent participation in their child’s eligibility decision is addressed at §300.306(a)(1) and in the module on *Initial Evaluation and Reevaluation*.
- Parent participation in IEP meetings is addressed specifically at §300.322, generally throughout the IEP provisions, and in the modules on *The IEP Team: Who’s a Member?* and *Meetings of the IEP Team*.

#### **What Is NOT a Meeting? §300.501(b)(3)**

(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. 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.

View 1

# Closer Look at Parent Participation

## Appropriate Notice of Meetings of Parents

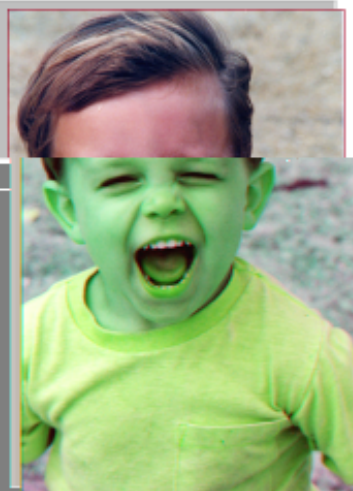


- Must be early enough to ensure parents have opportunity to attend

Slide loads with this view, including Bullet 1.

# Closer Look at Parent Participation

## Appropriate Notice of Meetings of Parents




- Must be early enough to ensure parents have opportunity to attend
- Must include the purpose, time, and location of the meeting
  - Must include who will attend meeting
  - Must tell parents they may invite individuals with knowledge or special expertise about the child
- Must include certain early childhood transition information, if appropriate.

Clicks 1-4

Clicks 1-4: Each click brings up one bullet and a new picture.

CLICK AGAIN to advance to next slide.

(discussion on next page) 



Slide 7 takes a detailed look at the appropriate notice of meetings that public agencies must provide parents. The regulations require that for each meeting discussed in the last slide (those with respect to the identification, evaluation, and educational placement of the child, and the provision of FAPE to the child):

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. [§300.501(b)(2)]

What notice would be consistent with §300.322(a)(1) and (b)(1)? Both provisions are on **Handout E-1**; we also present them in the box at the right, for convenience.

What do all those words mean? As the slide summarizes, the notice that the public agency must provide to parents regarding meetings:

- Must be early enough to ensure parents have an opportunity to attend;
- Must include the purpose, time, and location of the meeting;
- Must include who will attend the meeting;
- Must tell parents that they may invite individuals with knowledge or special expertise about the child; and

- Must include certain early childhood transition information, if appropriate.

With respect to “early childhood transition information,” IDEA’s regulations specify that, if a child is transitioning from Part C to Part B of the Act, the notice must tell the parents they may request that the Part C



service coordinator or other representatives of the Part C system be invited to the initial IEP meeting to assist with the smooth transition of the child [§300.321(f)]. This area is examined in the module on *Meetings of the IEP Team*. You may wish to refer to the background discussion there for more information on the transition and notice requirements.

### IDEA’s Required Notice Provisions for Meetings

#### §300.322(a)(1):

(a) *Public agency responsibility—general.* Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including—

(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; ...

#### §300.322(b)(1):

(b) *Information provided to parents.* (1) The notice required under paragraph (a)(1) of this section must—

(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and

(ii) Inform the parents of the provisions in §300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and §300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).



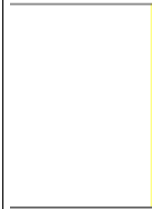
## Written Notices

- Prior written notice

- Procedural

is notice

safeguards



Slide presents completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 8 introduces Part 2 of this module, focused on the procedural safeguard of written notices. Two such safeguards will be discussed:

- Prior written notice, and
- Procedural safeguards notice.

Depending on the time you have available for training, the needs of your audience, and the relative emphasis you want to put on introducing these two types of notice, you may wish to re-orient the audience to the new topics with a round of questions to the group, intended to activate their prior knowledge and have them identify how the topics are relevant to them. For example, ask for a show of hands or vocal answers for such questions as:

- How many of you, as parents, have ever received prior written notice?
- A procedural safeguards notice?
- How many of you have *provided* parents with prior written notice?
- How about the procedural safeguards notice?
- If you had to describe prior written notice in two words or less, what would those words be?
- What one characteristic comes to mind when you think about the procedural safeguards notice?

# Written Notices

A model form for...

## PRIOR WRITTEN NOTICE UNDER PART B of IDEA

- Description of the action that the school district proposes or refuses to take:

- Explanation of why the school district is proposing or refusing to take that action:

Slide presents completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 9 begins the discussion of prior written notice by framing presentation of information around the model form for prior written notice that the 2004 Amendments to IDEA required the Secretary of Education to develop and widely disseminate. The next three slides will use the same frame, so you'll want to explain where this model form came from and why it was developed. Refer participants to **Handout E-3**, which provides the model form.



**Handout E-2**, for contrast, presents the actual text of the regulations regarding prior written notice.

### The Model Prior Written Notice Form

Here's the requirement that the 2004 reauthorization of the IDEA included:

(e) MODEL FORMS.— Not later than the date that the Secretary publishes final regulations under this title, to implement amendments made by the Individuals with Disabilities Education Improvement Act of 2004, the Secretary shall publish and disseminate widely to States, local educational agencies, and parent and community training and information centers—

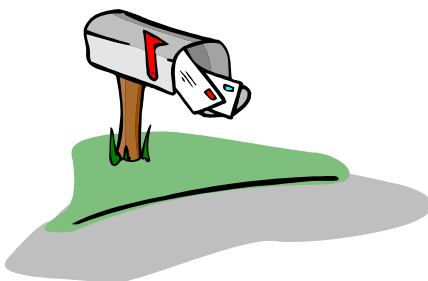
- (1) a model IEP form;

- (2) a model individualized family service plan (IFSP) form;

- (3) a model form of the notice of procedural safeguards described in section 615(d); and

- (4) a model form of the prior written notice described in subsections (b)(3) and (c)(1) of section 615 that is consistent with the requirements of this part and is sufficient to meet such requirements. [Section 617(e) of Public Law 108-446, codified at 20 U.S.C. 1417(e)].

Consistent with this provision, the Department developed the model forms to assist States and school districts in understanding the content that Part B



requires for each. As the introduction to the model forms states:

The content of each of these forms is based upon the requirements set forth in the Part B regulations. Although States must ensure that school districts include all of the content that Part B requires for each of the documents that they provide to parents, States are not required to use the format or specific language reflected in these forms. States may choose to add additional content to their forms, so long as any additional content is not inconsistent with Part B requirements.<sup>1</sup>

Interestingly, while the forms closely track the language in the regulations, the model prior written notice and model procedural safeguards notice are intended to meet the requirement that they be written in language understandable to the general public [§§300.503(c) and 300.504(d)]. For example, the model forms use “school district” or “district” in place of “public agency” and “local educational agency.” In addition, the procedural safeguards notice uses “you” in place of “parent” (or the eligible student, where

parental rights have been transferred from the parent to the student at the age of majority).

### What is Prior Written Notice?

*Prior written notice* refers to the public agency’s obligation to inform parents a reasonable time before it takes specific actions, or refuses to take specific actions. The exact language of IDEA is presented in **Handout E-2**, and summarized in the chart on the next page, which also notes the precise location of IDEA’s provisions for each to help you direct participants, as appropriate, to IDEA’s exact language in the handout.

### Providing Prior Written Notice via Email

Moving into the technology age, IDEA and its regulations bring public agencies a new option for providing notices to parents where both parties agree to its use: email! You’ll find this provision at §300.503, included in the box on this page, and on **Handout E-2**. Parents may elect to receive more than just the prior written notice via email (if the public agency makes the option available). Subject to the availability of the option, parents may also agree to receive via email:

### §300.505 Electronic mail.

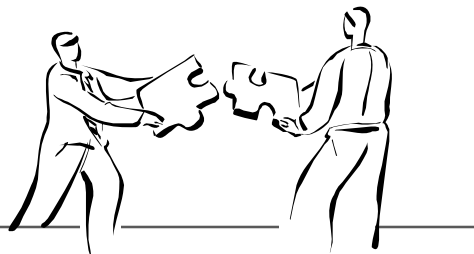
A parent of a child with a disability may elect to receive notices required by §§300.503, 300.504, and 300.508 by an electronic mail communication, if the public agency makes that option available.



- the procedural safeguards notice (at §300.504), and
- the notification of a due process complaint (at §300.508).

Nothing in the Act or regulations requires that a parent’s election of this option be in writing. As the Department observed:

It would be an unnecessary paperwork burden to require a parent who elects to receive notices by electronic mail to do so in writing, particularly when there are other methods available to document such a request, for example, by the LEA making a notation of the parent’s verbal request. We believe public agencies should have the flexibility to determine whether and how to document that a parent elects to receive these notices by electronic mail. (71 Fed. Reg. at 46694)



### Trainer’s Note

Discussion of these provisions is broken up across several slides; relevant background information for trainers will be presented with the appropriate slide.

## Discussion of the Slide

Indicate that the model form on the slide starts off with “description of the action the school district proposes or refuses to take” and provides a box where the action would be described. To what actions does prior written notice apply? According to the regulations (presented on Handout E-2), the public agency

must provide parents with prior written notice whenever it:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of 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. [§300.503(a)]

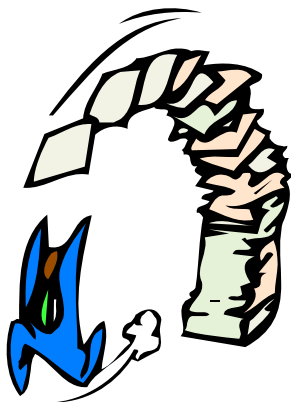
The notice must contain specific content to ensure that parents are fully informed of the proposal



### §300.503 Prior notice by the public agency; content of notice

- Written notice must be given to the parents of a child with a disability a reasonable time before the school:
  - (a) proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or
  - (b) refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.
- A parent may elect to receive notices by email communication, if the school makes that option available.

[§300.503(a)]



- Written notice must include:
  - (a) a description of the action proposed or refused by the school;
  - (b) an explanation of why the school proposes or refuses to take the action;
  - (c) a description of each evaluation procedure, assessment, record, or report the school used as a basis for their decision;
  - (d) a statement that the parents of a child with a disability have protection under the procedural safeguards and, how the parents can obtain a copy of them;
  - (e) sources for parents to contact to obtain assistance in understanding these provisions;
  - (f) a description of other options that the IEP Team considered and the reasons why those options were rejected; and
  - (g) a description of other factors relevant to the school's proposal or refusal.

