

Parents Handbook For Special Education



Notice of Procedural Safeguards

**Under the Individuals with Disabilities Education Act
2004**

**Government of the United States Virgin Islands
Department of Education**

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Introduction



IDEA is the Individuals with Disabilities Education Act, a federal special education law that assures eligible children with disabilities ages three through twenty one, a free appropriate public education (FAPE) in the least restrictive environment (LRE). An important part of this law supports parent participation in their children's education.

This Handbook, developed by the Virgin Islands State Office of Special Education staff, provides parents of children with disabilities an overview of their educational rights, also called procedural safeguards. This Handbook is the Notice of Procedural Safeguards for parents and surrogate parents. It describes the laws and regulations affecting the provision of special education to help parents understand each step in the special education process. With this knowledge, parents will be prepared to take an active role in their child's education, one that involves close collaboration with school district personnel in the development of an Individualized Education Program (IEP).

It is anticipated that the content of this Handbook will assist you in planning and managing your child's school career, leading to high school graduation and employment or further education.

NOTE: All numerical references preceded by the symbol “§” (meaning section), refer to a specific section in the Code of Federal Regulations (CFR).



Notice



You have the right to:

1. Be notified in writing, within a reasonable amount of time, of any proposals or refusals to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child;
2. Have that notice in writing at a level understandable to the general public and in your native language or other principal mode of communication, unless it is clearly not feasible to do so;
3. Have the notice describe the proposed or refused action by the agency, explain why the action is proposed or refused, and describe any other options considered and explain why those other options were rejected;
4. A description of each evaluation procedure, test, record, or report the agency has used as a basis for the proposed or refused action;
5. A description of any other factors that are relevant to the agency's proposed or refused action;
6. Be present at all IEP meetings.
7. A notice that includes a full explanation of all procedural safeguards available to the parents;
8. Have the notice translated orally or by other means in your native language or other mode of communication if your native language or other mode of communication is not a written language. You also have the right to understand the content of the notice and the right to written evidence that these requirements have been met;
9. Have protection under the procedural safeguards of this part as a parent of a child with a disability and, if this notice is not an initial referral for evaluation, the means by which a copy of the description of the procedural safeguards may be obtained;
10. Be informed of sources for parents to contact to obtain assistance in understanding the provisions of Part B of the IDEA.

You have the right to:

11. Receive a copy of the procedural safeguards at least one time a school year, except a copy also must be given to the parents:

- upon initial referral for evaluation;
- upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year;
- in accordance with the discipline procedures in §300.530(h); and
- upon request by a parent.



Consent



“Consent” means that:

- a. the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language or other mode of communication;
- b. the parent understands and agrees, in writing, to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and
- c. the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

1. You have the right to give consent before an initial evaluation or a reevaluation is conducted.
2. You have the right to give consent before initial provision of special education and related services are provided to your child with a disability.
3. Consent for initial evaluation may not be construed as consent for initial placement as described in paragraph 2 above.
4. Parental consent is not required before:
 - reviewing existing data as part of an evaluation or a reevaluation; or

- administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

5. You have the right to a description of the activity for which consent is requested including a list of records (if any) that will be released and to whom.

6. You have the right to revoke consent at any time. If you choose to revoke consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked). If a parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.

7. You have the right to refuse consent for initial evaluation or a reevaluation. If a parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency may not use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child. The public agency will not be considered to be in violation of the agreement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent. The public agency is not required to convene an IEP meeting or develop an IEP for the child.

8. The Agency must obtain informed parental consent prior to conducting any reevaluation of a child with a disability. The consent need not be obtained if the agency can demonstrate that it made reasonable efforts to obtain the consent and the child's parents failed to respond. Reasonable efforts include:

- a. keeping detailed records of telephone calls made or attempted and the results of those calls;
- b. providing copies of correspondence sent to the parents and any responses received; and
- c. keeping detailed records of visits made to the parent's home or place of employment and the results of those visits.

9. The public agency may not use a parent's refusal to consent to one service or activity under paragraphs 1 through 4 of this section to deny the parent or child any other service, benefit, or activity of the public agency.

Independent Educational Evaluation

“Independent educational evaluation” means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question.

“Independent educational evaluation 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, consistent with §300.103.

1. You have the right to obtain an independent educational evaluation by a qualified examiner.
2. You have the right to be told where an independent educational evaluation may be obtained at no expense or low expense and the agency criteria applicable for independent educational evaluations as set forth by the Virgin Islands Department of Education.
3. You have the right to request an independent educational evaluation at public expense if you disagree with an evaluation obtained by the public agency. If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent’s right to request an independent educational evaluation.
4. If you request an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either initiate a hearing under §300.507, to show that its evaluation is appropriate or ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing under §300.507 through §300.513 that the evaluation obtained by the parent did not meet agency criteria. If the public agency initiates a hearing and the final decision is that the agency’s evaluation is appropriate, the parent still has a right to an independent educational evaluation, but not at public expense.

5. If you request an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the explanation by the parent may not be required and the public agency may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the public evaluation.

6. Except for the criteria described in paragraph 3 above, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

7. You have the right to an independent evaluation at public expense when a hearing officer requests the evaluation during a hearing.

8. You have the right to an independent educational evaluation at private expense. If you obtain an independent educational evaluation at private expense, the results of the evaluation 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 may be presented by any party as evidence at a hearing under this subpart regarding that child.

9. You are entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which you disagree.



Surrogate Parents



1. Each Local Educational Agency and any other agency that is involved in the education or care of the child shall ensure that an individual is assigned to act as a surrogate for the parents of a child when no parent can be identified; the public agency, after reasonable efforts, cannot locate the parents; the child is an unaccompanied homeless youth as defined in section 725(6) of the McKinney-Vento Homeless Assistance Act; or the child is a ward of the state. The agency must have a method for determining whether a child needs a surrogate parent and for assigning a surrogate parent to the child.

2. The public agency may select a surrogate parent in any way permitted under State law but must ensure that a person selected as a surrogate is

not an employee of a public agency (SEA, LEA and any other agency) that is involved in the education or care of the child, has no personal or professional interest that conflicts with the interest of the child he or she represents, and has knowledge and skills that ensure adequate representation of the child. An individual who otherwise qualifies to be a surrogate parent under this section is not an employee of the public agency (i.e. State Educational Agency (SEA) or Local Educational Agency (LEA) solely because he or she is paid by the agency to serve as a surrogate parent.

3. The surrogate parent may represent the child in all matters relating to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to the child.

4. The public agency may select as a surrogate a person who is an employee of a nonpublic agency that only provides non-educational care for the child and who meets the standards in paragraph 2 of this section.

