

**PROCEDURAL SAFEGUARDS NOTICE**  
**August, 2016**

The mission of the Department of Defense Education Activity (DoDEA) is to provide a quality educational program that prepares all students for success in a global environment. We believe that through equal access to a quality education, all children can be challenged to achieve their best in school to be successful learners and productive adults. In DoDEA, students with disabilities are provided a Free Appropriate Public Education (FAPE) in the least restrictive environment based on the individual needs of the student and in accordance with applicable laws and regulations. This Procedural Safeguards Notice is designed to help you better understand your procedural safeguards as we work together to help your student receive an appropriate education. If you would like this notice in your native language, you should contact the school principal who will accommodate the request, unless it is clearly not feasible to do so.

**INTRODUCTION**

This document provides an overview of educational rights pertaining to special education for children with disabilities from age 3 through age 21 inclusive. This Notice provides the procedural safeguards as defined in DoD Instruction 1342.12, "Provision of Early Intervention and Special Education Services to Eligible DoD Dependents," dated June 17, 2015.

This Procedural Safeguards Notice must be provided:

- Once per year;
- Upon initial referral for special education evaluation or parental request for evaluation;
- Upon receipt of the first due process complaint;
- On the date the decision is made to remove a child with a disability because of misconduct, when the removal would change the child's placement; and
- Upon request of the parent.

**FOR ADDITIONAL INFORMATION**

DoDEA's special education programs and services are provided in accordance with the Department of Defense (DoD) Manual 1342.12, "Provision of Early Intervention and Special Education Services to Eligible DoD Dependents," dated June 17, 2015. A copy of this Manual may be obtained from the following web address:

<http://www.dodea.edu/Curriculum/specialEduc/pubs.cfm>

DoDEA Case Study Committee (CSC) refers to a multidisciplinary team of special educators, regular educators, related services personnel, administrators, and you, the parent. The required composition of a CSC depends upon the activities that must be accomplished. The CSC provides oversight of the school special education program and all activities directly related to a student with a disability found eligible under DoD Instruction 1342.12 (referenced above). For additional information about your student's school CSC Committee, please speak with the school administrator.

Your local school is the first stop for additional information concerning your student's educational program. Your student's classroom teacher and school administrator are available to answer questions and address any concerns you may have. For questions pertaining to district

special education procedures, the District Special Education Instructional Systems Specialist (ISS) is available. This person is located in the local District Superintendent's Office.

### **PARENT PARTICIPATION**

You have the right to participate in CSC meetings to determine your student's initial or continuing eligibility for special education and related services, to prepare or change your student's Individualized Education Program (IEP), or to determine or change your student's placement. If you are unable to attend a meeting in person, you may be able to participate by telephone or video conference. Normally, placement decisions will not be made without your participation unless the school has been unsuccessful in its documented attempts to obtain your participation.

### **PRIOR WRITTEN NOTICE**

In addition to participating in decisions regarding your student's special education program, you have the right to receive written documentation called "Prior Written Notice" (PWN) within a reasonable time before DoDEA takes certain actions. The following is a list of activities or actions that require PWN:

- The CSC proposes to initiate an evaluation of your student (or refuses a request for an evaluation);
- The CSC determines that your student is eligible for special education services (or determines that your student is not eligible for special education services);
- The CSC proposes a change in your student's educational program/placement (e.g. an initial IEP or a change to existing IEP) (or refuses your request for a change in your student's program/placement).

The PWN documentation shall include:

- A description of the action proposed or refused by DoDEA;
- An explanation of why DoDEA proposed or refused the action;
- A description of the information or data used as the basis for DoDEA's proposal or refusal;
- A description of other options that DoDEA considered but rejected and the reasons why those options were rejected;
- A description of any other factors relevant to DoDEA's decision;
- A statement of your procedural safeguards and information about where you can obtain a copy of your procedural safeguards;
- Sources for you to contact to obtain assistance in understanding your rights; and
- Dispute resolution procedures, including a description of mediation, how to file a complaint, due process hearing procedures, and applicable timelines.

### **PARENT CONSENT**

Your written consent is necessary for many of the actions the school personnel will undertake in the delivery of educational services, to provide a FAPE for your student. It is important to DoDEA that you are fully informed about the activity for which your consent is sought. If you would like the parent consent notice in your native language, you should contact the school principal who will accommodate the request, unless it is clearly not feasible to do so.