[§300.503(b)]

- Written notice must be:
  - (a) written in language understandable to the general public; and
  - (b) 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.
- If the native language or other mode of communication of the parent is not a written language, the school must take steps to ensure—
  - (a) that the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
  - (b) that the parent understands the content of the notice; and
  - (c) that there is written evidence that these requirements have been met.

[§300.503(c)]

or refusal. This will be discussed in upcoming slides. For now, focus on the fact that before the agency may take action or refuse to take action with regard to identifying a child as a child with a disability, evaluating the child, determining or changing the child's placement, or refusing to do so, it must provide the parent with proper notice. Nor can the agency change the provision of FAPE (free appropriate public education) to the child, or start providing FAPE, or refuse to provide FAPE or refuse to change the provision of FAPE without providing written notice to the parents a reasonable time before it actually does so. This notification is intended to give parents a full explanation and the opportunity to agree or disagree with what the public agency is proposing or refusing to do. If needed, it also provides parents the opportunity to use the law's other procedural safeguards (such as mediation or due process) to resolve any disputes about the action that the agency is proposing (or refusing) to take.

Take a moment to go through some examples, emphasizing both sides of the action—something a district might *propose* to do, or something it might *refuse* to do. Then focus on the specific action—identification of the child, evaluation, educational placement, or the provision of FAPE to the child. Have

participants generate various instances where prior written notice would have to be provided, starting the list yourself if you need to prompt or frame the discussion. Write these on a flipchart or have one of the participants take notes on the discussion. Prompts might include:

- The school district wants to evaluate a child to see if he is a “child with a disability.” The district is seeking the parent’s consent to do so. Does the district need to provide prior written notice? (Yes, because the district is proposing to *initiate* a child’s evaluation.)
- The parents have asked the district to evaluate their child to see if she is a “child with a disability.” District personnel do not agree with the parents and decide not to conduct the evaluation. Does the district need to provide prior written notice to the parents? (Yes, because the district is *refusing* to initiate the child’s evaluation.)
- The child isn’t doing well in two of his general education classes despite the provision of the supplementary aids and services and program modifications and supports that are listed on his IEP. The district decides to place the child in a special education resource

room instead. Is prior written notice to the parents necessary? (Yes, since the district is proposing to change the child’s placement and the provision of FAPE.)

- The district sees that the child has met her speech-language goals in the IEP—in fact, she has made so much progress that the district substantially reduces the amount of speech-language pathology services provided to the child. Would the district be in violation of IDEA’s notice requirements if it did so before it gave written notice to the parents? (Yes, because the district is proposing to alter the provision of FAPE to the child.)

Use the two boxes on the model form (**Handout E-3**) to go beyond just “yes” or “no” answers. For example, the first box requires a description of the proposed or refused action. The second box requires an explanation for that action. So, how might these two boxes be filled out for each of the examples above?

Indicate that more information must be filled in on this model form, and move on to the next slide to see what that information might be.



## Reference

<sup>1</sup> U.S. Department of Education. (2006). *Guidance on required content of forms under Part B of the IDEA*. Retrieved October 4, 2006, from [www.ed.gov/policy/speced/guid/idea/modelform-intro.pdf](http://www.ed.gov/policy/speced/guid/idea/modelform-intro.pdf)

View 1

## Written Notices

More of the model form...

- Description of each evaluation procedure, assessment, record, or report school district used in deciding to propose or refuse the action:

Slide loads this element of the model form for prior written notice.

## Written Notices

More of the model form...

- Description of each evaluation procedure, assessment, record, or report school district used in deciding to propose or refuse the action:

- Description of any other choices IEP Team considered & the reason why these choices were rejected:

Click 1

Click 1:  
This next element of the prior written notice appears.

(continued on next page) 

## Written Notices

### More of the model form...

- Description of each evaluation procedure, assessment, record, or report school district used in deciding to propose or refuse the action:

- Description of any other choices IEP Team considered & the reason why these choices were rejected:

- Description of other reasons why school district proposed or refused the action:

Click 2

Click 2:  
And now this  
element appears.

CLICK AGAIN to advance to next slide.

### Slide 10: Background and Discussion

5 Clicks

Slide 10 continues looking at the model form (**Handout E-3**) as a vehicle for examining IDEA's requirements for Prior Written Notice. Here are three more elements that the notice must contain to provide the parents with details about the action being proposed or refused by the public agency:

- Description of each evaluation procedures, assessment, record, or report the school district used as a basis or relied upon for the proposed or refused action. [§300.503(b)(3)]
- Description of any other options or choices that the IEP Team considered and the reasons why those choices or

options were rejected. [§300.503(b)(6)]

- Description of other relevant factors or reasons why the public agency proposed or refused the action. [§300.503(b)(7)]

Clearly, providing prior written notice is an involved and detailed affair, requiring real specifics and thorough disclosure to support the action in question. The model form rearranges some of the provisions in IDEA and reorders them to be in a more natural sequence of information, grouping together similar items.



## Written Notices

### More of the model form...

- Resources for the parents to contact for help in understanding Part B of the IDEA:

- If this notice is not an initial referral for evaluation, how the parent can obtain a copy of a description of the procedural safeguards:

Slide presents completely, showing these two elements of the prior written notice. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 11 presents the last two elements in the Department's model form for prior written notice. These require districts to specify:

- Resources that parents can contact for help in understanding Part B of IDEA; and
- How the parent can obtain a description of IDEA's procedural safeguards (this information doesn't need to be provided if the notice being provided is not for an initial referral for evaluation).

Take a moment with participants to discuss what resources parents might contact for help in understanding IDEA. We've listed a few in the box on the next page, to share with the audience as you deem appropriate. The Department (2006)

concluded that having a list of such resources on the State's Web site may be one way to provide parents with easy access to assistance in understanding IDEA but notes that "[e]ach State is in the best position to determine whether including this information on its Web site would be helpful to parents." (71 Fed. Reg. 46692)





## Resources for Parents

### **Parent Training and Information (PTI) Centers and Community Parent Resource Centers (CPRCs)**

*What's a PTI and a CPRC?*

<http://www.nichcy.org/pubs/basicpar/bp3txt.htm>

*Where do I find my PTI or CPRC?*

Listed under NICHCY's State Resource Sheets, under "Organizations Especially for Parents."

<http://www.nichcy.org/states.htm>

### **Disability Organizations in Your State**

*What disability are you interested in?*

Search for national disability organizations addressing your child's disability.

<http://www.nichcy.org/search.htm>

*Is there a State-level chapter of the group?*

Visit the group online to see, or look under "Disability-Specific Organizations" on NICHCY's State Resource Sheets.

<http://www.nichcy.org/states.htm>

### **Other Resources Listed on NICHCY's State Resource Sheets**

<http://www.nichcy.org/states.htm>

- State Department of Special Education (many offer parent guides to special education online)
- Client Assistance Programs
- Protections and Advocacy agencies
- State-level disability networks





**View 1**

Slide loads completely. No clicks are needed except to advance to the next slide.


Slide automatically goes through several screen changes, each time presenting a different version of this stop sign, in a different language, until it ends up at this closing view...

**Auto-Load**



Here's the final view, the stop sign in English.

CLICK AGAIN to advance to next slide.

(discussion on next page) 

## Slide 12: Background and Discussion

### Auto-Loads



This slide is intended to set up a context for the next slide and IDEA requirement—that prior written notice (and other notices) must be provided in the parent’s native language or mode of communication, unless it is clearly not feasible to do so.

By running through several pictures of stop signs from around the world, the slide shows the multilingual rendering of the same message: STOP. The only real clue as to what each of the signs might mean is their recognizable shape and color. We probably would know to stop at any of these signs, even if we didn’t know the language on the sign.

A possibility of understanding most other messages written in a language we didn’t understand wouldn’t be very high, however, especially a message as complicated and detailed as a prior written notice. This is the reality faced by parents who have a limited proficiency in English—which is why the next slide’s content is so important.

You might engage the audience in a guessing game about this slide’s meaning and intent. What do they think is going on here? Did they immediately recognize, by the shape and color, that the pictures all showed a stop sign? How many languages did they recognize? What’s the point of this slide, and where is it leading?

## Prior Written Notice



### Written notice must be:

- written in language understandable to general public
- provided in native language of parent or other mode of communication used by parent\*

\* Unless it is clearly not feasible to do so

Slide presents completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Building on the context established in the last slide, Slide 13 shifts the focus from what must be included in the prior written notice a district provides to parents to *how* the notice is expressed or communicated to ensure that parents understand its content or the required information. The IDEA regulations require both elements listed on the slide, that the notice must be:

- Written in language that the general public can understand; and
- Provided in the parent's native language or mode of communication, unless it is clearly not feasible to do so.

The exact regulatory text is provided for your convenience in the box on the next page. It is also important to note that these same provisions are incorporated into the requirements for the procedural safeguards notice. [§300.504(d)]. The procedural safeguards notice is discussed further below, but the discussion references back to these same requirements.

The first two of these provisions are noted on the slide and are consistent with other IDEA provisions regarding the use of native language or mode of communication to ensure that messages are understood. (IDEA's definition of "native language" is found at §300.29 and is also presented in the box on the next page.) Other notable

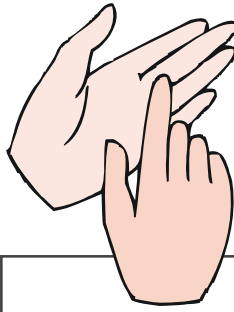
places where the regulations reference native language are:

- A child must be evaluated in his or her native language or mode of communication. [§300.306(c)(1)(ii)]
- Consent is defined so that parents are informed, in their native language, of all information relevant to the activity for which consent is being requested. [§300.9]
- Public agencies must provide parents with an interpreter if they are deaf or have limited English proficiency. [§300.322(e)]

The modules on *Introduction to Evaluation* and *Meetings of the IEP Team* discuss these, further.

## And If The Parent's Language Is Not a Written One?

Not mentioned on the slide but potentially very important to mention to your audience (referring them to **Handout E-2**) is what a public agency must do to provide understandable prior written notice when the parent's language is not a written one. IDEA requires that the public agency takes steps to ensure that the notice is "translated orally or by other means" to the parents in their native language, with the underlying requirement of ensuring that the parent understands the content. Furthermore, there must be written evidence that the public agency has met these two requirements at §300.503(c)(2)(i) and (ii). The Department noted that these rights "are essential to ensure that public agencies provide all parents the requisite prior written notice in a meaningful and understandable manner" (71 Fed. Reg. 46692).



### §300.503(c):

#### Making Notice Understandable to Parents

(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.

---

### §300.29 Native language.

(a) *Native language*, when used with respect to an individual who is limited English proficient, means the following:

(1) The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in paragraph (a)(2) of this section.