5. The State Educational Agency must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

Children's Rights



Your child has the right to:

1. Receive policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type of severity of disability;
2. Be informed that under the regulations of the Family Educational Rights and Privacy Act of 1974 (34 CFR 99.5(a)), the rights of parents regarding education records are transferred to the student at age 18;
3. Be informed that if the rights accorded to the parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with

§300.520, the rights regarding educational records in §§300.613-300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.

Opportunity to Examine Records



1. You have the right to examine all records relating to your child without unnecessary delay after your request and before any meeting regarding an IEP or hearing and, in no case, more than 45 days after the request.
2. You have the right to inspect and review all education records with respect to the identification, evaluation and educational placement of the child; and the provision of FAPE to the child; including the right to a response from the participating agency to reasonable requests for explanations and interpretations of the records.
3. You have the right to have a representative appointed by you to review the records.
4. You have the right to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records.
5. You have the right to have the agency presume that a parent has authority to inspect and review records of his or her child unless agency has been advised that parent does not have authority under state law.
6. You have the right to inspect and review only the information relating to your child if any education record includes information on more than one child or be informed of that specific information.
7. You have the right to have the public agency keep a record of parties obtaining access to education records collected, maintained, or used under

Part B of the IDEA (except access by parents and authorized employees of the participating agency), including name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

8. You have the right to have the participating agency search for or retrieve information without charge.
9. A parent may be charged a fee for copies of records, which are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.
10. You have the right to be informed of all types and locations of records being collected, maintained or used by the agency.
11. You have the right to ask for an explanation of any item in the records.
12. You have the right to ask for an amendment of any education record if it is inaccurate, misleading or violates the privacy or other rights of the child.
13. You have the right to be informed of the refusal and right to a hearing if the agency refuses to make the requested amendment.
14. You have the right to have the agency decide whether to amend the information within a reasonable time after being asked to do so.
15. You have the right to be informed that if the agency decides in a hearing that the information is inaccurate, misleading, or violates the child's rights, it shall amend the information accordingly and so inform the parent in writing. You also have the right to be informed of the parent's right to place a statement in the record commenting on information or setting forth the parent's reasons for disagreeing with the agency's decision if it is decided in a hearing that information need not be amended.
16. You have the right to be informed if the agency decides in a hearing that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it shall inform the parent of the right to place in the records it maintains on the child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
17. You have the right to have parents' explanation maintained in the record as long as the contested record is maintained.
18. You have the right to have parents' explanation disclosed or the contested record disclosed by the agency to any party.

19. You have the right to have a hearing that must be conducted according to the procedures under 34 CFR §99.22 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 a child.

20. Except as to disclosures addressed in §300.535(b) for which parental consent is not required by Part 99, parental consent must be obtained before personally identifiable information is:

- disclosed to anyone other than officials of participating agencies collecting or using the information under Part B of the IDEA, subject to paragraph 21 of this heading; or
- used for any purpose other than meeting a requirement of Part B of the IDEA.

21. You have the right to be informed that an educational agency or institution subject to 34 CFR Part 99 may not release information from education records to participating agencies without parental consent unless authorized to do so under Part 99.

22. You have the right to receive from the SEA policies and procedures that are used in the event that a parent refuses to provide consent under §300.622

23. You have the right to have each participating agency protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

24. You have the right to be informed of the name and position of the one official at each participating agency that shall assume responsibility for ensuring the confidentiality of any personally identifiable information.

25. You have the right to know that all persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under §300.123 and 34 CFR Part 99.

26. You have the right to review a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information that each participating agency shall maintain for public inspection.

27. You have the right to be informed when each public agency no longer needs personally identifiable information that was collected, maintained, or used to provide educational services to your child.

28. You have the right to have at your request the information destroyed;

however, a permanent record of a student's name, address, phone number, his or her grades, attendance records, classes attended, grade level completed, and year completed may be maintained without time limitation.

Enforcement

You have the right to:

1. Receive from the SEA the policies and procedures, including sanctions, that the State uses to ensure that its policies and procedures are followed and that the requirement of the Act and the regulations in this part are met;
2. Know that the State requires a public agency to include in the records, of your child with a disability, a statement of any current or previous disciplinary action that has been taken against the child and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student records of non-disabled children;
3. Know that the statement will include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary taken, and any other information that is relevant to the safety of the child and other individuals involved with the child;
4. Know that if your child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized educational program and any statement of current or previous disciplinary action that has been taken against the child.

Confidentiality of Information



You have the right to:

1. Restrict access to your child's records by withholding consent to disclose records;
2. Be notified and receive copies before information in your child's file is destroyed;
3. Be told to whom information has been disclosed;
4. Review and receive copies of all information sent to another agency where your child seeks or is eligible to be enrolled.



Personally Identifiable Information



Personally identifiable means information that includes:

- the name of the child, the child's parent, or other family member;
- the address of the child;
- a personal identifier, such as the child's social security number or student number; or
- a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.



Protections For Children Not Yet Eligible For Special Education and Related Services



You have the right to know that:

1. A child who has not been determined to be eligible for special education and related services under IDEA and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in §300.530, may assert any of the protections provided for this section if the LEA had knowledge (as determined in accordance with paragraph 2 of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

2. An LEA must be deemed to have knowledge that a child is a child with a disability if:

- The parent of the child has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to supervisory or administrative personnel of the appropriate educational agency that the child is in need of special education and related services.
- The teacher of the child, or other personnel of the agency, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.
- You, the parent of the child, have requested an evaluation of the child pursuant to §§300.300-300.311; or

3. Exception—A public agency would not be deemed to have knowledge under paragraph (2) of this section if, as a result of receiving information specified in that paragraph—

- the parent of the child has not allowed an evaluation of the child pursuant to §§300.300-300.311
- the parent has refused services under the Act
- the child has been evaluated in accordance with §§300.300-300.311 and determined to not be a child with a disability under the Act.

4. If an LEA does not have knowledge that a child is a child with a disability, the child may be subjected to the same disciplinary measures applied to children without disabilities who engaged in comparable behaviors consistent with paragraph 5 of this section;

5. If a request is made for an evaluation of a child during the time period in

which the child is subjected to disciplinary measures under §300.530, the evaluation must be conducted in an expedited manner.

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

7. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency must provide special education and related services in accordance with the provisions of Part 300, including the requirements of §§300.530 through 300.536 and §612(a)(1)(A) of the Act.

Change of Placement for Disciplinary Removals

1. Know that for purposes of removals of a child with a disability from the child's current educational placement under §300.536, a change of placement occurs if:
 - a. the removal is for more than 10 consecutive school days; or
 - b. the child is subjected to a series of removals that constitute a pattern—
 1. because the series of removals total more than 10 school days in a school year;
 2. because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 3. because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

c. The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.

