



New Hanover County Schools

Reach, Equip, Achieve

PROCEDURAL SAFEGUARDS:

HANDBOOK ON PARENTS' RIGHTS

Looking for Parent/Family Resources?
See Appendix 1 in back →

Procedural Safeguards: Handbook on Parents' Rights

Introduction

The Individuals with Disabilities Education Act of 2004 (IDEA) is the federal law and Article 9, Section 115C of the North Carolina General Statutes is the State law concerning the education of students with disabilities. Part B of the IDEA refers to the part of the law for children with disabilities who are ages three (3) through 21.

Children with disabilities include those with autism, deaf-blindness, deafness, developmental delay, serious emotional disability, hearing impairment, intellectual disability, multiple disabilities, other health impairment, orthopedic impairment, specific learning disabilities, speech and/or language impairment, traumatic brain injury and visual impairment.

Purpose of this Document

The IDEA requires schools to provide parents of a child with a disability a notice containing a full explanation of the [Procedural Safeguards](#) (legal rights) available under the IDEA and the accompanying federal regulations.

This document replaces the 2004 Handbook on Parents' Rights. It reflects the mandates of the IDEA (2004), federal regulations (August 14, 2006) and Policies (November 1, 2007).

The numbers listed after each heading in this document refer to the sections for the legal citations in the federal regulations. The numbers after some of the sub-headings refer to the legal citations in the [North Carolina Policies Governing Services for Children with Disabilities](#) (*Policies*) where you can find the information. (Examples: 34 CFR §300.300 and NC 1504-1.13)

Information in the [Procedural Safeguards](#) Document

1. Parental Consent
2. Prior Written Notice
3. Independent Educational Evaluation
4. Access to Records
5. Unilateral Placement of Children with Disabilities by Parents in Private Schools at Public Expense
6. Request for Procedural Review
7. Availability of Mediation
8. State Complaint Procedures
9. Filing a Due Process Petition
10. Hearings on Due Process Petitions
11. State-Level Appeals
12. Civil Actions
13. Attorneys' Fees
14. Disciplinary Procedures
15. Other Information

When You Will Receive the [Procedural Safeguards](#)

The Procedural Safeguards must be given to you **one time each school year** and at the following times:

- a. When your child is first referred for evaluation or when you request an evaluation;
- b. When you request a copy of the Procedural Safeguards;
- c. When your child is removed for disciplinary reasons and the removal results in a change in placement;
- d. Upon receipt of the first State complaint and/or the first due process petition in a school year, if you file a State complaint or request a due process hearing; and
- e. Upon each revision to the Procedural Safeguards.

Procedural Safeguards:
Handbook on Parents' Rights

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1. PARENTAL CONSENT 34 CFR §300.300 and NC 1503-1

Definition

Consent means:

- a. You have been fully informed in your native language or other mode of communication (such as sign language, Braille, or oral communication) of all information about the action for which you are giving consent;
- b. You understand and agree in writing to that action, and the consent describes that action, and lists the records (if any) that will be released and to whom; and
- c. You understand that the consent is voluntary on your part and you may withdraw your consent at anytime.
- d. Your withdrawal of consent does not undo an action that has occurred after you gave your consent and before you withdrew it.
- e. If you revoke consent in writing to end your child's receipt of special education services after the child has already received services, New Hanover County Schools is not required to amend the education records to remove any references to your child's receipt of special education services.

Consent for Initial Evaluation

New Hanover County Schools cannot conduct an initial evaluation of your child to determine whether your child is eligible under IDEA to receive special education and related services without first providing you with prior written notice of the proposed action and without obtaining your consent as described in this section.

New Hanover County Schools must make reasonable efforts to obtain your informed consent for an initial evaluation to decide whether your child is a child with a disability.

Your consent for initial evaluation does not mean that you have also given your consent for New Hanover County Schools to start providing special education and related services to your child.

If your child is enrolled in public school or you are planning to enroll your child in a public school, and you have refused to provide consent or failed to respond to a request to provide consent for an initial evaluation, New Hanover County Schools may, but is not required to, seek to conduct an initial evaluation of your child by requesting mediation or filing a petition for a due process hearing. New Hanover County Schools will not violate its obligations under Child Find to locate, identify and evaluate your child if it does not pursue an evaluation of your child in these circumstances.

Special Rules for Initial Evaluation of Wards of the State

Ward of the State in North Carolina means a child who, as determined by North Carolina law, is removed from the home and placed in custody with the Department of Social Services (DSS) or a person designated in a court order.

