

## **Department of Defense Education Activity Parent Rights and Responsibilities**

### **I. Record of Participation:**

You have the right to examine your child's records. You also have the right to attend any school meeting held with respect to the identification, evaluation, and educational placement of your child and to participate in the development of your child's Individualized Education Program (IEP).

### **II. Notice of Change:**

You have the right to receive written notice before school personnel propose to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education (FAPE). The school also has a duty to provide you with written notice of their refusal to grant your request to initiate or change the identification, evaluation, or education placement of your child or the provision of a FAPE.

The specific written notice of a proposed change will include a description of the action proposed or the action requested and refused by the school personnel and an explanation of why the school personnel proposes the action. It will also describe any other options the school personnel considered and the reasons why those options were rejected. The notice will be accompanied by a description of the mediation and due process hearing procedures.

### **III. Consent:**

Your consent is necessary for many of the actions the school personnel will undertake in the delivery of a FAPE for your child. It is important to us that you are fully informed about the activity for which consent is sought. If necessary to your understanding, you may request information in your native language or in another mode of communication. You must understand and agree in writing to the implementation of the activity.

You have the right to give or to withhold your consent before the initiation of formal evaluation procedures or an initial educational placement or before a change in your child's educational placement. If you refuse to consent to a formal evaluation, the initial placement or change in placement, either you or school personnel may request a conference, mediation, or an impartial hearing to resolve any disagreement between you and school personnel over the proposed action.

A written request for your consent is necessary if your child's records are to be released outside of the Department of Defense except in a few cases in which, by law, the records can be released (for example, to law enforcement personnel). The request must specify to whom the records shall be released.

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### **IV. Independent Educational Evaluation:**

An independent evaluation is an evaluation conducted by a qualified examiner who is not employed by either the DoD school or EDIS that conducted the initial evaluation. You have the right to request an independent educational evaluation of your child at DoDEA's expense if you disagree with the school system's evaluation.

If you request an independent educational evaluation at DoDEA's expense, the school, without unnecessary delay, must either:

- Initiate an impartial due process hearing to show that its evaluation is appropriate; or
- Ensure an independent evaluation is provided at DoDEA's expense unless the school demonstrates in an impartial hearing that the independent evaluation obtained by the parent did not meet DoDEA criteria. In such cases, the parents are responsible for the cost of the evaluation.

If the school initiates a hearing and the decision is that the school's evaluation is appropriate, you still have the right to an independent evaluation, but not at the expense of DoDEA.

### **V. Unilateral Placement:**

The law does not require the school administrator to pay for the costs of educating a child with a disability when you unilaterally place their child in a private school if a DoDEA operated school has made a free appropriate public education available to your child. Only a hearing officer can order school personnel to pay for a private placement and/or reimburse you for the expenses you incur in placing your child. Such a ruling is possible only if you request a due process hearing and you prove both that the program offered by the DoDEA was inappropriate and that the private school placement was appropriate.

A hearing officer may reduce or deny reimbursement if, prior to removing your child from the school, you were notified by the school of its intent to evaluate your child (including a statement of the purpose of the evaluation), but you failed to make your child available for the evaluation.

If you remove your child with disabilities from the DoD school without providing the school at least 10 days advance notice of your dissatisfaction with the school's program and of your intent to remove your child to enroll him or her in an alternate program, you may not be able to recover the costs of such alternative placement. You will recover those costs only if you prevail in a formal due process hearing after having afforded the school adequate notice of your

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intent to remove the child and giving the school personnel an opportunity to mitigate your concerns.

### **VI. Resolving Disagreements: Informal Process**

Parent/Teacher Communication: You are encouraged to communicate with your child's teachers informally and regularly to fully and frankly discuss your concerns. When you are unable to resolve your concerns with your child's teachers, you are free to establish communication with the school's administrators through a conference.

Conference: A conference generally includes a school administrator and your child's teachers or service providers. The purpose of any communication with the school, whether with the teacher or in a conference, is to clarify the issues. These conferences, and other communications with the school, are facilitated when you can articulate your concerns and the specific relief you are seeking. You should work closely with school personnel to clearly define the areas of disagreement and possible solutions.

When a conference produces mutually agreeable solutions, the school will prepare a memorandum for the record that outlines the disagreements and explains their resolution by mutual agreement. If the conference fails to produce a mutually agreeable solution, either you or the school personnel

- may sign a form requesting mediation; or
- execute a waiver of mediation process, and request a formal due process hearing.