(2) In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

(b) For an individual with deafness or blindness, or for an individual with no written language, the mode of communication is that normally used by the individual (such as sign language, Braille, or oral communication).



View 1

Simon Says

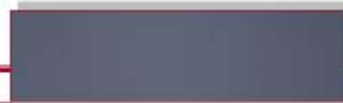


Stand up.

Slide loads with this view. It also advances automatically (through the scenes shown below), so no clicks are needed except to advance to the next slide.

Auto-Load

Simon Says



Are you UP?



Stand up.

Picture automatically advances, and "Are you up?" appears.

(continued on next page)



**Simon Says**

Are you UP?

Good, good....

Stand up.

**Auto-Load**

Picture automatically advances, and "Good, good..." appears.

CLICK to advance to next slide.

### Slide 14: Background and Discussion

Slide 14 is all about—taking a break! But taking a *meaningful* break, a break that stimulates the mind and muscles, stirs the blood, and reactivates attention.

Tell your audience that in a moment the “procedural safeguards notice” is going under the microscope, but not just yet. First everyone has to clear their mind. Have the audience get to their feet. Are they up? Good, good...

When you see that the audience is really up on their feet, **CLICK** to advance to the next slide, which will guide them through a few movements to get the kinds out.

#### Using the Next Two Slide to Guide the Break

The upcoming two slides are designed to guide the audience through a few simple stretches and other relaxation techniques.

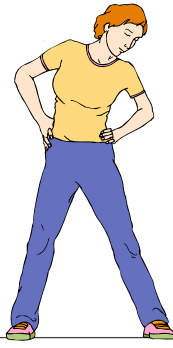
Devote at least 2 minutes to this break. Nothing potentially vigorous enough to strain muscles or cause accidents, but movement nonetheless, accompanied by deep breaths. Depending on the amount of space available and the dignity and capabilities of the audience, you might have participants:

- raise their hands above their heads, reaching for the sky (or ceiling);

**Auto-Load**

- lower their arms, place their hands on their hips;
- twist gently left, twist right;
- let their arms hang loose;
- touch their left shoulder with their right hand, reverse;
- lift one shoulder toward the ear, then the other;
- roll their shoulders, then their head, loosening up those neck muscles;
- reach for the sky again...

Interesting research exists to suggest the benefits that physical movement can bring to learning—in particular, a break that involves physical movement refreshes the brain, gets the blood flowing, loosens the kinks that develop from sitting in class or training, and releases stress even as it reactivates attention.



---

### **Note to Trainer**

The next two slides are designed to automatically guide participants, in an easy and non-injury-prone way, to stretch, breathe, and unwind. You won't have to click to go from Slide 15 to Slide 16; it'll just automatically happen.

When the screen shows the final picture—that of a flying eagle and a flying little boy (yes!)—this mini-break is done. You'll have to click to advance after that. If you'd like to give the audience a longer break, don't click until they come back at whatever time you've designed!



Simon Says

1



Stretch.

All of the following images auto-load. Have the audience watch the screen, if they'd like, which will give them some ideas for gentle relaxation and unwinding.

Slide 15 auto-advances to Slide 16 (shown on the next page), so just let the slide show run until you reach the last image shown at the bottom of the next page.

Simon Says

2



Breathe.

Simon Says

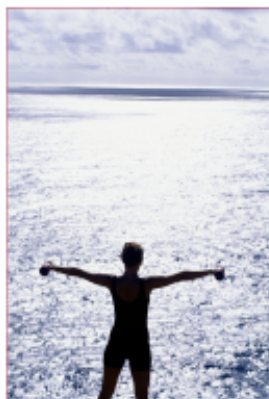
4



None of this, please.

Simon Says

3




Unwind.

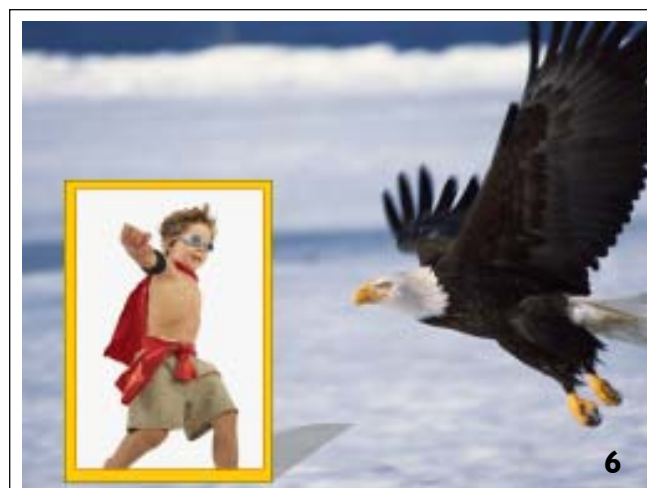
Simon Says

5




Just get the knots out

(continued on next page) 



If you'd like to give the audience a longer break, don't click until they come back!

CLICK AGAIN to advance to next slide.

(discussion on next page) 



**Back in the saddle.**

Slide presents completely. No clicks are necessary except to advance to the next slide.

**CLICK** to advance to next slide.

Slide 17 signals that break time is over, and it's time to get back in the training saddle and ride. You can display this slide as participants get back in their seats, and then call the session back to order, clicking to advance to the next slide and take up a new procedural safeguards topic.

**View 1**

# Procedural Safeguards Notice



Is a comprehensive written explanation of procedural safeguards

Topic: Procedural Safeguards notice.

Slide loads with this view.

# Procedural Safeguards Notice



Is a comprehensive written explanation of procedural safeguards

Must be provided to parents once per school year and with other specific actions

**Click 1**

Click 1: This 2nd paragraph appears.

(continued on next page) 

# Procedural Safeguards Notice

Click 2



Is a comprehensive written explanation of procedural safeguards

Must be provided to parents once per school year and with other specific actions

Must be written in understandable language

Click 2: And 3rd paragraph appears.

CLICK to advance to next slide.

## Slide 18: Background and Discussion

2 Clicks

Slide 18 is the first of many slides that look closely at the procedural safeguards notice, which is a comprehensive written explanation of important procedural safeguards provided to parents and their children under the IDEA and its regulations. The relevant regulatory provisions are presented in **Handout E-4** and summarized in the chart on the next page, which includes references to the subparts of the regulations to help you direct participants, as appropriate, to the exact language in the handout.

### What's New and Different in the Notice



Quite a bit has changed in the procedural safeguards notice required by IDEA and its regulations. We identify and discuss those differences below and then refer back to them as upcoming slides deal with specific content or changes. For

clarity, all of the changes will be discussed here, in one place, as foundations for trainers, not because they should all be mentioned on this first slide!



*When the procedural safeguards notice must be provided. IDEA and its regulations modify and potentially reduce the*

### Trainer Note

Discussion of these provisions is broken up across several slides, with the bulk of the background information provided here, in the first slide; other relevant background information for trainers will be presented with the appropriate slide.

circumstances under which the public agency must provide parents with the procedural safeguards notice. Under the prior law and regulations, the notice had to be provided, at a minimum, upon:

- Initial referral for an evaluation;
- Each notification of an IEP meeting;

- Each reevaluation of the child; and
- Receipt of each request for a due process hearing.

Now, under IDEA and its regulations, the notice must be provided only once a school year except for the following circumstances:

- Upon an initial referral or parent request for an evaluation;
- Upon receipt of the parent's first due process hearing complaint in a school year;



### **§300.504 Procedural safeguards notice**

- A copy of the procedural safeguards notice must be provided to parents once per school year.
- A copy also must be given:
  - (1) when a parent requests it;
  - (2) upon initial referral or parent request for child's evaluation,
  - (3) when a parent files a State complaint or due process complaint, and
  - (4) in the event of disciplinary actions. [§300.504(a)]
- A school may place a current copy of the procedural safeguards notice on its Internet Web site if it has one. [§300.504(b)]
- The notice must be in understandable language in accordance with the requirements outlined for *prior written notice*. [§300.504(d)]
- The procedural safeguards notice must include a full explanation of all safeguards in the relevant IDEA regulations that cover:
  - (1) Independent educational evaluations;
  - (2) Prior written notice;
  - (3) Parental consent;
  - (4) Access to education records;
  - (5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including the timeline for filing a complaint, the opportunity to resolve the complaint, and the differences between the scope of the two procedures such as their jurisdiction or authority, issues covered, filing and decisional timelines, and relevant procedures;
  - (6) The availability of mediation;
  - (7) The child's placement during the pendency of any due process complaint;
  - (8) Procedures for students who are subject to placement in an interim alternative educational setting;
  - (9) Requirements for unilateral placement by parents of children in private schools at public expense;
  - (10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;
  - (11) State-level appeals (if applicable in the State);
  - (12) Civil actions, including the time period in which to file those actions; and
  - (13) Attorneys' fees. [§300.504(c)]

- Upon receipt of the parent's first State complaint in a school year;
- As required by the disciplinary procedures in the regulations; and
- When requested by a parent.

*Change: Notice at IEP Team meeting.*



The biggest change is that the procedural safeguards notice is *no longer required* every time parents are notified about an IEP Team meeting but only once a school year. This change is based upon the revisions to the statute. As the Senate Report No. 108-185 explains:

While the procedural safeguards notice is critical for notifying parents and children with disabilities of their rights under the law, parents, as well as district personnel, have often criticized the frequent distribution of this notice within a year. Many view this as an example of either federal excess or as contributing to the uncomfortable feeling of an adversarial legal process as opposed to an educational practice. If a school holds an annual IEP meeting, conducts a reevaluation of a child, and then needs a follow-up IEP meeting in the course of a school year, the school must provide the parent a procedural safeguards notice at least three different times during that year. This process can create additional expense to print and mail the extensive document, and may even create a sense of mistrust on the part of parents. The committee believes that it does not make sense to

### Procedural Safeguards Notice upon Disciplinary Change of Placement: §300.530(h)

(h) *Notification.* On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

require the issuance of a lengthy statement of procedural safeguards multiple times during a single school year. Therefore, Section 615(d)(1) has been amended to require that parents receive the procedural safeguards generally only once a year. Schools would most likely send this notice to parents either at the beginning of the school year, or at the annual IEP meeting for the child. [S. Rep. No. 108-185, at 36 (2003)]

*Change: Notification at first due process complaint and State complaint.*



Another revised aspect worth commenting upon is that the procedural safeguards notice no longer must be provided upon *every* filing of a due process hearing complaint—only upon the *first* such filing in a school year. Similar provisions apply to when a State complaint is filed—only the first one in a school year will trigger the requirement to provide parents with a copy of the procedural safeguards notice. These are necessary:

...because parents particularly need a clear understanding of their rights when they embark on these processes and might

not have available copies of the procedural safeguards notice provided earlier in the year, or the notice they previously received may be outdated. (71 Fed. Reg. 46692)

*Added: Notification consistent with disciplinary procedures.* In keeping with changes in the statute's language, the final regulations, at §300.504(a)(3), specify that the procedural safeguards notice must be provided to parents "[i]n accordance with the discipline procedures in §300.530(h)." The latter provision requires that the notice be provided "not later than the date on which the decision to take disciplinary action is made." (71 Fed. Reg. 466692) The exact text of §300.530(h) is presented in the box above, for your convenience.