2. This determination is subject to review through due process and judicial proceedings.



Interim Alternative Education Setting



For purposes of this section, the following definitions apply:

a. **Controlled substance** means a drug or other substance identified under schedules I, II, III, IV, or V in section 202 (c) of the Controlled Substances Act (21 U.S.C. 812 (c)).

b. **Illegal drug**—means a controlled substance; but does not include a substance that is legally possessed or used under the supervision of a licensed health-care professional or used under any other authority under that Act or under any other provision of Federal law.

c. **Serious bodily injury**—has the meaning given the term “serious bodily injury” under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.

d. **Weapon has the meaning** given the term “**dangerous weapon**” under paragraph (2.) of the first subsection (g.) of section 930 of Title 18, United States Code.

e. **Substantial evidence** means beyond a preponderance of the evidence.

You have the right to:

1. Know that school personnel may order:

- a. to the extent removal would be applied to children without disabilities, the removal of a child with a disability from the child's current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).
- b. after a child with a disability has been removed from his or her current placement for more than 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under §300.101(a).

2. Know that for disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (4) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (5) of this section.

3. Know that:

- A child with a disability removed from the child's current placement pursuant to paragraphs (3), or (6) of this section must:
 - a. continue to receive educational services, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting and to progress toward meeting the goals set out in the child's IEP; and
 - b. receive as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.

- The services required in this section may be provided in an interim alternative educational setting.
- A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
- After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
- If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services as provided in §300.101(a).

4. Know that within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

- If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or
- If the conduct in question was the direct result of the LEA's failure to implement the IEP;
 - a. the conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the IEP Team determine that the conduct was caused by or had a substantial relationship to, the child's disability or the conduct was the direct result of the LEA's failure to implement the IEP.
- If the LEA, the parent, and relevant members of the child's IEP Team determine that the LEA failed to implement the IEP, the LEA must take immediate steps to remedy those deficiencies.

5. Know that if the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must either—

- Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
- If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
- Except as provided in paragraph (8) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.

6. Know that 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 safeguard notice described in §300.504.

7. Know that the child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g).

8. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child—

- Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or LEA;
- Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or LEA;
- Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA

9. Child's Status during Due Process Proceedings.

- a. Except as provided in §300.533, during the pendency of any administrative or judicial proceeding regarding a due process complaint notice requesting a due process hearing under §300.507, unless the State or Local Educational Agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement.
- b. If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.
- c. If the complaint involves an application for initial services under Part 300 from a child who is transitioning from Part C of the Act Part B and is no longer eligible for Part C services because the child has turned three, the public agency is not required to provide the Part C services that the child had been receiving. If the child is found eligible for special education and related services under Part B and the parent consents to the initial provision of special education and related services, then the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.
- d. If the Hearing Officer in a due process hearing conducted by the SEA or a State Review Official in an administrative appeal agrees with the child's parents that a change of placement is appropriate, that placement must be treated as an agreement between the State and the parents for purposes of paragraph (a) of this section.

Appeals and Placement During Appeals

You have the right to know that:

1. If you disagree with any decision made by the LEA or SEA regarding placement under paragraphs 1 through 9 of the above section titled "Change in Placement For Disciplinary Removals", or the manifestation determination under paragraph (4) of the above referenced section, or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing.

2. A Hearing Officer hears, and makes a determination regarding an appeal made under paragraph (1) of this section.

3. In making a determination under this section the Hearing Officer may—

- Return the child with a disability to the placement from which the child was removed if the Hearing Officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or
- Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the Hearing Officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

The procedures above may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

4. Expedited Due Process Hearing: Whenever a hearing is requested under paragraph (1) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508 (a) through (c) and 300.510 through 300.514, except as provided below:

- The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The Hearing Officer must make a determination within 10 school days after the hearing.
- Unless the parents and LEA agree in writing to waive the resolution meeting described below, or agree to use the mediation process described in the chapter "Mediation Process" in this document—
 - ✓ A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
 - ✓ The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

The SEA must ensure that the timeline requirements in §§300.510 through 300.514 are met. The decisions on expedited due process hearings are appealable consistent with §300.514.

Placement during Appeal

You have the right to know:

1. When an appeal has been made by a parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the Hearing Officer or until the expiration of the time period specified in §300.530 (c) or (g), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

Placement of Children By Parents In Private Schools When FAPE Is An Issue



You have the right to know that:

1. The school district is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the school district made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with §§300.131 through 300.144.
2. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial

responsibility are subject to the due process procedures of §§300.504 through 300.520.

3. If a child with a disability who has previously received special education and related services from the school district has been enrolled by his parents in a private preschool, elementary, or secondary school without the consent of or referral by the school district, a court or Hearing Officer may require the school district to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the school district had not made a free appropriate public education available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a Hearing Officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

4. The cost of any reimbursement described above may be reduced or denied if:

- At the most recent IEP meeting that the parents attended prior to removal of the child from public school, the parents failed to inform the IEP team that they were rejecting the placement proposed by the school district to provide a free appropriate public education to the child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
- At least 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information outlined in the above paragraph.

5. If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

- Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

6. Reimbursement may not be reduced or denied for failure of the parent to provide notice referred to above if:

- The school prevented the parents from providing the notice;
- The parents had not received notice, pursuant to §300.504, of the notice requirement in paragraph (4) of this section; or

- Compliance with paragraph (4) of this section would likely result in physical harm to the child; and
- May in the discretion of the court or a Hearing Officer, not be reduced or denied for failure to provide this notice if—
 - ✓ The parents are not literate or cannot write in English; or
 - ✓ Compliance with paragraph (4) of this section would likely result in serious emotional harm to the child



Complaint Procedures



As a parent, you have a right to file a complaint with the Department of Education regarding the provisions of a Free Appropriate Public Education in the Least Restrictive Environment for your child. The information provided in this section outlines the procedures a parent or other party must follow when resolving a disagreement between parties.

1. The Virgin Islands Department of Education has adopted procedures for resolving any complaint, including a complaint filed by an organization or individual from another state. The complaint must be in writing, to the State Director of Special Education, with a copy sent to the School District Superintendent of the public agency in which the alleged violation has occurred. If the parents are unable to file in writing, they may contact the public agency or SEA for assistance. To assist parents, organizations or individuals in filing a complaint, the State Office of Special Education has available a model form to assist in filing a complaint and due process complaint notice. The parent, entity, individual or group, must identify himself or herself and provide the following information:

- a. A statement that the public agency has violated a requirement of Part B of the IDEA or the VIDOESER, it must clearly identify the concern or the alleged violation as well as the facts on which the

statement is based. If necessary, the SEA will assist the complainant in clarifying allegations;

- b. The name of the child, the address of the residence of the child, and the name of the school the child is attending;
- c. The name of the child or children or school or district associated with the specific complaint allegations;
- d. Must allege a violation that occurred not more than one year prior to the date that the complaint is received unless a longer period is reasonable because the violation is continuing, or the complainant is requesting compensatory services for a violation that occurred not more than three years prior to the date the SEA received the complaint;
- e. Include a daytime telephone number where the complainant can be reached along with a mailing address;
- f. In the case of a homeless child or youth available contact information for the child and the name of the school the child is attending; and
- g. The party filing the complaint must forward a copy of the complaint to the LEA or public agency serving the child at the same time the party files the complaint with the SEA; and
- h. The complaint sent to the SEA should be addressed to the State Director of Special Education.