## **Consent Required**

### **The First (Initial) Evaluation for Special Education Eligibility**

DoDEA must have your informed consent prior to conducting an initial evaluation of your student. If you have concerns or questions about the process and are reluctant to provide consent, fail to respond or participate in the process, or ultimately decline to provide consent for an initial evaluation, DoDEA will:

- Work with you to resolve questions and concerns;
- Seek to maintain your cooperative partnership in supporting your student's educational progress.

DoDEA also has the right to pursue formal dispute resolution (i.e. impartial due process procedures) if there is evidence that your student's educational progress is being impeded by the impact of a suspected disability. If you decline to give consent for initial evaluation, DoDEA shall not be in violation of the requirement to conduct child-find, the initial evaluation, or the duties to follow evaluation procedures or make an eligibility determination and write an IEP.

### **Initial Placement (Delivery of Service) in Special Education**

If your student is found eligible for special education services after the initial evaluation has been completed, you will be asked to participate in the development of an IEP. This program will identify your student's needs and the proposed services to meet their needs. For this initial IEP you must give your informed written consent before DoDEA can place your student in a special education program and begin providing services. Upon signing the IEP your student will begin receiving services in accordance with the start date specified in the IEP. If you refuse initial consent for services, DoDEA shall not be considered to be in violation of the requirement to make a FAPE available to the student for its failure to provide those services to the student for which parental consent was requested and refused.

### **Re-evaluation**

Once your student has been found eligible and is receiving special education services it is important that the educational program accurately reflects their progress and needs. A comprehensive re-evaluation of your student must be conducted *at least* once every three years (i.e. a triennial evaluation and review) but can be conducted earlier than three years if there is a need to consider a complete update to your student's program before the triennial date.

The re-evaluation process is intended to determine if your student continues to require specialized instruction and special education placement. This process may or may not require the administration of formal testing procedures.

If the CSC decides that formal testing is required for the triennial review, it will seek your consent. If you request that an evaluation be conducted, DoDEA will seek your consent to proceed with the evaluation. The CSC will document that reasonable efforts were made to obtain your consent and if consent is not obtained, DoDEA will proceed with the evaluation as parental consent for re-evaluation is not required.

If the CSC decides that no formal testing is required for the triennial review you will be provided with the reasons for this decision. Other data (e.g. service provider reports, observations, teacher input, parent input) can be utilized in the updated triennial profile.

You have the right to request formal testing procedures be conducted. The CSC must honor your request for updated assessments and complete the assessments before the triennial review date.

### **Consent Not Required**

Parental consent is not required for:

- The CSC review of existing information as part of an evaluation or re-evaluation;
- Conducting classroom observations;
- Testing or evaluations that are administered to all students unless consent is required of all student's parents before administering the test;
- Conducting evaluation procedures identified on the student's IEP as a measure for determining progress.

### **Withdrawal of Consent**

After providing DoDEA your written consent for evaluation, re-evaluation, or placement in special education services you may revoke your written consent at any time. You must notify DoDEA *in writing* of your withdrawal of consent.

- If you revoke your consent during the evaluation process, the revocation of consent only applies to evaluation activities that are not yet completed. Evaluation components that were completed remain valid components of your student's educational record.
- If you revoke your consent for the provision of special education services, all services and accommodations are terminated upon receipt of your revocation of consent. DoDEA will provide you with PWN before the cessation of services. PWN will indicate that your student will not be considered to have a disability or afforded protection under the Individuals with Disabilities Education Act (IDEA), as implemented in DoD by DoDI 1342.12 and DoDM 1342.12.
- If you revoke your consent for the provision of a particular special education or related service, and you and the school members of the CSC agree that your student would be provided a FAPE if your student did not receive that service, your student's IEP may be modified to remove the service, and DoDEA will provide PWN.
- If you and the school members of the CSC disagree as to whether your student would be provided a FAPE if your student did not receive a particular service, you may use the mediation or due process procedures to obtain a determination as to whether the service with which you disagree is or is not appropriate and necessary for your student to receive FAPE, but the school may not cease the provision of a particular service unless the school agrees it is not necessary or such determination is made through mediation or due process procedures.