*Added: Procedural safeguards notice available online.* IDEA and



its regulations incorporate a new provision that touches upon the convenience factor that the internet offers many public agencies and parents. The regulation, at §300.504(b), reads:

(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.

You will note, by the use of the word “*may*,” that posting the notice online is not required of public agencies. The question naturally arises, however, as to whether agencies may discharge their obligation to provide the procedural safeguard notice at any given time by merely referring parents to the version on their Web site. From the Department’s perspective, the answer to this is *no*:

The public agency would not meet its obligation in §300.504(a) by simply directing a parent to the Web site. Rather, a public agency must still offer parents a printed copy of the procedural safeguards notice. If, however, a parent declines the offered printed copy of the notice and indicates a clear preference to obtain the notice electronically on their own from the agency’s Web site, it would be reasonable for the public agency to document that it offered a printed copy of the notice that the parent declined. Posting the procedural safeguards notice on a public agency’s Web site is clearly optional and for the convenience of the public and does not replace the distribution requirements in the Act. (71 Fed. Reg. 46693)

*Changes to the content of the procedural safeguards notice.*



In general, the broad topics that must be included in the procedural safeguards notice have not changed significantly. However, because many of the underlying statutory and regulatory requirements for these broad topics have changed under the 2004 Amendments to IDEA, the actual content of explanation of procedural safeguards will be significantly different from the explanation in notices under the prior requirements in some areas. In addition, for one topic, the filing of complaints, IDEA provides more specifics on the content of the procedural safeguards notice. The statute, at 20 U.S.C. 1415(d)(2)(E), requires that the notice include an explanation regarding “the opportunity to present and resolve complaints, including—the time period in which to make a complaint [and] the opportunity for the agency to resolve the complaint...”

To implement this change in the statute, the corresponding regulation at §300.504(c)(5) requires:

...an explanation of the State complaint procedures in §§300.151 through 300.153 and the due process complaint procedures in §300.507 in the procedural safeguards notice to assist parents in understanding the differences between these procedures. (71 Fed. Reg. 46694)

The revised provision is presented in the box below and appears on **Handout E-4**.

### **Implications for Public Agencies**

Public agencies must respond to the changes that IDEA 2004



#### **Procedural Safeguards Notice and State Complaint Procedures: §300.504(c)(5)**

(c) *Contents.* The procedural safeguards notice must include a full explanation of all of the procedural safeguards available...relating to—

(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including—

(i) The time period in which to file a complaint;

(ii) The opportunity for the agency to resolve the complaint; and

(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures...



and its regulation have made to procedural safeguards notice provisions by making changes in the notices that *they* provide to parents and in the procedures for providing such notice.

In addition to some of the new provisions described above, there is one that hasn't been mentioned, although it will come up later in this module: the new requirement for a "Resolution Meeting." Since resolution meetings are now part of due process hearing procedures, the explanation that public agencies offer in the procedural safeguards notice about due process hearing procedures "would necessarily include information about how the resolution meeting works and the responsibilities of the parties in the resolution meeting" (71 Fed. Reg. 46694).

### Model Forms: The Procedural Safeguards Notice

As with prior written notice (discussed earlier in this module), the 2004 Amendments to IDEA also required that the Secretary of Education develop and widely disseminate a model procedural safeguards notice, which is currently available online in Word and in PDF formats, at: <http://idea.ed.gov/static/modelForms>

This model form is 47 pages long, true testimony to how comprehensive the procedural safeguards notice is intended to be. Because it is so long, however, we have not included it as a handout in this curriculum. If you would like to share this with your audience, you may download it from the address just



given, make copies, and include the model form in any participant packet made available, or you can provide the audience with the direct link to download the model form themselves. As with the model forms for prior written notice and the IEP, States are not required to use the format or the specific language provided in the model for the procedural safeguards notice. The model form is provided as a guide to States, who may choose to add additional content to their own forms, provided that the additional content is consistent with IDEA's Part B requirements.

### Discussion of the Slide

*What! We haven't even gotten to discussing the slide yet?*

Well, we're finally there. But it's taken so long to get here, we feel compelled to remind you that, while so much background was provided here, in one place, it was intended to be shared with participants as you move through the slides and the various points above are relevant to a slide's content.

OK, do you remember what the present slide actually spotlighted? Let's review the three points on the slide that begin discussion of the procedural safeguards notice:

- Is a comprehensive written explanation of procedural safeguards.
- Must be provided to parents

once per school year and with other specific actions.

- Must be written in understandable language.

*Comprehensive explanation.* The fact that the procedural safeguards notice is required to provide parents with a comprehensive written explanation of important procedural safeguards under the Act and its regulations speaks directly to its intention and its worth: Ensuring that parents know their specific rights and recourses under the law and understand those rights and recourses. The notice must contain a full explanation of all the topics that are specified under "Contents" at §300.504(c) and will be discussed in upcoming slides. For now, what's important to relate to the audience is the intent to provide a full explanation of these topics in the notice—which may help explain why the model procedural safeguards notice described above is 47 pages in length.

*Yearly provision of the notice and with other specific actions.* As described above, the procedural safeguards notice must be given to parents once per school year. This represents a change from prior law that is intended to reduce burden on public agencies. There are specific other times when the procedural safeguards notice must be provided to parents, an important fact for parents and public agencies to know. The next slide takes a closer look at exactly *when* this notice must be provided, so you don't have to go into that here. For now, just indicate to participants that, at a minimum, parents must receive the notice once every school year



and that there *are* other times that the notice must be provided, which they will soon hear all about.

Do you remember when we discussed how the prior written notice must be expressed or communicated so that parents understand its content? As we mentioned in that discussion, the IDEA regulations also require this for the procedural safeguards notice. That means that both the prior written notice and the procedural safeguards notice

need to be in understandable language. To review, the two elements listed on Slide 10, that also apply here, require that the notice be:

- Written in language understandable to the general public; and
- 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.

To close the loop, you should emphasize that the requirements in §300.503(c) apply to both types of notice. [§300.504(d)]

### Space for Notes

---

## Procedural Safeguards Notice

### When?



Once a school year

Upon initial referral or parent request for evaluation, including reevaluation

Upon receipt of first State complaint in a school year

View 1

Slide loads with this view.

## Procedural Safeguards Notice

### When?



Once a school year

Upon initial referral or parent request for evaluation, including reevaluation

Upon receipt of first State complaint in a school year

Upon receipt of first due process

request for a special education evaluation

On date of decision to make disciplinary change of placement for violation of code of student conduct

When a copy is requested by a parent

Click 1

Click 1: These 3 items load.

CLICK AGAIN to advance to next slide.

(discussion on next page)

## Slide 19: Background and Discussion

I Click



Slide 19 lists the times when the procedural safeguards notice must be provided to parents under IDEA and its regulations. Go through each of these briefly, referring the audience to **Hand-out E-4** and bringing in any of the background information provided under Slide 18, as you deem appropriate. It would be extremely relevant as well to point out crucial changes in the timing of the notice, especially that it *no longer has to be provided*:

- in advance of every IEP Team meeting (and that the procedural safeguards notice is different from the prior written notice that must be sent to parents early enough to ensure they have the opportunity to attend); or
- upon receipt of subsequent requests for a due process hearing, or due process hearing complaints, after the first in a school year.



Space for Notes

Slide loads with this view.

View 1

## Procedural Safeguards Notice

### Must explain:

- ✓ Independent educational evaluations (IEE)
- ✓ Prior written notice



Clicks 1-2

## Procedural Safeguards Notice

### Must explain:

- ✓ Independent educational evaluations (IEE)
- ✓ Prior written notice
- ✓ Parental consent
- ✓ Access to education records
- ✓ Availability of mediation
- ✓ Child's placement during pendency of any due process hearing

Click 1:  
These 2 bullets appear.

Click 2:  
And now these last 2 bullets appear.



(continued on next page) 

**Procedural Safeguards Notice**

**Must explain:**

- ✓ Independent educational evaluations (IEE)
- ✓ Prior written notice
- ✓ Parental consent
- ✓ Access to education records
- ✓ Availability of mediation
- ✓ Child's placement during pendency of any due process hearing

Opportunity to present and resolve complaints through due process

complaint procedure

And there's more...

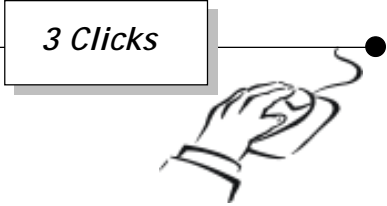
more... →

Click 3

Click 3: Picture disappears and up comes this last item, the arrow, and "there's more..."

CLICK to advance to next slide.

**Slide 20: Background and Discussion**



As has been said, the procedural safeguards notice is intended to provide parents and their children with a comprehensive written explanation of important procedural safeguards under the IDEA and its regulations. Considering how many provisions are included in the notice, it's not surprising that this slide only *begins* the list of what needs to be explained.

**Discussing the Slide**

Here are some suggestions for discussing this slide:

*And there's more.* Indicate to your audience that this is the first part of the list of procedural safeguards that the notice must explain. More is coming.

IEE. Many in the audience may know about an IEE, but you can't assume that everyone does, so a summarizing statement about the IEE would be important to offer. Say something like:

*Independent educational evaluation...this procedural safeguard gives parents the right to have an evaluation of their child conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question. This is a right that parents might exercise if they don't agree with the evaluation results obtained by the school. Part of the right includes the right to ask the school (public agency) to pay for the cost of the independent educational*

*evaluation—but that's a separate matter, and we're going to talk about it later in this module.*

The right to an IEE is a topic addressed in Part 2 of this module. Because the IEE provision is required content in the procedural safeguards notice, the notice must explain elements such as what an IEE is, how the parent can obtain one, the right to request that the public agency pay for it, and other matters relevant to an IEE.



*Prior written notice.* The audience should be able to tell you all about prior written notice, based on the training you just provided! This is a good opportunity to ask participants to re-tell (or review) that content, specifically identifying what kind of information the procedural safeguards notice might include to explain the right to prior written notice.

*Parental consent.* Not surprisingly, parent consent is a gigantic issue in the IDEA and its regulations. It is addressed briefly in this module (in Part 2) and in more detail in several other modules—most predominantly in *Initial Evaluation and Reevaluation*. Spend a moment or two brainstorming with participants as to when, in special education matters, it might be important to have the right to give or withhold consent, if they were the parent of a child with a disability.