If a child is a ward of the State and is not living with you, New Hanover County Schools does not need consent from you for an initial evaluation to determine if your child is a child with a disability if:

- a. Despite reasonable efforts to do so, New Hanover County Schools cannot find you;
- b. Your rights have been terminated in accordance with NC law; or
- c. A judge has assigned the right to make educational decisions and to consent for an initial evaluation to an individual other than you.

Parental Consent for Services

New Hanover County Schools must obtain your informed consent before providing special education and related services to your child for the first time. New Hanover County Schools must make reasonable efforts to obtain your informed consent.

In Other Words.....

→ You have certain consent rights. There are times when New Hanover County Schools must ask for your written permission. These are explained below.

→ You can withdraw your permission, but cannot change what happened before you withdrew it.

→ You must be notified and give written permission before New Hanover County Schools can evaluate your child for special education and related services for the first time.

→ Giving permission to evaluate does not mean you have also given permission for special education services.

→ If you do not give written permission, New Hanover County Schools can request mediation or file a due process petition to test your child without permission, but it is not required to do this.

→ After the evaluation, if the IEP Team decides your child is eligible, you must give written permission before your child can receive special education and related services for the first time. (You are a member of the IEP Team.)

If you do not respond to a request to provide consent for your child to receive special education and related services for the first time, if you refuse to give such consent, or if in the future you decided to revoke consent, New Hanover County Schools may not use mediation or a due process hearing in order to obtain agreement or a ruling that special education and related services may be provided without your consent.

If you refuse to give consent for your child to receive special education and related services for the first time, or if you do not respond to a request to provide such consent, or if in the future you revoke consent and New Hanover County Schools does not provide your child with the special education and related services for which it sought your consent, New Hanover County Schools:

- a. Is not in violation of the requirement to make a free appropriate public education (FAPE) available to your child for its failure to provide those services to your child; and
- b. Is not required to have an Individualized Educational Program (IEP) meeting or develop an IEP for your child for the special education and related services for which your consent was requested.

Parental Consent for Reevaluations

New Hanover County Schools must obtain your informed consent before it tests your child as part of the reevaluation process, unless it can demonstrate that it took reasonable steps to obtain your consent for your child's reevaluation assessments; and you did not respond.

If you refuse to consent to testing as part of your child's reevaluation, New Hanover County Schools may, but is not required to, use mediation or a due process hearing to override your refusal to provide consent. New Hanover County Schools does not violate its obligations under the IDEA if it does not pursue the reevaluation testing in this manner.

Documentation of Reasonable Efforts to Obtain Parental Consent

Your school must maintain documentation of reasonable efforts to obtain your consent for initial evaluations, to provide special education and related services for the first time, for reevaluation and to locate parents of wards of the State for initial evaluations. The documentation must include a record of New Hanover County Schools' attempts, such as:

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence sent to you and any responses received; and/or
- c. Detailed records of visits made to the parent's home or place of employment and the results of those visits.

When Consent is Not Required

Your consent is not required before New Hanover County Schools:

- a. Reviews existing data (records and information) as part of your child's initial evaluation or reevaluation; or
- b. Gives your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from the parents of all children.

New Hanover County Schools may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

If you have enrolled your child in a private school at your own expense or if you are home schooling your child and you do not provide consent for your child's initial evaluation or reevaluation, or you fail to respond to a request to provide your consent, New Hanover County Schools cannot override your consent by using mediation or an impartial due process hearing.

→ In Other Words.....

If you do not give written permission or if you withdraw permission in the future for your child to receive special education, New Hanover County Schools cannot use mediation or due process to provide the services without your permission.

- You cannot file a State complaint or a due process petition against New Hanover County Schools for failing to provide a free, appropriate public education (FAPE), if you did not give permission or if you withdraw permission in the future for your child to receive special education and related services.

- If the IEP Team decides your child needs any testing for a reevaluation and you do not respond to requests for your permission, the school can test your child without your permission.

- If you refuse to give permission, New Hanover County Schools can request mediation or file a due process petition to test without your permission.

- New Hanover County Schools must keep records of the times it has tried to contact you about giving written permission for an evaluation of your child or to provide special education and related services to your child.

- Before an evaluation or reevaluation, the IEP Team may review the data it already has and this does not require your permission.

- New Hanover County Schools does not need your permission to give your child with a disability a test or other evaluation that it is giving other children in the school, unless permission is required from the other parents.