2. Within 60 calendar days of the receipt of a complaint, the SEA, through the State Director of Special Education shall:

- a. Assign the complaint to the State Office of Special Education staff for review and further investigation with parent or representative of the organization (within five days);
- b. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum allowing the public agency to offer a proposal to resolve the complaint and the opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506 of the Act;
- c. If the public agency and complainant cannot reach an amicable decision within an appointed timeframe, the SEA will conduct an

independent on-site investigation if determined necessary (within a forty-five day period);

- d. Give the complainant the opportunity to submit additional information, either orally or in writing about the allegations in the complaint;
- e. Review all relevant information and make a determination as to whether the public agency is violating or has violated a requirement of Part B of the IDEA or of the VIDOESER; and
- f. Issue a written decision to the complainant that is endorsed by the State Director of Special Education with a copy to the respective Superintendent that addresses each allegation in the complaint and contains:

- 1. findings of facts and conclusions;

- 2. the reasons for the SEA's final decisions.

- 3. An extension of time to complete actions under this section is permitted if exceptional circumstances exist with respect to a particular complaint or the parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization) and the public agency involved agree to extend the time to engage in mediation pursuant to these Rules or to engage in other alternative means of dispute resolution

- g. Determine procedures for effective implementation of the SEA's decision, if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

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

- a. How to remediate the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child; and

- b. Appropriate future provision of services for all children with disabilities.

4. If a written complaint is received that is also the subject of a due process hearing, under the Due Process Hearing Procedures in this Handbook, or contains multiple issues, of which one or more are part of that hearing, the SEA must set aside any part of the complaint that is being addressed in the hearing until its conclusion. Any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and complaint procedures described in this section.

5. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, then the due process hearing decision is binding on that issue. The SEA must inform both parties of this fact. A complaint alleging a LEA's failure to implement a due process decision, however, must be submitted directly to the State Director of Special Education and resolved by the SEA.

DUE PROCESS HEARING AND MEDIATION PROCEDURES

Consistent with the requirements of Part B of the IDEA and the Virgin Islands Department of Education Special Education Rules, the procedures noted below shall be utilized for conducting due process hearings and mediation in the Territory.

REQUEST FOR HEARING

1. If the parents of a child with a disability or any other party are aggrieved by a public agency's decision or proposal to initiate or change, the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education to the child, they may request an impartial due process hearing of their complaint which is to be in writing to the State Director of Special Education with a copy to the Superintendent of the LEA. If the parents or any other party are unable to make the request in writing, they can contact the SEA for assistance. The public agency may also initiate a hearing on the same matters, as may a child with a disability or who is suspected of having a disability that, is the age of majority, and has not been declared incompetent by a Court. A parent or agency must request an impartial hearing on the their due process complaint within two years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the due process complaint. This timeline does not apply to a parent if the parent was prevented from filing a due process complaint due to specific misrepresentations by the LEA that it had resolved the problem forming the basis of the due process complaint; or the LEA withholding of information from the parent that was required under the IDEA and the VIDOESER.

2. When requesting a hearing, the parent of a child with a disability, other party, or the attorney representing the child must provide notice, which remains confidential and which includes:

- a. the name of the child;
- b. the address of the residence of the child available contact information in the case of homeless child;
- c. the name of the school the child is attending;
- d. a description of the nature of the problem of the child relating to the proposed or refused initiation or change, including facts relating to the problem; and
- e. a proposed resolution of the problem to the extent known and available to the parents at the time.

3. The SEA has developed a model request form to assist parents in filing a request for a due process hearing that includes the information required in subsection 2 above.

4. An SEA may not deny or delay a parent's right to a due process hearing for failure to provide the notice required in paragraph 2 of this section.

5. Upon receipt of a written request for a hearing or the public agency initiates the hearing, the State Director shall:

- a. Inform the parents in writing of any free or low-cost legal services as well as other services relevant to mediation or a due process hearing, if the parent requests the information or initiates a hearing under Section IV. J. of the VIDOESER;
- b. offer parents or the agency an opportunity to participate in mediation, unless the parent waives the opportunity for mediation.

6. The SEA, shall conduct the impartial due process hearing including cost associated with the payment of fees of the due process hearing officers and court reporter. The public agency is responsible for other costs of the hearing, including attorneys' fees.

7. The SEA shall ensure that within forty five days after receipt of the written hearing request, the hearing is immediately commenced and completed, including any mediation conducted pursuant to the VIDOESER, and a final decision is rendered, unless a specific extension of time has been granted by the

Hearing Officer.

8. The SEA shall monitor all due process hearings to ensure adherence to required procedures.

9. The party requesting the due process hearing may not raise issues at the due process hearing that were not raised in the due process complaint unless the other party agrees otherwise.

MEDIATION

The public agency has procedures that are implemented to allow parties the opportunity to resolve disputes involving matters of identification, evaluation, educational placement and a free appropriate public education for a child with a disability through a mediation process, including matters arising prior to the filing of a complaint. At a minimum, mediation must be available whenever a due process hearing or an expedited due process hearing is requested.

1. The procedures meet the following requirements:
 - a. The procedures ensure that the mediation process is voluntary on the part of the parties, is not used to deny or delay the parent's rights for a hearing or to deny any other rights afforded under Part B of the IDEA, and is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
 - b. The State maintains a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. A representative of the SEA shall assign a mediator on a rotating basis from that list whenever a due process hearing request is filed.
 - c. The State shall bear the cost of the mediation process, including the costs of meetings to encourage mediation.
 - d. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.
 - e. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a legally binding written mediation agreement signed by both parties to the dispute. The mediator shall also provide a copy within seven days to the SEA.

f. Any issues of the hearing complaint not resolved in the written mediation agreement will go forth to hearing, unless the parties agree otherwise.

g. The absence of a signed mediation agreement within the prescribed time frame will constitute a presumption that agreement has not been reached and due process hearing timelines continue.

h. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process. Nothing in these regulations shall supersede any parental access rights under the Family Educational Rights and Privacy Act of 1974 or foreclose access to information otherwise available to the parties.

i. The mediation agreement must be signed by both the parent and a representative of the agency who has the authority to bind such agency and; the agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.

j. Following resolution as denoted by a signed mediation agreement, the SEA will ascertain that the mediation agreement has been fully implemented by the responsible public agency. Should it be determined that the responsible public agency has not implemented the provision of the agreement the SEA will initiate enforcement procedures.