*Access to education records.* This, too, has been discussed in this module, so have participants re-tell (review) that content, specifically identifying what kind of information the procedural safeguards notice might include about a parent's right to access their child's education records.

*Opportunity to present and resolve complaints through due process complaint and State complaint procedures.* This procedural safeguard affords parents the right to address a dispute and two specific mechanisms by which disagreements with the public agency may be heard, reviewed and adjudicated. Both will be discussed in the last part of this module.

*Availability of mediation.* This, too, affords parents a mechanism by which to resolve disputes with the public agency and the right to request and utilize it. It also will be a topic addressed in the last part of this module.

*Child's placement during pendency of any due process hearing complaint.* Big words, eh? To express this concept in more commonplace terms, you might present an imaginary scenario to participants. For example, let's say that parents disagree with their child's placement and request a due process hearing to have the placement changed. Where and how does the child receive his or her special education and related services while the hearing proceeds and the matter is being addressed? That is what generally is meant by "child's placement during pendency." The procedural safeguards notice must explain to parents what the requirements are in this regard and what rights parents have.



**View -1**

Slide loads with this view, including Bullet 1.

## Procedural Safeguards Notice

### Must explain:

- ✓ Procedures for students subject to placements in an interim alternative educational setting (IAES)



**Clicks 1-2**

Click 1: Bullet 2 appears.

Click 2: Bullet 3 appears, and the picture changes.

## Procedural Safeguards Notice

### Must explain:

- ✓ Procedures for students subject to placements in an interim alternative educational setting (IAES)
- ✓ What's required if parents are seeking a unilateral private school placement at public expense
- ✓ Hearings on due process complaints, including required disclosures



(continued on next page) 



## Procedural Safeguards Notice

Clicks 3-4

### Must explain:

- ✓ Procedures for students subject to placements in an interim alternative educational setting (IAES)
- ✓ State-level appeals (if applicable in the State)
- ✓ Civil actions
- ✓ Attorney's fees

Click 3:  
Picture disappears  
"State-level  
appeals" bullet  
appears.

Click 4:  
These last 2  
bullets appear.

Parents/guardians  
are seeking a unilateral  
private school placement  
at public expense

- ✓ Hearings on due process complaints, including required disclosures

CLICK to advance to next slide.

## Slide 21: Background and Discussion

4 Clicks

The items listed on this slide are important procedural safeguards but will *not* be discussed in this *Overview to Procedural Safeguards*, with the exception of a brief look at due process complaints and hearings in the last section of this module (as part of the overview of dispute resolution options). For those that need to know the specifics of any one of these safeguards, you may wish to refer them to the model procedural safeguards notice on the Department's "exclusively IDEA" Web site, at: <http://idea.ed.gov/static/modelForms>

There is also information on some of these topics in other modules. For example, there are modules on due process hearings and on parents seeking unilateral private school place-

ments at public expense. You might also indicate to participants that each of these items can be identified in full (including IDEA's final regulations) by using the listing at the very end of **Handout E-4**—see the "Listing of Specific Sections Included in the Procedural Safeguards Notice." The Department has kindly provided cross-references in §300.504(c) "to identify the specific regulatory provisions that include procedural safeguards for which an explanation must be provided in the procedural safeguards notice." (71 Fed. Reg. 46693) The breadth of this listing clearly illustrates how important and foundational this list of *procedural safeguards* is to understanding IDEA and its regulations.

### Take a Break?

This would be a good time to offer your audience a break, as this concludes Part 2 of this module. The next slide will begin Part 3, where we look at selected other concepts and definitions in the overall topic of procedural safeguards, including some that are not included in the content of the procedural safeguards notice.



## Selected Other Concepts and Definitions



- Independent educational evaluation (IEE)
- Surrogate parents
- Age of majority

Slide presents completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 22 is an advance organizer for the audience as to what content they're going to hear and discuss in Part 3 of this module. These three additional areas within Procedural Safeguards will be addressed:

- Independent educational evaluation (IEE);
- Surrogate parents; and
- Age of majority.

Depending upon the needs of the audience, and their reasons for being in this training, you may want to go through these briefly or in more detail. We've provided appropriate background material under each slide's discussion to allow you to expand or minimize the training, as needed. If you're not sure how much detail your audience

needs, then take a quick vote, asking for a show of hands: Detailed? Brief? Then you'll know and can streamline or elaborate accordingly, using the **Handouts E-5, E-6, and E-7** to frame your discussion.

In any event, it's important to mention that, while all of these topics are addressed within IDEA's procedural safeguards section, two of them do not appear in the list of what the procedural safeguards notice must contain [at §300.504(c)] nor in the model procedural safeguards form available online at <http://idea.ed.gov/static/modelForms>. Neither should participants expect to see these two topics explained in their local procedural safeguards notice. The two topics at issue here are: surrogate parents and

age of majority. There is still a lot to know about both subjects, as the background material in the upcoming pages indicate.

## Independent Educational Evaluations



View 1

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## Independent Educational Evaluations

Clicks 1-4

Parents who disagree with the school's to pay for an IEE, or of a due process to defend its ation

School must either: evaluation may request an IIE at public expense

Agreed • request heard evalu

school successfully defends its evaluation, E may not be at blic expense

Upon an IEE request, school must inform parents of where one may be obtained and any applicable agency criteria

If s del IEE pul

Clicks 1-4: Click by click, the covering pictures drop away, revealing the text underneath.

Pictures disappear in this order: top-left, bottom-left, top-right, bottom-right.

(continued on next page)

## Independent Educational Evaluations

Click 5

Results of an IEE that meets agency criteria



whether at public or private expense

must be considered

when making any decisions about the provision of FAPE to the child

Click 5:  
This final screen on IEEs appears.

CLICK AGAIN to advance to next slide.

### Slide 23: Background and Discussion

5 Clicks



Slide 23 takes up the topic of IEEs—*independent educational evaluations*. They are included the procedural safeguards notice and, as promised at that time, will now be examined more closely. **Hand-out E-5** presents the IDEA 2004's regulatory provisions for IEEs. The box at the right indicates key points to make regarding IEEs.

#### What is an IEE?

IEE stands for “*independent educational evaluation*.” This means an evaluation that is conducted by a qualified examiner who is *not* employed by the public agency responsible for the education of the child. The chart below details IDEA's regulatory provisions with respect to an IEE.

#### Key Points about IEEs

Parents who disagree with the school's evaluation may request an IEE at public expense.

Upon an IEE request, the school must inform parents of where one may be obtained and any applicable agency criteria.

The school must either:

- agree to pay for an IEE; or
- request a due process hearing to defend its evaluation.

If the school successfully defends its evaluation, the IEE may not be at public expense.

Results of an IEE that meets agency criteria, whether at public or private expense, must be *considered* when making any decisions about the provision of FAPE to the child.

What's involved in implementing the IEE aspect of *Procedural Safeguards*? The chart below provides a synopsis of points.

*continued on next page* →



### **§300.502 Independent Educational Evaluation**

- Parents have the right to obtain an IEE of their child, subject to these procedures. [§300.502(a)(1)]
- If a parent *disagrees* with an evaluation conducted by the school, he or she has the right to request an IEE of the child at *public expense*. [§300.502(b)(1)]
- When parents request an IEE, the school must provide the parents with information about where an evaluation may be obtained and any agency criteria that apply to an IEE. [§300.502(a)(2)]
- If a parent requests an IEE, the school may ask for the parent's reason why he or she objects to the public evaluation. However, the school may not *require* the parent to provide an explanation and may not unreasonably delay either agreeing to the IEE or requesting a hearing to defend the school's evaluation. [§300.502(b)(4)]

### **IEE at Public Expense**

- A parent is entitled to one IEE at public expense, each time the school conducts an evaluation with which the parent disagrees. [§300.502(b)(5)]
- If a parent obtains an IEE at public expense or shares with the school an evaluation obtained at private expense, the results of the evaluation—
  - (a) must be considered by the school, in making any decisions with respect to the provision of FAPE for the child, as long as the evaluation meets any applicable agency criteria ; and
  - (b) may be presented as evidence at a hearing on a due process complaint for that child. [§300.502(c)]
- If a parent requests an IEE at public expense, the school must either:
  - file a due process complaint requesting a hearing to show that its evaluation is appropriate; *or*
  - ensure that an IEE is provided at no cost to the parent (at public expense). [§300.502(b)(2)]
- If a hearing officer requests an IEE as part of a hearing on a due process complaint, the cost of the evaluation must be at public expense. [§300.502(d)]
- If the school files a due process hearing and the final decision is that the school's evaluation is appropriate, the parent still has the right to an IEE, but not at public expense. [§300.502(b)(3)]
- If an IEE is conducted at public expense, the agency criteria under which the evaluation is obtained (including the location of the evaluation and the qualifications of the examiner) must be the same as the criteria that the school uses when it initiates an evaluation, to the extent the criteria are consistent with the parent's right to an IEE. [§300.502(e)]

## Who Pays for the IEE?

The answer is that some IEEs are at public expense and others are not. For example, the parent of a child with a disability may disagree with the public agency's evaluation and request an IEE at public expense. "At 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 [§300.502(a)(3)(ii)]. The public agency may grant the parent's request and pay for the IEE or arrange to have one conducted at no cost to the parent, or it may file a complaint seeking a due process hearing to show that its own evaluation was appropriate.

If the public agency initiates a hearing and the final decision of the hearing officer is that the agency's evaluation was appropriate, then parents still have the right to an IEE but not at public expense. [§300.502(b)(3)]

## Other IEE Provisions

- Parents have the right to obtain an IEE of their child, subject to these procedures. [§300.502(a)(1)]
- If the parent requests an IEE, the public agency may ask the parent why he or she objects to the public evaluation. However, the agency may not *require* the parent to explain, and it may not unreasonably delay either providing the IEE at public expense or initiating a due process hearing to defend the public evaluation. [§300.502(b)(4)]



- Whenever an IEE is at public expense, it must meet any criteria that the public agency uses when it initiates an evaluation—such as the location of the evaluation and the qualifications of the examiner—to the extent consistent with a parent's right to an IEE. However, the public agency may not impose other conditions or timelines related to obtaining an IEE at public expense. [§300.502(e)]
- If the parents request an IEE, the public agency must inform them about any agency criteria that apply to an IEE and provide information about where an IEE may be obtained. [§300.502(a)(2)]
- The results of an IEE at public expense or an evaluation obtained at private expense that has been shared by the parent must be considered by the public agency in any decision made with respect to the provision of FAPE to the child *if the IEE or evaluation meets agency criteria*. [§300.502(c)(1)]

- As part of a hearing on a due process complaint, a hearing officer may request an IEE; if so, that IEE must be at public expense. [§300.502(d)]



## What's New, What's Different About IEEs in IDEA 2004's Final Regulations



Several new aspects of IEEs have been introduced in these regulations and are worth noting.