### **INDEPENDENT EDUCATIONAL EVALUATION (IEE)**

An independent educational evaluation (IEE) is an evaluation conducted by a qualified examiner who is not employed by either DoDEA or the Educational and Developmental Intervention Services (EDIS). You have the right to an IEE at any time, at your own expense.

If you disagree with the findings of a DoDEA school system evaluation you may request an IEE at DoDEA expense. This request must be presented in writing. Upon receipt of your written request for an IEE, DoDEA must act upon this request without delay. You are entitled to only one IEE at DoDEA school system expense in response to a given DoDEA school system evaluation with which you disagree.

DoDEA must either agree to fund the IEE or initiate a due process hearing to demonstrate the DoDEA school system evaluation, with which you disagree, was appropriate. If DoDEA agrees to fund an IEE, it will specify the agency's criteria for the components of an appropriate evaluation. DoDEA may identify providers who can meet these criteria. You are not required to choose one of those suggested providers; however, your selected provider must be able to provide an evaluation that meets agency criteria. DoDEA is not required to fund an IEE that does not meet agency criteria.

If DoDEA does not fund an IEE, it must initiate a due process hearing. If the Hearing Officer determines that DoDEA's evaluation is appropriate, DoDEA is not required to fund the IEE. You can still obtain an IEE at personal expense.

### **Consideration of the IEE Findings**

An IEE obtained at either DoDEA or private (parent) expense will be considered by the CSC in any decisions concerning your student's FAPE. However, the CSC must consider all available information in making decisions affecting your student's eligibility, placement, IEP, services, and FAPE. The results and recommendations from an IEE are taken into consideration along with all other data. The IEE alone does not serve as the sole basis for your student's educational decisions.

### **ACCESS TO EDUCATIONAL RECORDS**

As the parent, you (or your authorized representative) have the right to inspect and/or review any records relating to your student, which are collected, maintained, or used by your local school district or by the DoD school system under the requirement of the Privacy Act of 1974 (PA), as amended, 5 U.S.C. 552a, as implemented by DoD Directive 5400.11-R, "DoD Privacy Program" <http://www.dodea.edu/Curriculum/specialEduc/parentsInfo.cfm>

Privacy Act records are those that are filed under your or your student's name, or a personal identification number or other personal identifier such as address or personal characteristic(s) that make it possible to identify the student with reasonable certainty. These records include your student's confidential educational records, including any special education, registration, attendance, health, and disciplinary records maintained at the school.

### **Release of Records**

In accordance with the Privacy Act, disclosure of records to DoDEA or Department of Defense (DoD) officials does not require parental consent. Disclosure of records to a contractor for use in the performance of a DoD contract is considered a disclosure within the DoD. Written parental consent is typically necessary if your student's records are to be released to third parties outside of the DoD. However, in some situations, records may be released to third parties without parental consent (e.g. if the disclosure is authorized under the Privacy Act to include, but not

limited to, disclosures to law enforcement personnel or disclosures to protect the health and welfare of the student or others, etc.).

## **SCHOOL DISCIPLINE AND PLACEMENT IN INTERIM ALTERNATIVE EDUCATIONAL SETTING**

All school disciplinary rules and procedures are applicable to students with disabilities. However, students with disabilities are provided with specific protections and procedures to ensure that they are not denied special education services during disciplinary actions. In addition, some students with disabilities demonstrate misconduct that is a manifestation of their disability. For these students it is essential that their educational program incorporates strategies and instruction to reduce the likelihood of misconduct or behaviors that result in disciplinary incidents.

A student with a disability who engages in misconduct may be given a disciplinary action that removes the student from their educational program (e.g. suspension). In accordance with DoDM 1342.12, Enclosure 4, paragraph 12.b, the removal is considered a change in placement if the student is removed from his or her current academic placement for more than ten consecutive school days or for a series of removals that cumulates to more than ten school days during the school year and is determined by the CSC to be a pattern of misbehavior. The determination is made on a case-by-case basis and is subject to review by a Hearing Officer. The CSC will base its determination on whether the child has been subjected to a series of removals that constitute a pattern by examining whether:

- (a) The student's behavior is substantially similar to his or her behavior in previous incidents that resulted in the series of removals; and
- (b) Additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another.

On the date the decision is made to remove a student with a disability because of misconduct, when the removal would change the student's placement, the school must notify the parents of that decision and provide the parents the Procedural Safeguards Notice.