The school administrator will provide copies of these forms to you when there is a failure to reach agreement, or upon your request.

Mediation: Mediation is a confidential, voluntary, informal dispute resolution process at no cost to you. In mediation, a neutral, third person (the mediator) helps disputing parties conduct discussions in a manner that empowers the two parties to reach agreement. The mediator is not like an arbitrator that makes findings and imposes duties upon the parties. The advantage of mediation is that it leaves the parties in full control of the process and permits them to achieve agreements to which they are both fully committed. Discussions that occur during the mediation process are confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings.

If you request to enter into mediation as a means of resolving a dispute, the school representative will identify and appoint a trained mediator. The mediator will meet with you and a representative of the school, together and individually, on the date(s) agreed upon for the mediation. The meeting or meetings will be scheduled at mutually agreeable times and places. An agreement reached by the parties to the dispute will be set forth in a written agreement.

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You or school personnel can request mediation at any time there is a disagreement that is not resolved through a conference. When you request a due process hearing, described in the next section, the school is required to offer the opportunity to mediate, and you must decline any such offer in writing. You may agree to delay a due process hearing pending the outcome of mediation.

### **VII. Resolving Disagreements: Formal Due Process Hearing:**

To request a hearing before an impartial hearing officer, you must file a petition (complaint) with the Director of the Defense Office of Hearings and Appeals (DOHA), Post Office Box 3656, Arlington, Virginia 22203 and provide a copy to the school. The written petition must include your child's name, his/her address and the name of the school, a description of the nature of the problem, and a proposed solution to the problem. A sample complaint form is available from your school principal. The key to success in any such proceeding is for you to clearly state the nature of your disagreement with the school personnel and to describe the specific relief you are requesting.

The Director, DOHA, will assign a hearing officer to decide the case. The dispute can be resolved either through a formal hearing in front of the hearing officer with both parties presenting their respective cases, or the case can be submitted to the hearing officer for decision based on the written record. You must notify the hearing officer in writing if you prefer to have a decision based on a written record rather than having a hearing. The hearing officer will issue a decision within 50 days of being assigned the case unless the parties request discovery or additional time to present their case.

At least 5 days before a formal hearing, you must provide to the school's representative a description of all evaluations on your child that have been completed by that date. You must also provide the recommendations based on those evaluations that you will rely on to show your child has not received a FAPE. The school's representative must also disclose to you 5 days before the due process hearing all evaluations completed by that date and the recommendations based on those evaluations. The school personnel will rely on this information to establish that the services provided have enabled the child to benefit from his or her public education. Both you and school personnel will have to disclose at least 5 days before the hearing, the documents each intends to introduce at the hearing and a list of witnesses each intends to call at the hearing.

You may consult with legal counsel or with individuals with special knowledge or training with respect to children with disabilities. Your choice of a representative may accompany you, and present your case, to the hearing officer. At the hearing, you or your representative may present evidence, and confront and cross-examine witnesses. At the conclusion of the hearing, you may obtain a written or electronic record of the hearing. The hearing may be closed or open to the public at your election. You must waive your child's privacy rights in writing if you want

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a hearing open to the public. The hearing officer may announce a decision at the conclusion of the hearing or may issue a written decision shortly after the hearing is concluded.

### **VIII. Administrative Review:**

Any party has the right to appeal a hearing officer's decision to the DOHA Appeal Board. Each side will have the opportunity to file written statements of issues and arguments with the Director, DOHA, who will assign the case to the Appeal Board for consideration. The Appeal Board may order the parties to give oral argument in support of the party's position. The Appeal Board will issue a decision within 45 days of receiving the parties written arguments.

### **IX. Placement:**

While a due process hearing or judicial proceeding is pending, unless you and the school agree otherwise, your child shall remain (stay-put) in his or her educational setting in effect at the time the due process hearing was requested. This means that your child will be provided the services that are prescribed on the IEP that had been previously agreed to.

### **X. Civil Actions and Attorneys Fees:**

Any party aggrieved by the findings and decisions of a hearing officer may file a civil action in federal court to redress their injury. A court may award reasonable attorneys' fees to parents or guardians of a child or youth with disabilities if the parents are the prevailing party in the court action. Attorneys' fees are not awarded to representatives who are not licensed attorneys. Attorney fees are not awarded for legal advice, counseling or representation rendered in connection with meetings of the Case Study Committee.