*Limiting an IEE at public expense for each disputed evaluation.* These regulations state that a parent is entitled to only one IEE at public expense each time the public agency conducts an evaluation with which the parent disagrees. [§300.502(b)(5)]. This new regulatory provision is "consistent with a parent's statutory right to an IEE at public expense, while recognizing that public agencies should not be required to bear the cost of more than one IEE when a parent disagrees with an evaluation conducted or obtained by the public agency." (71 Fed. Reg. 46690)

*Presenting the results of an IEE as evidence in a due process hearing.* These regulations, at §300.502(c), now include specific language that permits "any party to present the results of a publicly-funded IEE" as evidence in a due process hearing (71 Fed. Reg. 46691). Parents should not have the "expectation of privacy regarding an evaluation that is publicly-funded or for which they seek public funding (71 Fed. Reg. 46690-46691). Accordingly, the regulations have changed §300.502(c)(2) "to ensure that public agencies have the opportunity to introduce the results of publicly-funded IEEs at due process hearing" (71 Fed. Reg. 46691).

*Privately funded evaluations.* The regulations also clarify that if a parent shares a privately-funded evaluation with the public agency, that evaluation may be presented as evidence in a due process hearing. The exact regulatory language reads:

(c) *Parent-initiated evaluations.* If the parent obtains an independent educational evaluation at public expense or shares with the public agency an evaluation obtained at private expense, the results of the evaluation—

(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

(2) May be presented by any party as evidence at a hearing on a due process complaint under subpart E of this part regarding that child. [*emphasis added*, §300.502(c)(2)]

Explaining this provision, the Department noted:

If a parent obtains an evaluation at private expense, there is nothing in the Act or these regulations that requires a parent to share that evaluation with the public agency. A privately funded evaluation that is not shared with a public agency would not be considered an IEE under this regulation. (71 Fed. Reg. 46690)

## Additional Discussion

The examination of IEEs in the final IDEA regulations raises many interesting points that enrich the understanding of IEEs and the attendant rights and responsibilities of both parents and public agencies. We've summarized several below.

*How does an agency's use of response to intervention affect IEEs?* As discussed separately in the modules on *Early Intervening Services and Response to Intervention* and *Identification of Specific Learning Disabilities*, IDEA and its regulations include provisions that permit a public agency to use a response to intervention process to determine whether a child has a specific learning disability (SLD). If the evaluation has been completed, the parent's right to request an IEE at public expense is unaffected. However:

The parent... would not have the right to obtain an IEE at public expense *before* the public agency completes its evaluation simply because the parent disagrees with the public agency's decision to use data from a child's response to intervention as part of its evaluation to determine if the child is a child with a disability and the educational needs of the child. (71 Fed. Reg. 46689, *emphasis added*)



*Review of existing data, input from parents, and instruments used in IEEs.* In response to commenters who suggested adding language to allow an evaluator conducting an IEE the opportunity to review existing data, receive input from the child's parents,

determine what additional data are needed, and select instruments appropriate to evaluate the child, the Department responded that such additional language was not necessary in the regulations, "because an IEE must meet the agency criteria that the public agency uses when it initiates an evaluation" (71 Fed. Reg. 46690). As part of any initial evaluation (if appropriate) and any reevaluation of a child, existing evaluation data on the child is reviewed, including input from the parents [§300.305(a)]. "Since the review of existing evaluation data and input from the child's parents are part of the public agency's evaluation, they would also be appropriate elements in an IEE" (*Id.*).

The same is true with respect to the variety of assessment tools and strategies that public agencies are required to use to gather relevant functional, developmental, and academic information about the child. These will be part of the agency's criteria for conducting evaluations and, thus, "apply to an IEE conducted by an independent evaluator" (*Id.*).

*Is parental consent needed before the child's education records may be released to an independent evaluator when a hearing officer orders an IEE?* Yes. In addressing this question the Department, noted that the independent evaluator is not an official of the agency and so, under §300.622(b), parent consent is required before releasing the child's records to an independent evaluator. If the parent refuses consent, the Department concluded that "a hearing officer could decide to dismiss the complaint." (*Id.*)

*Can the agency establish cost containment criteria for an IEE?* As has been said, an IEE at public expense must meet the criteria that the public agency uses when it initiates an evaluation (to the extent that such criteria are consistent with a parent's right to an IEE). [§300.502(d)] The Department specifically observed that:

Although it is appropriate for a public agency to establish reasonable cost containment criteria applicable to personnel used by the agency, as well as to personnel used by parents, a public agency

would need to provide a parent the opportunity to demonstrate that unique circumstances justify selection of an evaluator whose fees fall outside the agency's cost containment criteria. Section 300.502(b)(2) provides that if the parent requests an IEE at public expense, the public agency either must ensure that the IEE is provided at public expense or file a due process complaint notice to request a hearing to demonstrate that the agency's evaluation is appropriate. (*Id.*)

### Space for Notes

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## Surrogate Parents

If needed to protect the rights of a child with a disability, a **surrogate parent** may be appointed, when:



- the child is a ward of the State under State law
- the child is an ‘unaccompanied homeless youth’ under federal law
- no parent can be identified for the child, or
- the school, after reasonable efforts, cannot locate the child’s parent

Slide presents completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 24 focuses upon IDEA’s regulatory provisions regarding surrogate parents. These are presented in **Handout E-6**. In the event a child is a ward of the State; an unaccompanied homeless child; or for whom no parent can be identified or found, the school has a duty to protect the child’s rights. This duty includes determining the child’s need for a surrogate parent and, if needed, assigning a surrogate parent for the child. The chart on the next page details IDEA’s regulatory provisions with respect to surrogate parents, followed by a discussion of these provisions.

As noted under Slide 22, you will need to point out to participants that the specification at §300.504(c) regarding contents of the procedural safeguards notice does not include these provisions for surrogate parents.

Accordingly, the model form developed by the Department does not include an explanation of procedural safeguards regarding surrogate parents either.

### What is a Surrogate Parent?

The definition of *parent* in IDEA’s regulations includes a “surrogate parent who has been appointed in accordance with §300.519.” [§300.30(a)(5)] The provisions, at §300.519 (included in **Handout E-5**), set out the requirements for assigning, and the responsibilities of, surrogate parents. Because a public agency may select the surrogate parent in any way permitted under State law [§300.519(d)(1)], there will be some variation. Generally speaking, however, a surrogate parent represents and advocates on a child’s behalf under Part B of the

IDEA when there is no other legal or familial parent representative to do so. IDEA’s regulations set out a surrogate parent’s authority as follows:

(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. [§300.519(g)]



## Why Would a Surrogate Parent Be Necessary?

As the slide suggests, there are numerous circumstances when a surrogate parent may need to be assigned to a child with a disability to protect his or her rights under the IDEA. These are specified at §300.519(a)—when no parent can be identified or, after reasonable efforts by the agency, a parent cannot be located, when the child is a ward of the State under State law, or

when the child is an unaccompanied homeless youth and defined under a specific federal law. The definition of “unaccompanied homeless youth” is drawn from section 725(6) of the McKinney-Vento Homeless Assistance Act, (20 U.S.C. §11434a(6)). At the time of this writing, this definition states, “[t]he term ‘unaccompanied youth’ includes a youth not in the physical custody of a parent or guardian.” The law makes clear that the obligation of

public agencies to protect the IDEA rights of children with disabilities in these circum-



### §300.519 Surrogate Parents

- A child’s rights under the IDEA must be protected when—
  - no parent can be identified;
  - the school, after reasonable efforts, cannot locate a parent;
  - the child is a ward of the State under State law; or
  - the child is an “unaccompanied homeless youth” as defined under §725(6) of the McKinney-Vento Homeless Assistance Act, (42 U.S.C. 11434a(6)). [§300.519(a)]
- To protect a child’s rights under these circumstances, agencies must have a method for:
  - determining whether a child needs a surrogate parent, and
  - assigning a surrogate parent to the child. [§300.519(b)]
- The State must make reasonable efforts to ensure that assignment of a surrogate parent occurs not more than 30 days after the agency determines that one is needed. [§300.519(h)]
- The judge who oversees the case of a child who is a ward of the State may assign a surrogate parent who may not be an employee of the SEA, LEA, or any other agency involved in the education or care of the child. [§300.519(c)]
- An agency may select a surrogate parent in any way permitted under State law. [§300.519(d)]
- A surrogate parent selected by an agency:
  - may not be an employee of the SEA, school district, or any other agency involved in the education or care of the child;
  - may not have a personal or professional interest that conflicts with representing the interests of the child; and
  - must have the knowledge and skills to ensure that the child’s interests are adequately represented. [§300.519(d)(2)]



stances includes a process for determining the need for a surrogate parent and a process for appointing one if needed.

## Discussion of Surrogate Parents

Because of the variations in State laws, procedures, and mechanisms established to protect the rights of children who do not have a parent and children for whom the State is acting in the place of the parent, the Department received a wide range of comments on the proposed regulations for surrogate parents. The Department responded to these comments in the analysis accompanying the final regulations. See 71 Fed. Reg. 46710-46713. In the discussion that follows, we have tried to summarize some of those concerns and issues that may be of particular interest to certain audiences. Trainers are in the best position to judge whether or not their intended audience may have need of this information.

*Collaborating with other agencies to identify children in need of a surrogate parent.* IDEA requires that public agencies have a method for determining whether a child needs a surrogate parent and for assigning one to the child. This requirement is not specifically defined. Therefore, States and, as appropriate, agencies have some discretion in more fully defining the method that will be used. In order to keep children from falling through the cracks between multiple State



and local systems, collaboration with individuals and organizations, such as child welfare agencies, juvenile justice personnel, and homeless liaisons, may be an important component to be included in the method developed to determine the need for and assigning a surrogate parent. The Department specifically noted that “[t]here is nothing in the Act that would prohibit a public agency from collaborating with judges and child advocates in establishing a process for assigning surrogate parents.” (71 Fed. Reg. 46711)

*Maintaining the confidentiality of children’s information.* However, as a related point, confidentiality protections must be addressed in situations where a public agency involves other parties in its method for determining whether a surrogate parent is needed and in assigning one to the child. As the Department stated:

[T]he public agency must ensure that the confidentiality of personally identifiable data, information, and records collected or maintained by SEAs and LEAs is protected



in accordance with §§300.610 through 300.627, and that the privacy of education records is protected under FERPA and its implementing regulations in 34 CFR part 99. (*Id.*)

*An exception for “wards of the State.”* IDEA’s regulations specify three criteria when the public agency is selecting a surrogate parent. A surrogate parent:

- may *not* be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child;
- may *not* have a personal or professional interest that conflicts with the interest of the child; and
- *must* have knowledge and skills that ensure adequate representation of the child. [§300.519(d)]

Only the first of these three criteria is specifically set out in the statute. It is also the only one that applies when a judge overseeing a child’s case appoints a surrogate parent for a child who is a ward of the State. [§300.519(c)]

Why the different criteria? The Department explained its intent not to exceed the statutory language “so as to interfere as little as possible with State practice in appointing individuals to act for the child” (*Id.*). The Department also stated its expectation that “in most situations, the court-appointed individuals will not have personal or professional interests that conflict with the interests of the child and will have the

knowledge and skills to adequately represent the interests of the child” (*Id.*). This is consistent with general legal principles that the judge overseeing the child’s case is entrusted with protecting the interests of the child who is a ward of the State.