Within ten days of the removal that constitutes a change in placement, the CSC is required to conduct a meeting to determine if the student's misconduct is a *manifestation* of their disability. This is called a *manifestation determination* meeting.

The manifestation determination meeting will determine if:

- The student's conduct was caused by or had a direct and substantial relationship to their disability; or
- The student's conduct was a direct result of the school's failure to implement the IEP.

During the manifestation determination meeting, all relevant information including evaluation results, observations of your student, information provided by you, your student's IEP, and current placement will be reviewed.

**Conduct *Is Not* a Manifestation of the Disability**

If the conduct is determined to not be a manifestation of your student's disability, DoDEA disciplinary procedures applicable to students without disabilities may be applied, including placement in an alternate educational setting. The school continues to have a duty to provide your student with special education services.

**Conduct *Is* a Manifestation of the Disability**

If the conduct in question *is* determined to be a manifestation of your student's disability, the CSC will consider and initiate appropriate adjustments to the student's program (e.g. conduct a functional behavioral assessment, implement a behavior intervention plan, and modify accommodations or other aspects of the IEP if needed). The school must return your student to the placement from which your student was removed, unless you and the school agree to a change of placement or special circumstances exist, as discussed in paragraph (2) of the "Alternative Educational Setting" section that follows.

**Conduct is the Result of a Failure to Implement the IEP**

If the student's misconduct is determined to be the result of failure to implement the IEP, the CSC will review the current IEP and decide on appropriate actions and/or modifications to the student's program to address the student's behavior/misconduct. The school must return your student to the placement from which your student was removed, unless you and the school agree to a change of placement or special circumstances exist, as discussed in paragraph (2) of the "Alternate Educational Setting" section that follows.

**Alternative Educational Setting (AES)**

School personnel may remove a student with a disability for misconduct from his or her current placement:

- (1) To an appropriate interim alternate educational setting (AES), another setting, or suspension for not more than 10 consecutive school days to the extent those alternatives are applied to students without disabilities (for example, removing the student from the classroom to the school library, to a different classroom, or to the student's home), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct as long as the CSC has determined that those removals do not constitute a pattern of misbehavior; or
- (2) To an AES determined by the CSC for not more than 45 school days, without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student, at school, on school-provided transportation, on school premises, or at a school-sponsored event:
  - (a) Carries a weapon or possesses a weapon;
  - (b) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or
  - (c) Has inflicted serious bodily injury upon another person; or

- (3) To an AES determined by the CSC, another setting or suspension for more than 10 school days, where the behavior giving rise to the violation was determined by the CSC not to be a manifestation of the student's disability.
- (4) After an expedited hearing if school personnel believe that returning the student to his or her current educational placement is substantially likely to cause injury to the student or to others.

### **Required Services During Removal**

- (1) If a student with a disability is removed from his or her placement for 10 cumulative school days or less in a school year, the school is required only to provide services comparable to the services it provides to a student without disabilities who is similarly removed.
- (2) If a student with a disability is removed from his or her placement for more than 10 school days, where the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the student's disability, or who is removed irrespective of whether the behavior is determined to be a manifestation of the student's disability based on one of the special circumstances discussed in paragraph (2) of the preceding section entitled "Alternative Educational Setting," the school must:
  - (a) Continue to provide the student with the educational services as identified by the student's IEP as a FAPE so as to enable the student to continue participating in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.
  - (b) Provide, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications designed to address the behavior violation so that it does not recur.
- (3) If a student with a disability has been removed for more than 10 cumulative school days and the current removal is for 10 consecutive school days or less, then the CSC must determine whether the pattern of removals constitutes a change of placement by determining if the student has been subject to a series of removals that constitute a pattern of misbehavior. If the CSC determines the pattern of removals is NOT a change of placement, then CSC must determine the extent to which services are needed to enable the child to continue participating 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 CSC determines the pattern of removals IS a change of placement, then the CSC must conduct a manifestation determination.

### **Disciplinary Appeals**

- (1) The parent of a student with a disability who disagrees with any decision regarding placement or manifestation determination, or a school that believes maintaining the

current placement of the student is substantially likely to result in injury to the student or others, may appeal the decision by requesting an expedited due process hearing before a Hearing Officer by filing a petition with the Defense Office of Hearings and Appeals (DoHA), (below under Initiating Due Process Hearing), if the school believes that returning the child to the original placement is substantially likely to result in injury to the student or to others.