2. Impartiality of the mediator. An individual who serves as a mediator:

a. May not be an employee of any public agency or any state agency that is involved in the education or care of the child; or

b. must not have a personal or professional interest that conflicts with the person's objectivity; and

c. is not an employee of a public agency or State agency solely because he or she is paid by the VIDE SEA to serve as a mediator.

ASSIGNMENT OF HEARING OFFICER

1. If either party refuses to participate in mediation conference or other proposed mediation steps, or if mediation efforts fail to settle the differences between the parties, the VI State Office of Special Education Director shall assign an Impartial Hearing Officer on a rotating basis from a list of qualified Hearing Officers it maintains. The Hearing Officer's schedule and assignment history is public information. Each public agency shall keep a register of persons who may serve

as Hearing Officers, including their qualifications that have been trained and approved by the SEA. The Impartial Hearing Officer shall carry out all appropriate activities in conformance with the SEA procedures.

2. An Impartial Hearing Officer shall not be assigned from the register to a particular hearing that, with respect to that hearing has any personal or professional bias or interest which might conflict with his or her objectivity toward either of the parties to the hearing or any of the issues to be decided in the hearing. An employee of the public agency involved in the education or care of the child shall also be excluded from serving as a Hearing Officer.

3. Hearing officers will be considered qualified if they:

- a. Possess knowledge of, and the ability to understand, the provisions of the IDEA and all Federal and State regulations pertaining to it, and legal interpretation of the IDEA by State and Federal courts;
- b. Possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and
- c. Possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.
- d. Attend all training sessions for Hearing Officers provided or facilitated by the State Office of Special Education; and
- e. Attend the orientation training for Hearing Officers offered annually by the State Office of Special Education.

4. An individual who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a Hearing Officer.

5. A Hearing Officer may at any point withdraw from consideration or from service in any hearing in which he or she believes a personal or professional bias or interest of any of the issues to be decided in the hearing exist which might conflict with his or her objectivity.

PRE-HEARING PROCEDURES

GENERAL

Whenever a complaint has been received, the parents or Local Education Agency involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State Educational Agency.

RESOLUTION SESSION

- Within fifteen days of receiving notice of the parents' due process complaint, and prior to the initiation of a due process hearing, the LEA must convene a meeting with the parent and the relevant member or members of the IEP Team who have specific knowledge of the facts identified in the due process complaint.
- This meeting must include a representative of the public agency who has decision-making authority on behalf of that agency. The meeting may not include an attorney, unless the parent is accompanied by an attorney.
- The purpose of the Resolution Session is to provide the parent the opportunity to discuss the due process complaint, and the facts that form the basis of the due process complaint, so that the LEA has the opportunity to resolve the dispute that is the basis for the due process complaint.
- The relevant members of the IEP Team are determined by the parent and the LEA.
- The Resolution meeting need not be held if the parent and the LEA agree in writing to waive the meeting or the parent and the LEA agree to use the mediation process described in IV. K. of the VIDOESER.
- If the LEA has not resolved the due process complaint to the satisfaction of the parent within thirty days of the receipt of the due process complaint, the due process hearing may occur. The timeline for issuing a final decision begins at the expiration of this thirty day period.
- The forty five day timeline for the due process hearing to begin starts the day after one of the following events occur: both parties agree in writing to waive the resolution meeting after either the mediation or resolution meeting starts but before the end of the thirty-day period, the parties agree in writing that no agreement is possible; if both parties agree in writing to continue the mediation at the end of the thirty-day resolution period, but later, the parent or public agency withdraws from the mediation process.
- If a resolution to the dispute is reached at the meeting described in this section, the parties must execute a legally

binding agreement that is signed by both the parent and a representative of the agency who has the authority to bind the agency, and is enforceable in any Territorial Court of competent jurisdiction or in a district court of the United States, or, by the SEA.

Agreement Review Period: If the parties execute an agreement, a party may void the agreement within three business days of the agreement's execution.

1. Within a reasonable amount of time the Hearing Officer shall provide the parent or guardian, the public agency, and the SEA written notice of the date, time and place of the hearing.
2. The Hearing Officer shall ensure that each hearing and each review involving oral arguments is conducted at a time and place reasonably convenient to the parties involved.
3. At the discretion of the Hearing Officer, a pre-hearing conference shall be held in order to:
 - a. clarify the issues(s) of the hearing;
 - b. review the hearing rights of both parties;
 - c. review the procedures for conducting the hearing; and.
 - d. afford both parties the opportunity for disclosure. In no event will such a pre-hearing conference be held later than five days prior to the hearing.
4. Each party shall disclose to the other the full name, title, occupation, and place of employment of each witness, a capsule summary of the witnesses' testimony and any other evidence to be presented. These disclosures must be made at least five days prior to the hearing.
5. During a pre-hearing conference conducted pursuant to this section, or in the alternative through the delivery of a written statement, the Hearing Officer shall ensure that the parents are provided a full explanation of their hearing rights.

HEARING RIGHTS

Any party to a hearing or an appeal has the right to:

1. Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and compel the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing; and
4. Obtain written, or, at the option of the parents, electronic, verbatim record of the hearing and findings of fact and decisions.
5. At least five business days before a hearing each party shall disclose to all other parties all evaluations completed by that date and recommendations, based on the offering party's evaluations, that the party intends to use at the hearing.
6. A Hearing Officer may bar any party that fails to comply with the above provision from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

PARENT RIGHTS IN HEARING

In addition to the rights noted above, parents are assured of their right to have the child who is the subject of the hearing present, and to determine whether the hearing shall be open or closed to the public. The record of the hearing and the findings of fact and decisions must be provided at no cost to the parents.

DECISION OF HEARING OFFICER



The Hearing Officer must make a decision on substantive grounds based on a determination of whether the child received FAPE in accordance with the following requirements:

1. The final decision will be in writing, or at the option of the parent, electronic, and shall be sent by certified mail or hand-delivered within 45 days after the request for the hearing to the parents, to the public agency to their respective representatives, and to the SEA Disabilities Compliance Manager. A Hearing Officer may grant specific extensions of time beyond the forty five days, at the request of either party.
2. The decision of the Hearing Officer will include findings of fact and decision and reasons for these findings and decision.
3. The decision of the Hearing Officer shall be based solely on evidence and testimony presented at the hearing.
4. In matters alleging a procedural violation, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies—
 - a. impeded the child's rights to a FAPE;
 - b. significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or
 - c. caused a deprivation of educational benefit.
5. A verbatim record of the proceedings of the hearing will be made, and shall include any materials or statements specifically requested by any of the parties to appear in the record.