*Surrogate parents and children who are wards of a tribe.* Many Native American children are “wards of a tribe,” not “wards of the State.” How do IDEA’s regulatory provisions regarding surrogate parents, then, apply to them? The answer is: Differently. The definition of “State” (at §300.40) does not include an Indian tribe or tribal governing body. This is in keeping with the way the term is defined within the statute itself. Thus, the Department noted that:

[It] does not have the authority to interpret ward of the State to include children who are wards of a tribe of competent jurisdiction. However this does not relieve States or the BIA [Bureau of Indian Affairs] of their responsibility to ensure that the rights of a child who is a ward of a tribe are protected through the appointment of a surrogate parent under §300.519 when no parent can be identified; when the agency cannot, after reasonable efforts, locate a parent; or when the child is an unaccompanied homeless youth. (71 Fed. Reg. 46711-46712)



*Temporary surrogate parents for children who are unaccompanied homeless youth.* In §300.519(f), a notable exception exists to the requirement at §300.519(d)(2)(i) that a surrogate parent appointed by a public agency may not be an employee of any agency involved in the education or care of the child. This provision reads:

*Unaccompanied homeless youth.* In the case of a child who is an unaccompanied homeless youth, appropriate staff of emergency shelters, transitional shelters, independent living programs, and street outreach programs may be appointed as temporary surrogate parents without regard to paragraph (d)(2)(i) of this section, until a surrogate parent can be appointed that meets all of the requirements of paragraph (d) of this section.



Thus, a temporary surrogate parent for an unaccompanied homeless youth may include an employee of the State educational agency, the local educational agency, or

any other agency that is involved in the education or care of the child (71 Fed. Reg. 46712). The final regulations do not specify a time limit for a temporary surrogate parent representing the child. The Department noted that “the need for a temporary surrogate parent will vary depending on the specific circumstances and unique problems faced by each unaccompanied homeless youth” (*Id.*).

*Note:* The other two criteria for surrogate parents, however, *do* apply when appointing a temporary surrogate parent for an unaccompanied homeless youth (i.e., not having a personal or professional conflict of interest; and having the knowledge and skills that ensure adequate representation of the child).

*May a school district replace a surrogate parent who disagrees with the district’s views?* The potential for conflict of interest in a surrogate parent’s appointment and in the exercise of his or her responsibilities as a surrogate is addressed within IDEA’s regulatory requirement that the surrogate parent have “no personal or professional interest that conflicts with the interest of the child the surrogate parent represents” [§300.519(d)(2)(ii)]. Beyond that, however, what of the agency that appoints the surrogate parent? Potential conflicts may exist there as well, especially should this individual

disagree with the school district about how he or she represents the child's educational interests or what is best for that child's education. The Department discussed this issue at some length:

[P]ublic agencies have a responsibility to ensure that a surrogate parent is carrying out their responsibilities, so there are some circumstances when removal may be appropriate. A mere disagreement with the decisions of a surrogate parent about appropriate services or placements for the child, however, generally would not be sufficient to give rise to a removal, as the role of the surrogate parent is to represent the interests of the child, which may not be the same as the interests of the public agency. We do not think a regulation is necessary, however, as we believe that the rights of the child with a disability are adequately protected under Section 504 of the Rehabilitation Act (Section 504) and Title II of the Americans with Disabilities Act (Title II), which prohibit retaliation or coercion against any individual who exercises their rights under Federal law for the purpose of assisting children with disabilities by protecting rights protected under those statutes. See, 34 CFR 104.61, referencing 34 CFR 100.7(e); 28 CFR 35.134. (71 Fed. Reg. 46712)

### Other Points in Brief

- It is up to each State to determine whether procedures to terminate surrogate parents are needed and whether to collaborate with other agencies as part of any procedures they may choose to develop. (71 Fed. Reg. 46712)
- A child with a foster parent who is considered a parent, as defined in §300.30(a), does not need a surrogate parent unless State law, regulations, or contractual obligations with a State or local entity prohibit a foster parent from acting as a parent, consistent with §300.30(a)(2). (*Id.*)
- Although not required, if a public agency determined a need to specify the duties and responsibilities for surrogate parents, that are consistent with, but beyond those duties and responsibilities set out in the regulations, neither the Act nor these regulations would prohibit the agency from doing so. (71 Fed. Reg. 46713)
- States have the discretion to determine how best to monitor the timely appointment of surrogate parents by their LEAs. States also have discretion to use funds reserved for other State-level activities to provide technical assistance to LEAs and courts that fail to meet the 30-day timeframe, as requested by the commenters. (*Id.*)

- If an LEA consistently fails to meet the 30-day timeframe or unnecessarily delays the appointment of a surrogate parent, the State is responsible for ensuring that measures are taken to remedy the situation. (*Id.*)
- The use of funds provisions within the Act and its regulations allow funds reserved for State-level activities to be used for support and direct services. See §300.704(b)(4)(i). This would include the recruitment and training of surrogate parents. (71 Fed. Reg. 46711)



## Age of Majority

In general, age of majority is...



the age when State law recognizes that an individual can exercise certain legal rights and responsibilities (e.g., entering into binding contracts, executing a valid will, and voting)

View I

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## Age of Majority

IDEA's age of majority provisions...



to transfer parental rights to the individual child

Click I

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(continued on next page) 

## Age of Majority

Click 2

There is a special rule...



...for States that allow determinations that a child is **unable** to provide *informed consent* with respect to his or her educational program

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### Slide 25: Background and Discussion

2 Clicks

Slide 25 shifts the focus from surrogate parents to the last item in Part 3 of this module: "Age of Majority." This topic is addressed here, as a procedural safeguards issue, and under the module on *Content of the IEP*, where transition-related issues are dealt with in some depth. The regulations address the transfer of rights from the parent to the child when the child reaches the age of majority as defined under State law.

#### Points to Make

- Generally, the age of majority is the age when State law allows an individual to exercise certain legal rights and responsibilities such as enter-

ing into binding contracts, executing a valid will, and voting.

- For IDEA purposes, the age of majority provisions allow States to transfer parental rights to the 'adult' child under certain circumstances.
- There is a special rule for States that allow determinations that a child is unable to provide *informed consent* with respect to his or her educational program.

How thoroughly you decide to discuss these issues will depend on the needs of your audience and how much time you have available in your training session. A chart detailing

IDEA's regulatory provisions is provided on the next page, accompanied by discussion of the issues on the

slide and additional background material to help you expand the discussion as needed.

**Handout E-7** presents IDEA's exact regulations on transfer of rights at age of majority.



## A Summary of IDEA's Provisions

As with surrogate parents (above), contents of the procedural safeguards notice, specified at §300.504(c), does not include age of majority. Accordingly, the model form developed by the Department does not include an explanation of procedural safeguards regarding age of majority.

*What is the age of majority?* In general, under State law, when a child reaches the age of majority, he or she is considered to have reached the age where he or she can exercise certain legal rights and responsibilities such as entering into binding contracts without parental approval, executing a valid will, and voting. The concept may vary from State to State but, generally, the age of majority for most States is somewhere between 18 and 21 years old. States also recognize that, despite reaching the age of majority, an individual may not have the ability or fitness to exercise such rights and responsibilities. Generally, State law defines this as "incompetence" and a court with proper jurisdiction can judge an individual to be legally unfit to make certain types of decisions or carry out certain duties for themselves or "incompetent."

*What do IDEA and its regulations allow when a child reaches the age of majority?* IDEA and its regulations allow (but do not require) a State to transfer the rights accorded to the parents to the child when the child reaches the age of majority under State law that applies to all children, as long as he or she has not been determined incompetent under State law. [§300.520(a)(1)(ii)].

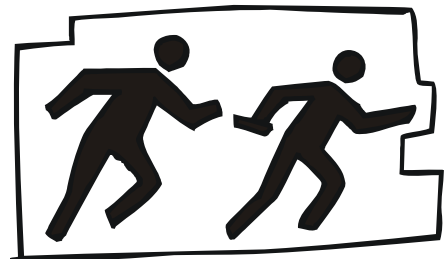
This means that the rights and responsibilities for educational decision-making, participation in meetings, and dispute resolution may be shifted from the parents to the 'adult' child. The one right that must be given to both parents and the 'adult' child is the right to all notices required under Part B of the IDEA, such as prior written notice and the

procedural safeguards notice. [§300.520(a)(1)(i)]. The age of majority regulation also allows the transfer of parental rights at the age of majority to children not determined incompetent who



### §300.520 Transfer of Parental Rights at Age of Majority

- A State may provide that, when a child reaches the age of majority under State law that applies to all children, all rights under Part B of the IDEA previously given to the parent transfer to the child. [§300.520(a)(1)(ii)]
- If the State elects to transfer parental rights at the age of majority, as set out above, the school district must provide both parents and the child with any notice required under Part B of the IDEA. [§300.520(a)(1)(i)]
- A State also may provide that all such parental rights transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution. [§300.520(a)(2)]
- The State may not provide for the transfer of parental rights for a child who is determined incompetent under State law. [§300.520(a)]
- If the State elects to transfer parental rights, the school district must provide parents and the child written notice of the transfer of rights. [§300.520(a)(3)]
- If under State law a child who has reached the age of majority but is *not* determined incompetent, can be determined to be unable 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 child's educational interests throughout the child's eligibility under Part B of the IDEA. [§300.520(b)]





are incarcerated in an adult or juvenile, State or local correctional institution.  
[§300.520(a)(2)]

To ensure that both the parent and the child are informed of the transfer of rights, the public agency has specific notice requirements it must fulfill. In addition to the notice provision mentioned above, notice must be given to the student as part of the IEP process. This is addressed further in the module *Content of the IEP* and as a part of talking about transition planning designed to help prepare students with disabilities for the adult world. In brief, beginning no later than one year before the child reaches the age of majority, the IEP must include a statement that the student has been informed of the transfer of rights, if any, that will occur at the age of majority. The specific IDEA regulation states as follows:

(c) *Transfer of rights at age of majority.* Beginning no later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under §300.520. [§300.320]

The parent, as a member of the IEP Team, may well be aware of the transfer, given that "[s]ection 300.322(e) requires the public agency to give a copy of the IEP to the parent" (71 Fed. Reg. 46713). However, whenever the State provides for such transfer, the public agency also must provide *notice to the parent and child* of the transfer of

### **IDEA's Provision at §300.520(b): Special Rule for Transfer of Rights**

*Special rule.* A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.

parental rights at the age of majority. [§300.520(a)(3)].