- New Hanover County Schools cannot request mediation or file a due process to test without your permission if your child attends a private school that you pay for or is home schooled.

2. PRIOR WRITTEN NOTICE 34 CRF §300.503 and NC 1504.1.4

Notice

New Hanover County Schools must give you written notice (provide you certain information in writing) whenever it:

- Proposes to initiate or to change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child; or
- Refuses to initiate or to change the identification, evaluation, or educational placement of your child or the provision of FAPE to your child.
- Ceases services based on your written revocation of consent.

Note: Information about providing prior notice due to a disciplinary change in placement is located in Section 14 **Disciplinary Procedures**

Note: Placement in special education is used in two different ways:

- That a child has been determined to be eligible for special education and related services; and
- The level on the continuum of services, which means the amount of time the student will be removed from his/her nondisabled peers. Placement does not mean the location of services or school assignment.

Content of Notice

The written notice must:

- Describe the action that New Hanover County Schools proposes or refuses to take;
- Explain why New Hanover County Schools is proposing or refusing to take the action;
- Describe each evaluation procedure, assessment, record, or report New Hanover County Schools used in deciding to propose or refuse the action;
- Include a statement that you have protections under the Procedural Safeguards provisions in Part B of the IDEA (Part B means services for children ages 3 through 21);
- Tell how you can obtain a description of the Procedural Safeguards if the action that New Hanover County Schools is proposing or refusing is not an initial referral for evaluation;
- Include resources for you to contact for help in understanding IDEA;
- Describe any other options that your child's Individualized Education Program (IEP) Team considered and the reasons why those options were rejected; and
- Provide a description of the reasons why New Hanover County Schools proposed or refused the action.

Notice in Understandable Language

The notice must be:

- Written in language understandable to the general public; and
- Provided in your native language or other mode of communication you use unless it is clearly not feasible to do so.

If your native language or other mode of communication is not a written language, New Hanover County Schools must take steps to ensure that:

- The notice is translated for you orally or by other means in your native language or other mode of communication;
- You understand the content of the notice; and
- There is written evidence that a and b have been met.

Electronic Mail

New Hanover County Schools offers parents the choice of receiving documents by e-mail, you may choose to receive the following by e-mail:

- Prior written notice;
- Procedural Safeguards notice (this document); and
- Notices related to a due process petition.

In Other Words.....

→ If you revoke consent, New Hanover County Schools must provide written notice to you before stopping the special education services.

→ The prior written notice must clearly explain everything New Hanover County Schools decided to do or refused to do, and why those decisions were made.

The prior written notice must clearly explain the other things New Hanover County Schools considered, but decided against, and why it decided against them.

The prior written notice must clearly explain all the information used in making the decisions.

The prior written notice must have a statement that tells you about your protections in this document.

→ If your native language is not one that can be written, New Hanover County Schools will translate the notice for you orally.

→ You can ask New Hanover County Schools to send these three notices by e-mail if New Hanover County Schools offers you a choice about how you receive the notices.

3. INDEPENDENT EDUCATIONAL EVALUATIONS (IEE) 34 CFR §300.502 and NC 1504-1.13

General

You have the right to obtain an independent educational evaluation (IEE) of your child if you disagree with the evaluation of your child that was conducted by New Hanover County Schools.

If you request an independent educational evaluation, New Hanover County Schools must provide you with information about where you may obtain it and about New Hanover County Schools' criteria that apply to independent educational evaluations.

In Other Words.....

→ If you disagree with the school's evaluation, you can ask for New Hanover County Schools to pay for an evaluation by someone not employed by New Hanover County Schools. New Hanover County Schools will give you names of qualified people who can do the evaluation and the IEE criteria.

Evaluation at Public Expense

You have the right to an independent educational evaluation of your child at public expense if you disagree with an evaluation of your child conducted by New Hanover County Schools, subject to the following conditions:

a. If you request an independent educational evaluation at public expense, New Hanover County Schools must, without unnecessary delay, either:

- File a due process petition to request a hearing to show that its evaluation of your child is appropriate; or
- Provide an independent educational evaluation at public expense, unless New Hanover County Schools demonstrates in a hearing that the evaluation of your child that you obtained did not meet New Hanover County Schools' criteria;

b. If New Hanover County Schools requests a hearing and the final decision is that New Hanover County Schools' evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense; and

c. If you request an independent educational evaluation of your child, New Hanover County Schools may ask why you object to its evaluation. However, New Hanover County Schools may not require an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing for a due process hearing to defend its evaluation.