6. The decision of the Hearing Officer is final upon the parents and upon the agency, its officers, employees and agents, unless a party of the hearing appeals the decision in court or brings a civil action.

7. Following rendering of the Hearing Officer's decision, the VIDE will ascertain that the decision has been fully implemented by the responsible public agency through its monitoring process. Should it be determined that the responsible public agency has not implemented these orders the VI-SEA will initiate enforcement procedures.

8. The VI-SEA Disabilities Compliance Manager or designee shall transmit the findings and decision to the Virgin Islands Advisory Panel on Special Education (VIAPSE) and make them available to the public, after deleting any personally identifiable information.

EXPEDITED DUE PROCESS HEARINGS

Whenever a hearing is requested when a parent of a child with a disability disagrees with any placement decision under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, the decision may be appealed by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

You have the right to know that:

1. An expedited due process hearing under §300.532 must:

- Meet the requirements of §§300.507 and 300.508 (a) through (c) and §§300.410 through 300.514.

2. The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date of the complaint requesting the hearing is filed. The Hearing Officer must make a determination within 10 school days after the hearing.

3. Unless the parents and LEA agree in writing to waive the resolution meeting described in IV. M. Resolution Session of the V. I. Special Education Special Education Rules, or agree to use the mediation process described in §300.506.

- A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
- The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.

4. The decisions on expedited due process hearings are appealable consistent with §300.514.

MEDIATION PROCESS

You have the right to:

1. Resolve disputes through a voluntary mediation process that at a minimum must be available whenever a hearing is requested under §300.507 or §§300.530 through 300.537.j
2. Know that mediation is not used to deny or delay a parent's right to a due process hearing under §300.507, or to deny any other rights afforded under Part B of the Act.
3. Have the mediation conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
4. Know that the State maintains a list of individuals, who are qualified mediators, knowledgeable in laws and regulations relating to the provision of special education and related services.
5. Know that a mediator is selected on a rotational or other impartial basis from the list described above.
6. Know that the State bears the cost of the mediation process, including the cost of meetings described in paragraph (13.) under this heading.
7. Know that each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties

to the dispute.

8. Know that if the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution.

9. Know that discussions that occur during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding, and must be signed by both the parent and a representative of the agency who has the authority to bind such an agreement.

10. Know that an individual who serves as a mediator may not be an employee of:

- the SEA or the LEA that is involved in the education or care of the child; and
- must not have a personal or professional interest that conflicts with the person's objectivity.

11. A person who otherwise qualifies as a mediator is not an employee of an LEA or State agency described under §300.228 solely because he or she is paid by the agency to serve as a mediator.

Adoption of State Complaint Procedures

VIRGIN ISLANDS DEPARTMENT OF EDUCATION PROCEDURES FOR RESOLVING COMPLAINTS UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

Section 1. Complaint Resolution Steps

A. Herein are the written procedures for resolving any complaint, including a complaint filed by an organization or individual from another State that meets the requirements of §300.151, of the 2004 reauthorization of the IDEA. These procedures will be and are widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities.

B. In resolving a complaint in which the SEA has found a failure to provide appropriate services, an SEA, pursuant to its general supervisory authority under Part B of the Act, must address:

- The failure to provide appropriate services, including corrective action appropriate to address the needs of the child (such as compensatory services or monetary reimbursement); and
- Appropriate future provision of services for all children with disabilities.

Upon receipt of a complaint, the State Office of Special Education will:

1. Notify the public agency against which the complaint has been filed. The notice will include the allegations, the basis for the allegations, and a copy of this complaint procedure.
2. Suggest the Early Complaint Resolution Process (ECR) to both parties as a method for resolving the complainant's concerns.
3. Advise the complainant of his or her right to submit additional information, either orally or in writing, about the allegations in the complaint, within the 60-day timeline. The complainant may submit additional oral information through an interview with the complaint investigator.
4. Provide the public agency with the opportunity to respond to the complaint, including, at a minimum;
 - At the discretion of the public agency, a proposal to resolve the complaint; and
 - An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with §300.506.
5. Gather sufficient additional information to make a determination for each allegation through informal fact finding, telephone or personal interviews, and a review of files, documents, correspondence, and other information. If both parties agree that one or more violations have occurred, additional fact - finding will not be conducted in those areas.
6. Carry out an independent on-site investigation, if it is deemed necessary.
7. Review all relevant information and make an independent determination for each allegation filed by the complainant as to whether the public agency has violated a requirement of Part B of the IDEA.

8. Issue a written decision to the complainant and educational agency that contains:

- findings of fact and conclusions; and
- the reasons for the SEA's final decision.

8. An introduction with:

- a. the date the complaint was received by the VIDE-SEA;
- b. the name of the public agency involved;
- c. the complainant's allegations;
- d. the complaint investigator's name;
- e. a list of the information gathered and reviewed, and the method of collection;
- f. a description of the complainant's opportunities to submit additional information and whether additional information was submitted; and
- g. if relevant, a description of any extension of the 60-day timeline and the exceptional circumstances that warranted the extension.

9. The SEA's findings of fact and conclusions.

10. The SEA's reasons for the final decision, including a determination regarding each allegation.

11. If the SEA determines that the public agency violated a Part B requirement, required compliance activities will be stated in the report. A timeline and method of documenting compliance will be included.

12. A reference number that was assigned will be utilized in place of personally identifiable information in the final report. The use of personally identifiable information about personnel employed by the public agency will be avoided.

C. Notify the complainant and the public agency if the timeline is extended. The 60-day timeline, from date of receipt of the complaint to issuance of the report, may be extended, if exceptional circumstances exist, not routine circumstances, such as requiring additional information from the

complainant and are documented by the SEA. If the timeline is extended, the complainant and public agency will be notified in advance of the extension. The notification will include the length of the extension and a description of the exceptional circumstances that warrant the extension.