- (4) When an appeal has been made by either the parent or the school, the student must remain in the interim AES pending the decision of the Hearing Officer or until the expiration of the specified time period, whichever occurs first, unless the parent and the DoDEA school system agree otherwise.

### **UNILATERAL PLACEMENT**

A unilateral placement occurs when you make a unilateral decision to enroll your student in an educational option that is not arranged through DoD. This placement is considered unilateral when a DoDEA school is available to serve a DoD dependent student entitled to an education at DoD expense.

If you unilaterally enroll or place your student in any educational option that is not arranged through DoD, DoDEA is not required to fund the costs of your unilateral decision, unless a Hearing Officer orders DoDEA to fund that placement. In order for you to obtain a Hearing Officer decision directing DoDEA to pay for your unilateral placement decision, you must prove that DoDEA:

- Failed to provide your student with a FAPE;
- You gave the school at least 10 business days advance written notice of your intent to remove your student from the DoDEA school;
- The school was unable to mitigate your concerns; and
- Your unilateral placement was appropriate for your student.

Reimbursement of your costs for the unilateral placement may be reduced or denied by a Hearing Officer if:

- After being notified by DoDEA of its intent to evaluate your student (including the purpose of the evaluation), you failed to make your student available to DoDEA for the evaluation; or
- You removed your student from the DoDEA school without providing the school with at least 10 business days advance written notice of your concerns and intent to enroll in a non-DoD program.

The provisions of this section do not apply if DoDEA authorizes placement of your student in a private or homeschool program.

### **AGE OF MAJORITY**

In DoDEA, your student reaches the age of majority on their 18<sup>th</sup> birthday. The rights accorded to you, the parent(s), are transferred to your student at age 18, unless your student consents in writing to allow you to continue to exercise parental rights; or your student has been deemed

legally incompetent pursuant to federal or state law, or DoDEA determines that your student is unable to provide informed consent with respect to his/her educational program and appoints a parent(s) to represent their educational interests throughout the period of eligibility. You will continue to be notified of all special education proceedings including disciplinary proceedings even after your student reaches the age of majority.

### **RIGHT TO LEGAL COUNSEL/REPRESENTATION**

You may, at any time, consult with legal counsel or with individuals with specialized knowledge or training with respect to students with disabilities. Your representative may accompany you and present your case to the school and/or Hearing Officer. At the due process hearing, you or your representative may present evidence and cross-examine witnesses.

### **RESOLVING DISAGREEMENTS**

If you have any concerns related to your student's special education program, the first step is to talk with your student's regular and/or special education teacher. The school administrator is also available to assist in resolving issues at the school level. It is always best to communicate and work at the lowest level with your student's school to attempt to resolve any issues. In the event that concerns are not resolved, you can take further steps to address them including requesting a formal CSC meeting, facilitated IEP meeting, mediation, filing an administrative complaint and/or requesting a due process hearing.

#### **CSC Meeting**

A CSC meeting will include all of the required members involved in your student's program (e.g., a school administrator, your student's teachers and service providers). CSC meetings are the most appropriate forum to address concerns that you have about your student's program and progress. The structure of the CSC meeting facilitates and documents all communications. It provides documentation of your concerns and disagreements as well as the school's response to your concerns. The minutes of the meeting and PWN serve as a record for both you and the school. If the CSC meeting fails to produce a mutually agreeable resolution to the problems and/or concerns, either you or DoDEA may:

- Request a Facilitated IEP meeting;
- Request a meeting with District level staff;
- Request (in writing) a mediation; or
- Request (in writing) a due process hearing.

#### **Facilitated IEP Meeting**

When you have a disagreement or concerns about your student's special education program/services that cannot be resolved within the CSC meeting forum, you or DoDEA can propose a Facilitated IEP Meeting. A specially trained individual from outside of the school/district will be brought in to assist you and the CSC in reaching a consensus and solutions to the issues and concerns. This Facilitated IEP Leader is skilled in dispute resolution processes and can often help parents and schools resolve problems and achieve a positive outcome on behalf of the student.