You are entitled to only one independent educational evaluation of your child at public expense for each evaluation New Hanover County conducted with which you disagree.

→ If you request an IEE, New Hanover County Schools has to decide if it will pay for it **or** file a due process petition to show that its evaluation is appropriate. If the judge decides New Hanover County Schools' evaluation is appropriate, then New Hanover County Schools does not have to pay for an IEE.

→ You must tell the school staff which assessments you disagree with and those are the only ones New Hanover County Schools must pay for when you request an IEE. You do not have to tell New Hanover County Schools why you disagree with its evaluation.

→ You may request only one IEE (paid for by New Hanover County Schools) for each New Hanover County Schools evaluation you disagree with and if New Hanover County Schools has not completed an evaluation, you cannot request an IEE.

Parent-initiated Evaluations

If you obtain an independent educational evaluation of your child at public expense or you share with New Hanover County Schools an evaluation of your child that you obtained at private expense:

- a. New Hanover County Schools must consider the results of the evaluation of your child, if it meets New Hanover County Schools' criteria for independent educational evaluations, in any decision made with respect to the provision of a free appropriate public education (FAPE) to your child; **and**
- b. You or New Hanover County Schools may present the evaluation as evidence at a due process hearing about your child.

Requests for Evaluations by Hearing Officers

If a hearing officer requests an independent educational evaluation of your child as part of a due process hearing, the cost of the evaluation must be at public expense.

New Hanover County Schools' Criteria

When New Hanover County Schools pays for an independent educational evaluation, the criteria for selecting an examiner for the independent evaluation is the same criteria that New Hanover County Schools uses when it arranges for an evaluation (as long as those criteria do not interfere with your right to an independent educational evaluation). Examples of the criteria are the location of the evaluation and the qualifications of the examiner.

Except for the criteria described above, New Hanover County Schools may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

In Other Words.....

- The IEP Team must consider the results of all IEEs that meet New Hanover County Schools' criteria when making decisions. (See the sub-heading **New Hanover County Schools' Criteria**.)

- If a judge orders an IEE as part of a due process hearing, New Hanover County Schools must pay for it.

- New Hanover County Schools must require you to use the same criteria it uses when selecting someone to conduct an evaluation. However, it can not require you to use the same criteria if it interferes with your right to an IEE.

4. ACCESS TO RECORDS 34 CFR §§ 300.610 - 300.625 and NC 1505-2

Confidentiality - Notice to Parents

New Hanover County Schools must give notice that is adequate to fully inform parents about confidentiality of personally identifiable information, including:

- a. A description of the extent to which the notice is given in the native languages of the various population groups;
- b. A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods used in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- c. A summary of the policies and procedures that New Hanover County Schools must follow about storage, disclosure to third parties, keeping records, and destruction of personally identifiable information; and
- d. A description of all of the rights of parents and children about this information, including the rights under the Family Educational Rights and Privacy Act (FERPA).

Before any major identification, location, or evaluation activity (Child Find), the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents of the activity to locate, identify, and evaluate children in need of special education and related services.

Access to Records

New Hanover County Schools must allow you to inspect and review any education records relating to your child that are kept or used by New Hanover County Schools under IDEA. New Hanover County Schools must comply with your request to inspect and review any education records on your child without unnecessary delay and before

- You have the right to be told how information on your child will be used and kept confidential.

- New Hanover County Schools must not delay your review of your child's educational records and must let you review them before any IEP meeting or due process hearing. New Hanover County Schools must let you review the records

In Other Words.....

within 45 days of your request.

any meeting about an IEP or any impartial due process hearing (including a resolution meeting or a hearing about discipline) and in no case more than 45 days after you have made a request. Your right to inspect and review education records includes:

- a. Your right to a response from New Hanover County Schools to your reasonable requests for explanations and interpretations of the records;
- b. Your right to request that New Hanover County Schools provide copies of the records if you cannot effectively inspect and review the records; and
- c. Your right to have your representative inspect and review the records.

New Hanover County Schools may presume that you have authority to inspect and review records relating to your child unless advised that you do not have the authority under applicable NC law governing such matters as guardianship or separation and divorce.

Record of Access

New Hanover County Schools must keep a record of parties obtaining access to education records collected, maintained, or used under IDEA (except access by parents and authorized employees of New Hanover County Schools), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Records on More than One Child

If any education record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

List of Types and Locations of Information

On request, New Hanover County Schools must provide you with a list of the types and locations of education records it collects, maintains or uses.