D. The complaint procedures outlined in this section are available for resolving any complaint that meets the criteria listed below:

1. Must include one or more statements that the public agency has violated a requirement of Part B of the IDEA '04; it must clearly identify the concern or the alleged violation as well as the facts on which the allegation is based (if needed, SEA will assist the complainant in clarifying allegations);
2. Should include the name of the child or children or school or district associated with the specific complaint allegations;
3. Must allege a violation that occurred not more than one year prior to the date that the complaint is received in accordance with §300.151.
4. Should include a daytime telephone number where the complainant can be reached along with a mailing address; and
5. Should be sent to the State Director of Special Education at the following address:

**Virgin Islands Department of Education
State Office of Special Education
State Director of Special Education
1834 Kongens Gade
St. Thomas, VI 00802
Fax: (340) 774-0817**

Section 2. Evaluating Complaints

Upon receipt of a complaint, the SEA will evaluate the complaint to determine if an investigation should proceed. If so, the SEA has 60 days to complete the complaint process. Any issue in the complaint that is not a part of the due process action will be resolved within the 60-day time limit, using the procedures listed in Section 3 of this document and in accordance to 34 CFR §300.152. However, the SEA may determine that an investigation cannot proceed. Below are the procedures the SEA will follow should this be the case:

- A. There are sixty (60) calendar days to complete the complaint process from the date stamped on the complaint letter. The complaint will be date

stamped upon receipt. A letter will be considered a formal complaint only if it meets the criteria noted above. During the 60-day time limit the SEA will:

1. reject a complaint that does not meet the federal complaint requirements;
2. set aside any part of a complaint that is subject of a due process hearing; and /or
3. decide that additional information is required.

B. The SEA will contact the complainant for additional information if any of the following or similar instances occur:

1. the complaint is not signed;
2. the complaint does not include allegations of Part B violations. (If appropriate, the SEA will notify the complainant of the appropriate agency, entity, or process to address his or her concerns);
3. the complaint does not include the basis for any of the allegations; or
4. all of the allegations in the complaint have been resolved in a previous due process hearing. However, the VI-SEA will resolve a complaint alleging that the public agency failed to implement a due process hearing decision.

C. The SEA will notify the complainant within 30 days of receipt of a complaint, if the process cannot proceed with resolution of certain statements and the reasons for these decisions. The complainant may subsequently revise the complaint either orally or in writing. If the revised complaint contains additional allegations on which the SEA can proceed, the SEA will modify the scope of complaint resolution. However, the 60 day time limit to complete the process is still in effect. Resolution of every allegation cannot proceed when:

1. Some of the statements in the complaint are not allegations that a public agency has violated a requirement of Part B of the IDEA. In this situation, the SEA will proceed with resolution of the statements that are allegations. Where appropriate, the SEA will assist the complainant in clarifying other statements and/or will inform the complainant of the appropriate agency, entity, or process to address concerns that do not allege IDEA violations.

2. The basis of a complaint is not provided for some of the allegations. In this situation, the SEA will assist the complainant in identifying the basis for his or her allegations.

3. Some or all of the allegations in the complaint are the subject of a current due process hearing. In this situation, the SEA will proceed with resolution of allegations that are not part of the due process hearing. The SEA will set aside allegations that are the subject of a due process hearing and will suspend the timeline for those allegations. When the hearing is resolved, the SEA will proceed with resolution of any allegations on which the Hearing Officer has not ruled. However, the SEA will proceed to resolve allegations that a public agency failed to implement a due process hearing decision within the time limit and procedures described in section 5 of this document; or

4. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties, the hearing decision is binding, and the SEA will inform the complainant to that effect.

D. If the complaint is withdrawn by the complainant prior to expiration of the time limit for resolution, the SEA will close the complaint.

Section 3. Complaint Resolution Process

The SEA will make every effort to resolve complaints in the least adversarial manner possible. Resolution of a formal complaint may be achieved through one or more of the following four processes after an investigation has been completed:

A. Early Complaint Resolution (ECR): The SEA may propose the use of ECR to resolve the complaint. This mutually agreed upon approach provides the complainant and the district an opportunity to immediately resolve the issues prompting the complaint, even though the parties may not agree on particular findings of fact and conclusions. The SEA representative or a contracted investigator will facilitate a written resolution to be signed by both parties, who will be bound to the terms and conditions of the ECR.

B. Corrective Action Plan (CAP): The district may propose a CAP to address the allegations in the complaint. The SEA must address how to remediate the denial of services, including, as appropriate, the awarding of monetary reimbursement or other corrective actions appropriate to the needs of the child and appropriate future

provision of services for all children with disabilities.

C. Investigation: The SEA will investigate the complaint by conducting interviews and reviewing files, correspondence, and other information. An on-site investigation may occur if necessary.

D. Verification of Resolution: At any time during an investigation, the public agency may submit information to the SEA to document that one or more of the allegations in the complaint have been resolved. The SEA may also receive similar information from other sources.

Section 4. Compliance Activities

A. Remedies: The SEA will identify the specific corrective action steps necessary for the district to achieve compliance. If it is determined that the district has failed to provide appropriate services, the SEA will address:

1. How to remedy the denial of those services including, as appropriate, the award of compensatory education, monetary reimbursement or other corrective actions appropriate to the needs of the student that is the subject of the complaint; and
2. Appropriate future provision of services for all students with disabilities.

B. Documentation: The SEA will verify implementation of corrective actions and compliance by obtaining documentation from the public agency, confirming compliance with the complainant, or conducting an on-site follow-up.

C. Technical Assistance: If necessary, the SEA will provide technical assistance to the public agency during or following complaint resolution. The SEA will maintain a record of technical assistance provided to education agencies.

D. Sanctions: If the SEA determines that the public agency has not completed the corrective action(s) as required, a "Letter of Enforcement" will be sent to the Insular Superintendent and the complainant within five (5) full business days of the overdue date, indicating that one or more of the following enforcement options will be taken in accordance with the procedures outlined in the IDEA.

- Interruption of federal funds

- Withholding federal or state funds
- Redirection of federal funds to ensure the child receives a free appropriate public education (FAPE)
- If applicable, report violations to a sponsoring entity and seek remedies through appropriate Board.

Section 5. Record of Complaints

Each complaint filed will be maintained for a period of at least 5 years and will include an original or copy of:

1. the complaint;
2. investigative notes, documents, correspondence, phone logs, etc.;
3. the final report, or documentation that the complaint was withdrawn; and
4. verification of compliance if additional activities are required in the report.



As parents of a child with a disability, you and your child have many rights, and with these rights, there are certain responsibilities. The Virgin Islands Department of Education is responsible for safeguarding your rights. You, in turn, should attempt to keep the school system informed of things that affect your child's education. You are also urged to assist the school by attending Individualized Education Program Conferences and by keeping the lines of communication open at all times. When you have concerns about your child's education, it is important to tell your school principal or supervisor of special education. If you need further assistance in talking to people in the school system, there are advocacy and/or parent groups from whom you may obtain help. Also, you may contact the Virgin Islands Department of Education. First and foremost however, you should talk to your child's teacher, principal, the special education supervisor, or other school administrators. Schools exist to help children grow

and develop into capable adults, but schools need the help and cooperation of parents to accomplish their goals.