## **Mediation**

You may request that DoDEA arrange for mediation with the assistance of a neutral third person mediator to help you and the school reach agreement over disputes regarding your student's special education services. This mediation process is voluntary and conducted by an independent, trained mediator who is appointed by DoDEA at no cost to you. The mediator does not make findings or impose duties upon the parties. In mediation, the parties are in full control of the process and are often able to achieve an agreement to which both parties are 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. The meeting or meetings will be scheduled at mutually agreeable times and places. If you reach an agreement through mediation, DoDM 1342.12 requires the parties to execute a written agreement that is enforceable in a court of law.

## **Initiating a Due Process Hearing**

If you and the school are unable to resolve a disagreement involving your student's identification, evaluation, placement, IEP, or the provision of FAPE, you or DoDEA may request a due process hearing. When a due process complaint (petition) is filed with the Director of the Defense Office of Hearings and Appeals (DoHA), an independent Hearing Officer will be appointed. The Hearing Officer will convene a due process hearing in the location where you and your student reside (or by video-teleconference) and will manage the exchange of information, preparation for the hearing, and conduct the hearing.

## **Notice/Petition/Complaint**

A party wishing to initiate a hearing must provide a copy of the petition (also called a notice of complaint) to the Director, DOHA, Post Office Box 3656, Arlington, Virginia 22203 or by e-mail to [specialedcomplaint@osdgc.osd.mil](mailto:specialedcomplaint@osdgc.osd.mil) and to the principal of the school in which the student is enrolled, or if the student is enrolled in the Non-DoD School program, to the DoDEA General Counsel. Filing of the petition is considered complete when received by DOHA. The party filing the petition is also encouraged to provide a copy of the petition to the DoDEA Special Education Office at DoDEA Headquarters, 4800 Mark Center Drive, Alexandria, VA 22350-1400. DOHA Director will appoint a DOHA Administrative Judge to serve as a Hearing Officer.

## **Time Limit to File**

You or DoDEA may request an impartial due process hearing within 2 years of the date you or the school knew or should have known about the alleged action that forms the basis of the complaint. You may be able to obtain additional time to request a due process hearing if you can prove that you were prevented from requesting the hearing due to:

- Specific misrepresentations by DoDEA that it had resolved the problem that is the basis of your complaint; or
- DoDEA's withholding of information that was required to be provided to you under part B of the IDEA and its implementing regulations, DoDI/DoDM 1342.12.

## **Information Required in the Petition**

The written petition must include:

- Your student’s name;
- His/her address;
- The name of the school your student attends;
- A description of the nature of each identified problem;
- A description for each of the proposed or denied initiations or changes to your student’s educational program; and
- Facts relating to each identified problem.

In order to ensure your due process petition is understood by the Hearing Officer and the responding school, you should clearly state the nature of your disagreement with school personnel, why you think it makes a difference to your student's education, and describe the specific relief or outcome you are requesting.

### **Written Notice and Response**

- Within 10 business days of receipt of the petition by the Director, DoHA, DoDEA must send you a response that specifically addresses the issues raised in the complaint.
- If the school has not already issued PWN to you, the response must include a comprehensive explanation in PWN (i.e., actions proposed or refused, a description of the other options the CSC considered and the reasons why those options were rejected, a description of each evaluation, procedure, assessment, record or report the CSC used as the basis for that decision, and a description of the factors relevant to the proposal or refusal).

### **Insufficient Petition**

The respondent may file a notice of insufficient petition within 15 business days of receiving a petition if the respondent wishes to challenge the sufficiency of the petition for failure to state the elements required by the IDEA. Within 5 business days of receiving a notice of insufficient petition, the Hearing Officer will issue a decision and will notify the parties in writing of that determination.

### **Resolution Session (Meeting)**

The IDEA and DoDM 1342.12 gives you the opportunity to meet with the school to explain your due process complaint, and gives DoDEA the opportunity to resolve your complaint. Within 15 calendar days of receipt by the Director, DoHA of your petition (i.e. notice/complaint) requesting due process, the school must hold a Resolution Session (or within 7 calendar days in the case of requests for an expedited hearing). This session is a meeting between you (the parents), relevant members of your student’s CSC who have specific knowledge of the facts identified in the complaint, and a representative of DoDEA who has authority to make a decision concerning your petition.

The Resolution Session must occur, unless both you and DoDEA agree in writing to waive the Resolution Session or to participate in mediation instead of the Resolution Session. At the end of 30 calendar days of the school principal’s receipt of a petition, if resolution has not been reached, the Hearing Officer may convene a due process petition.