*What is the special rule for States that allow determinations that a child is unable to provide informed consent with respect to his or her educational program?* IDEA and its regulations recognize that some State have a process to determine that a child is unable to provide *informed consent* with respect to his or her educational program even though the child is not deemed to be incompetent under State law. In such cases, the State must establish procedures for appointing the parent or, if the parent is not available, another appropriate individual, to represent the child's educational interests throughout the child's eligibility under Part B of

the IDEA for a child who has reached the age of majority but who is *not* determined incompetent. The provision at §300.520(b) specifies this rule and is presented above for your convenience (refer participants to **Handout E-7**, as appropriate).

It is up to the State to establish procedures for determining, if the parent is not available, the appropriate individual to represent the child's educational interests during his or her period of eligibility and how that individual is determined. The Department reaffirmed this in its analysis:

Section 300.520(b) recognizes that some States have mechanisms to determine that a child with a disability who has reached the age of majority under State law does not have the ability to provide informed consent with respect to his or her educational program, even though the child has not been determined incompetent under State law. In such States, 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 child throughout the remainder of the child's eligibility under Part B of the Act. Whether parents may retain the ability to make educational decisions for a child who has reached the age of majority and who can provide informed consent is a matter of State laws regarding competency. That is, the child may be able to grant the parent a power of attorney or similar



grant of authority to act on the child's behalf under applicable State law. We believe that the rights accorded individuals at the age of majority, beyond those addressed in the regulation, are properly matters for States to control. [(71 Fed. Reg. 46713)

Although States may provide that parental rights transfer to a child at age of majority, there is nothing in the statute or regulations that requires the child to exclude his or her parents from participating in educational decisions. Continued parental participation and the extent of that participation is a decision made by the child and parent(s).

View I

## Look from Outer Space

### Dispute Resolution Options



Slide loads with this view. Change of subject: Overview of Dispute Resolution Options.

Click I


## Look from Outer Space

### Dispute Resolution Options

- Discussion or conference
- IEP meeting
- Mediation
- Resolution meeting
- Due process hearing
- State complaint

Click 1:  
The list of dispute resolution options appears.

CLICK AGAIN to advance to next slide.

(discussion on next page) 

## Slide 26: Background and Discussion

There are several different approaches for resolving disagreements in the IDEA when parents and the school do not agree on a child's identification, evaluation, educational placement, or the provision of FAPE to the child. Of the six approaches listed on Slide 26, five are commonly used and one is entirely new in the 2004 Amendments to IDEA.

One particular approach may be more appropriate than others at different times and for different reasons. Most of these are specifically covered in IDEA's final regulations as procedural safeguards and provide formal mechanisms to resolve disputes.

Here, we are only dipping one toe into this water—or, as the slide's title says, taking a look from outer space. A detailed exploration of these alternatives is provided in Module 19, *Options for Dispute Resolution*. For now, we suggest a simple introduction to the relevant terms, using this slide as a springboard. Each of the items is discussed in brief below, to suggest discussion points for this training session.

### Discussion or Conference

It's worthwhile saying that the first step in avoiding and resolving disagreements is for parents and school personnel to simply sit down together and communicate. This is pure common sense and good team practice. Ask questions, listen to answers, share information, brain storm and problem solve—together, as mutual advocates for the child—not as adversaries with opposing

agendas. If informal collaborative efforts are unsuccessful, the following more formal processes of dispute resolution are available to schools and parents.

### IEP Review Meeting

Parents may request a meeting to review their child's IEP at any time they feel that the services their child is receiving are inappropriate or insufficient, or if he or she is not making progress. The public agency may do the same. If the child has received an independent educational evaluation, the IEP meeting may be an appropriate time to consider the results of that evaluation. A good thorough look at the child's needs and at the resources that can be accessed, may help to clarify what to do and/or reach a compromise or trial period for a new or revised approach. The IEP Team may also consider utilizing a facilitated approach to the IEP, which is more thoroughly discussed in the module *Options for Dispute Resolution*.

### Mediation

Mediation is another means of resolving a dispute and reaching consensus that involves sitting down together, each side presenting their views of the dispute and desired resolution. Mediation can be initiated by either schools or parents, is completely voluntary, and is facilitated by a trained, qualified, impartial mediator. Most often, mediation involves the people most directly

I Click



involved in a child's education—school personnel and parents—rather than attorneys. And while it is a structured (formal) process, it is an inherently more flexible one than the legal proceedings required for a due process hearing. A successful mediation results in a legally binding, enforceable agreement between the school and parents, and perhaps best of all, the agreement is one to which both sides have committed.

### Resolution Meeting



Called "Resolution Sessions" in the statute, the process is a new option available to resolve disputes. In the regulations the option is called "Resolution Meetings" and is IDEA's attempt to get the parties to resolve their differences short of going to due process, which generally is more adversarial and costly. The LEA must convene the resolution meeting within 15 days of receiving notice of the parent's due process complaint and prior to the hearing. The purpose of the meeting is for the parent of the child to discuss the due process complaint he or she has filed and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute. The LEA cannot have a lawyer present unless the parent does.





## Due Process Hearing

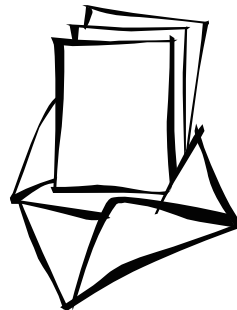
Both the parents and the public agency may request a due process hearing to resolve a dispute about the child's identification, evaluation, or educational placement, or any aspect related to the provision of FAPE to the child. The filing of a due process complaint can lead to mediation, a resolution session, and/or to a hearing.

The due process hearing moves resolution of the dispute out of the hands of the school and parents and places this authority in the hands of a hearing officer. The parties involved in a dispute process hearing present their issues and claims in a formal legal setting, utilizing evidence such as witnesses, testimony, documents, and using legal arguments. Typically, each side is represented by an attorney and the conduct of the hearing is similar in tone and execution to a legal proceeding in a courtroom.

After all evidence and legal arguments have been presented, the hearing officer rules on each matter under dispute and issues a written decision that must include findings of fact and a decision. The decision of the hearing officer stands as the administrative decision on the issues raised at the hearing. In States with a two-tiered process, if either party is aggrieved, they may appeal, first to a State review officer, and then to the appropriate federal district court or to a State court of competent jurisdiction. In States with a one-tiered process, appeal is directly to federal or State court.

## State Complaint

A State complaint consists of a written communication to the SEA alleging a violation under Part B of the IDEA. The State is required to investigate the complaint, allow the complainant to submit additional information, obtain a response from the LEA, and make an independent determination as to whether a violation has occurred. This includes findings of fact, conclusions, and the reasons for the SEA's final decision.



If the SEA finds a failure to provide appropriate services to a child, the SEA must address this through corrective action to address the needs of the child (such as compensatory services or monetary reimbursement) and to ensure appropriate future provision of services for all children with disabilities.

At times, while working through the dispute resolution process, parents may decide to remove their child from the public school and place him or her in a private school that the parent believes can provide educational benefit. If the public school has failed to make FAPE available to the child, the public school may be required to pay for the costs of the private school education. See §300.148. Although this is part of the required content in the procedural safeguards notice at

§300.504(c)(9), it is discussed more fully in the module called *Children with Disabilities Enrolled by Their Parents in Private Schools*.

## Outer Space Look



## Discipline Procedures

Come into play when a student with a disability violates a school code of student conduct and is subject to disciplinary action

Slide presents completely. No clicks are necessary except to advance to the next slide.

CLICK to advance to next slide.

Slide 27 takes up, very briefly, IDEA's discipline procedures. As with the last slide (options for dispute resolution), this slide is intended:

- to merely introduce the fact that IDEA's discipline procedures are also procedural safeguards, to ensure that participants are aware of them as such; and
- to provide the briefest of overviews as to the concerns these discipline procedures address.

A detailed look at this part of IDEA is provided in Module 19, *Key Issues in Discipline*.

For now, we suggest a simple introduction, a taste of the content addressed in Module 19, using this slide as a springboard.

### Background/Overview

The 2004 Amendments to IDEA include specific provisions that address the discipline of children with disabilities who violate a school code of student conduct and in so doing, become subject to disciplinary action by the public agency. The final Part B regulations include significant improvements in discipline procedures that attempt to balance the protection of children's rights while giving school personnel the authority to maintain safety and order for the benefit of all children. The new requirements

simplify the discipline process over how this was delineated under IDEA '97 and make it easier for school officials to discipline children with disabilities when discipline is appropriate and justified. At the same time, the new regulations retain provisions from the IDEA '97 regulations and revise others to ensure that the rights of children with disabilities and their families are protected. This is one reason why we introduce IDEA's discipline procedures in this module on procedural safeguards.

## Discussing the Slide

Indicate to participants that, as the slide summarizes, IDEA's discipline procedures come into play when a child with a disability violates a school code of student conduct and becomes subject to disciplinary action by the public agency. "Code of student conduct" is locally defined, so IDEA does not enumerate all the specific types of disciplinary infractions that would trigger its disciplinary provisions.

However, it does address, through specific regulations and procedures, violations that involve weapons, drugs, or serious bodily injury—all these terms having specific definitions within the Part B regulations. We're not going to delve into those definitions in this module; they are addressed in Module 19 in detail. They should also be included in the handouts participants received for the three modules in the Procedural Safeguards series (Theme E). The important point to make on this slide is that Congress established

these discipline procedures to give schools a process by which to approach discipline of children with disabilities consistent with general legal principles of fairness. The procedures are also very detail-laden, which is why you should avoid delving into their specifics in this overview.

## Space for Notes

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**Roundup Time!**

Slide presents completely. No clicks are necessary except to END the slide show.

CLICK to END the slide show.

Last slide! This intro to procedural safeguards is very nearly done!

Use this slide for a review and recap of your own devising, or open the floor up for a question and answer period. Emphasize the local or personal application of the information presented here.