If you would like further explanation of any of these rights, you may contact the State Director of Special Education:

Department of Education,
State Office of Special Education
1834 Kongens Gade
St. Thomas, Virgin Islands 00802
Telephone: (340) 776-5802
Fax (340) 777-1020
or
Department of Education
State Office of Special Education
2133 Hospital Street
Christiansted, St. Croix 00820
Telephone: (340) 719-7682
Fax (340) 719-7179 or (340) 719-7785

**Virgin Islands Department of Education
State Office of Special Education
Special Education Complaint Form**

If you believe that special education requirements have not been followed by a public school, you may file a complaint with the Virgin Islands Department of Education for investigation by the State Office of Special Education. If you need assistance in writing your complaint, you may call the State Office of Special Education at (340)719-7682 ext. 22. This form has been developed to assist parents in the filing a complaint.

The Local Education Agency (LEA) will contact the parent/complainant within ten (10) days of filing this complaint to inform the parent/complainant of the mediation process. The LEA and the parent/complainant can agree to use mediation to resolve the complaint or to have the case investigated by the State Office of Special Education.

Date: ____/____/____

Requesting Person: _____

Physical Address: _____
City _____ State _____ Zip _____

Mailing Address: _____ City _____ State _____ Zip _____

Phone Number: _____ Work Number: _____
Fax Number: _____ Alternate Number: _____

Your relationship to the child: _____
(e.g. parent, guardian, attorney for parent)

Full name of child: _____ School: _____
(also provide informal name, e.g. William James Smith (Billy))

Address of child's residence: _____
(street address)
City: _____ State _____ Zip _____

Select either item A or B

A. _____ I am writing this complaint on behalf of _____ a student
who attends _____ School.

B. _____ I am filing a special education complaint. I believe that the _____
school District is not following special education requirements.

Formal Complaint Form
Page 2

Instructions:

State your specific concern(s) below. It is important that for each concern, **you state the facts that support or surround your concern**. It would be helpful to include any dates or the period of time in which the events occurred. If you choose, you may describe the remedy that you believe would address your concern(s). ***You may attach additional sheets.***

Describe the nature of problem:

The above statement is based on the following fact(s):

Proposed Resolution:

Date(s) alleged violation(s) occurred:

Have you also filed a due process complaint regarding this issue? Yes _____ No _____

I understand that I will have another opportunity to provide documentation and information about my concerns as necessary.

Formal Complaint Form
Page 3

Notification for Investigation

Federal regulation mandates under §300.153 (d) that “*The party filing the complaint must forward a copy of the complaint to the Local Educational Agency (LEA) or public agency serving the child at the same time the party files the complaint with the State Educational Agency (SEA)*”. (**Authority: 20 U.S.C. 1221e-3**)

Mail your complaint to your District address that applies and the State Office of Special Education:

State Office
Virgin Islands Department of Education
State Office of Special Education
State Director of special Education
1834 Kongens Gade
St. Thomas USVI 00802-6746

St. Croix District
Virgin Islands Department of Education
Insular Superintendent
2133 Hospital Street
Christiansted, St. Croix V.I. 00820-4665

St. Thomas District
Virgin Islands Department of Education
Insular Superintendent
1834 Kongens Gade
St. Thomas U.S.V.I. 00802-6746

I forwarded my complaint to the State office and the District that applied to my jurisdiction.

Parent/Complainant Signature

Signature of Requesting Person: _____ **Date:** _____

<i>For Office Use</i>		
<i>Date Received</i>	<i>Case No. Assigned</i>	<i>Due Date</i>
<i>Comments:</i> 		

**Virgin Islands Department of Education
Request for Special Education
Due Process Hearing**

*Within **15** days of receiving notice of a parents' request for a due process hearing, and prior to the beginning of a due process hearing under §300.511, the Local Education Agency (LEA) must convene a **resolution meeting** with the parents and the relevant member(s) of the Individualized Education Program (IEP) team who have specific knowledge of the facts identified in the hearing request. The meeting must include a representative of the LEA who has decision-making authority on behalf of that District unless the parent is accompanied by an attorney. The purpose of the meeting is for the parent/complainant of the child to discuss their hearing request and the facts that forms the basis of the hearing request, so that the LEA has the opportunity to resolve the dispute that is the basis for the hearing request.*

*The LEA is not required to hold a **resolution meeting** if both parties agree in writing to waive the meeting or agree to use the **mediation process** to resolve the issues included in the hearing request. If the parents and the LEA do not agree to waive the resolution session and the District has not resolved the due process complaint to the parent's satisfaction within **30** days of the receipt of the due process hearing request, the due process hearing must occur. An agreement to waive the resolution session must be in writing.*

Date: ____ / ____ / ____

Name of requesting person(s): _____
(Please Print)

Title of requesting person(s): _____
(e.g. parent; guardian; attorney for parent)

Mailing address of requesting person(s) _____

Full name of child: _____
(also provide informal name, e.g. William James Smith (Billy))

Address of child's residence: _____
(Street Address)

(City) (Zip Code)

Name of school child attends: _____

Name of District your child attends: _____

Home Phone: _____ **Work Phone:** _____

Reasons you are requesting a special education due process hearing:

Identification:

Provide the facts and details to the concerns you have regarding your child's special education identification. [Use the back of this page if you need more space.]

Evaluation:

Provide the facts and details related to the concerns you have regarding your child's evaluation.
[Use the back of this page if you need more space]

Educational Placement:

Provide the facts and details related to the concerns you have regarding your child's educational placement. [Use the back of this page if you need more space]

Free Appropriate Public Education

Provide the facts and details related to the concerns you have regarding your child's free appropriate public education. [Use the back of this page if you need more space]

How would you like this problem or these problems to be resolved? In other words, what do you want for your child that you feel she or he needs? [Use the back of this page if you need more space]

NOTE: New issues may not be raised at the due process hearing that are not raised in the notice, unless the other party agrees.

Signature of Requesting Person: _____ **Date:** _____

Notification for Due Process Hearing

Federal regulation mandates under §300.153 (d) that "The party filing the complaint must forward a copy of the complaint to the Local Educational Agency (LEA) or public agency serving the child at the same time that party files the complaint with the Educational Agency (SEA)". (**Authority: 20 U.S.C. 1221e-3**) Mail your complaint to your District address that applies and the State Office of Special Education:

State Office
Virgin Islands Department of Education
State Office of Special Education
State Director of Special Education
1834 Kongens Gade
St. Thomas USVI 00802-6746

St. Croix District
Virgin Islands Department of Education
Insular Superintendent
2133 Hospital Street
Christiansted, St. Croix USVI 00820-4665

St. Thomas District
Virgin Islands Department of Education
Insular Superintendent
1834 Kongens Gade
St. Thomas USVI 00802-6746

I forwarded my complaint to the State Office and the District that applied to my jurisdiction.

Parent /Complainant Signature