- **Failure to Participate:** If DoDEA has offered to convene a resolution meeting and has been unable to obtain parental participation in the resolution meeting after making and

documenting its reasonable efforts, DoDEA may, at the conclusion of the resolution period (30 calendar days or 15 calendar days in the case of an expedited hearing) request that a hearing officer dismiss the parent's due process complaint or request for an expedited due process hearing.

- **Attorneys:** No attorney fees are authorized for attorney participation in the resolution session. DoDEA may have an attorney present only if the parent is accompanied by an attorney.
- **Enforceable Resolution Agreement:** If you and DoDEA reach mutual agreement at the resolution session, you and the DoDEA representative will put this agreement into writing. It is a binding agreement, enforceable in court when signed by both parties. Even after signing, however, each party has the right to review and void the agreement within 3 business days after signing the agreement.
- **Conducting the Due Process Hearing:** Before proceeding with a due process hearing, please consult DoDM 1342.12, for a detailed discussion of rights and responsibilities.
- **Witnesses and Documentary Evidence Disclosures:** At least 5 business days prior to a hearing, the parties shall exchange lists of all documents and materials that each party intends to use at the hearing, including all evaluations and reports. Each party also shall disclose the names of all witnesses it intends to call at a hearing along with a proffer of the anticipated testimony of each witness. At least 10 business days prior to a hearing, each party must provide the name, title, description of professional qualifications, and summary of proposed testimony of any expert witness it intends to call at the hearing. The Hearing Officer may deny the use of evidence that has not been shared with and available to both parties.
- **Dispute Resolution:** The dispute may be resolved either through a formal oral 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 formal oral hearing. DoDEA may oppose your request to waive the hearing, in which case the Hearing Officer will rule on the request.
- **Hearing Decision:** The Hearing Officer shall issue findings of fact and conclusions of law not later than 50 business days following the filing and service of a legally sufficient petition or amended petition and the hearing officer's receipt of notice that the 30-day resolution period concluded without agreement, the parties waived the resolution meeting, or the parties concluded mediation in lieu of the resolution process without reaching agreement.
- **Verbatim Record:** At the conclusion of the due process hearing you may obtain a written or electronic record of the hearing.

#### **ADMINISTRATIVE APPEAL OF HEARING DECISION:**

Either you or DoDEA has a right to appeal a Hearing Officer's decision to the DoHA Appeal Board within 15 business days of receiving the Hearing Officer's decision. The Appeal must be filed with the Chairperson, DoHA Appeal Board, at the address specified above for the filing of a petition. Within 30 business days of filing the notice of appeal, the appealing party shall file a written statement of issues and arguments on appeal with the Chairperson, DOHA Appeal Board. The appealing party shall deliver a copy to the other party by mail. The non-appealing party shall file any reply within 20 business days of receiving the appealing party's statement of issues and arguments on appeal with the Chairperson, DOHA Appeal Board. The non-appealing party shall deliver a copy of the reply to the appealing party by mail. The DOHA Appeal Board shall issue a decision on all parties' appeals within 45 business days of receipt of the matter.

### **CIVIL ACTIONS**

Any party (the parent or DoDEA) aggrieved by the final decision of the DoHA Appeal Board has the right to file a civil action with respect to the matter that was the subject of the due process hearing (including a hearing relating to disciplinary procedures). The action may be brought in a district court of the United States of competent jurisdiction. The civil action must be filed within 90 calendar days of the date you receive the Appeal Board's decision. To ensure compliance with applicable filing and other rules of procedure so that you do not forfeit your right to file a civil action, you should, at a minimum, consult the Federal Rules of Civil Procedure, local court rules, and with legal counsel.

### **ATTORNEY FEES**

A U.S. Federal Court may award reasonable attorney fees to a prevailing party in any administrative action or court proceeding authorized by the IDEA.

### **CONCLUSION**

DoDEA hopes this guide provides you with additional clarification of the many rights afforded to you and your student. DoDEA is committed to creating an educational partnership with you with the goal of providing quality special education services to your student in accordance with DoDM 1342.12. If at any time you have additional questions regarding your student's educational program, please do not hesitate to speak with your student's classroom teacher, special educator, and/or school administrator.