Fees

New Hanover County Schools may charge a fee for copies of your child's special education records, if the fee does not effectively prevent you from exercising your right to inspect and review those records. New Hanover County Schools may not charge a fee to search/retrieve the information.

Amendment of Records at Parent's Request

If you believe that information in the education records about your child collected, maintained and/or used under IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the school that maintains the information to change the information.

New Hanover County Schools must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request. If New Hanover County Schools refuses to change the information in accordance with your request, it must inform you of the refusal and advise you of the right to a hearing for this purpose.

Opportunity for a Hearing

New Hanover County Schools must, upon your request, provide you an opportunity for a hearing to challenge information in education records about your child to ensure that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child.

→ You have the right to review your child's education records, ask for an explanation of any records you do not understand, ask for copies if you cannot go to the school to review your child's records, and have someone who represents you review your child's records.

→ The school must document who can see your child's record. If someone else reviews your child's record then that person must sign and date a form, and write why he/she reviewed the record.

→ If there is information about another child in your child's records, that child's parents can only see their child's information. They cannot see your child's information.

→ You can ask New Hanover County Schools what kinds of records it keeps and where they are located.

→ New Hanover County Schools can charge a fee to copy your child's record, but it must be a reasonable fee that you are able to pay. New Hanover County Schools cannot charge you for looking for and getting the records.

→ If you disagree with certain items in the records, you can ask for those items to be changed or removed from the record.

→ If the school decides not to change or remove these items, you can ask for a hearing that will be conducted by New Hanover County Schools.

Hearing Procedures

New Hanover County Schools must conduct a hearing when you disagree with information in education records. The hearing is not a due process hearing. It is conducted according to the procedures under the Family Educational Rights and Privacy Act (FERPA).

Note: Information about FERPA is located at <http://ed.gov/policy/gen/guid/fpco/index.html>

Result of Hearing

If, as a result of the hearing, New Hanover County Schools decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must amend the information accordingly and inform you in writing.

If, as a result of the hearing, New Hanover County Schools decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records that it maintains on your child a statement commenting on the information or providing any reasons you disagree with the decision of New Hanover County Schools.

Such an explanation placed in the records of your child must:

- a. Be maintained by New Hanover County Schools as part of the records of your child as long as the records or contested portion is maintained by New Hanover County Schools; and
- b. If New Hanover County Schools discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

Consent for Disclosure of Personally Identifiable Information

Unless the information is contained in education records and the Family Educational Rights and Privacy Act (FERPA) authorizes its release, your consent must be obtained before personally identifiable information is released to parties other than officials of the school system.

Your consent is not required before personally identifiable information is released to officials of New Hanover County Schools for purposes of meeting a requirement of IDEA except when:

- a. Your consent, or the consent of your child who has reached the age of majority (18 years old), must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services; or
- b. If your child attends or is going to attend a private school that is not located in the school system in which you reside, your consent must be obtained before any personally identifiable information about your child is released between officials in public schools where the private school is located and officials in public schools where you reside.

Safeguards

New Hanover County Schools must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. One official of New Hanover County Schools must assume responsibility for ensuring the confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction on policies and procedures about confidentiality under IDEA and New Hanover County Schools must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

→ If the decision from the hearing is that the information you disagreed with is not correct or violates your child's privacy or other rights, it must change the information.

→ If the decision from the hearing is that the information is correct and does not violate your child's privacy and other rights, then you have the right to place a statement in the record about the information telling why you disagree with it.

→ If New Hanover County Schools makes a copy of the record for another party, then it must also copy your written statement.

→ New Hanover County Schools must get your written permission before it can give information that identifies your child to people not employed by New Hanover County Schools. There are times that your permission is not required, such as, when officials of New Hanover County Schools need the information as a requirement of the IDEA.

→ Written permission is required to share information with other agencies assisting with post-secondary transition services.

→ If your child attends a private school in another LEA, the LEA where you live must get your written permission to share the record with the LEA where the private school is located.

→ New Hanover County Schools must keep your child's records confidential and keep a list of all employees who can review your child's records without written permission.

Destruction of Information

New Hanover County Schools must inform you when personally identifiable information collected, maintained or used is no longer needed to provide educational services to your child. The information must be destroyed at your request. However, a permanent record of your child's name, address, phone number, his or her grades, attendance record, classes attended, grade level completed and year completed may be maintained without time limitation.

In Other Words.....

- When New Hanover County Schools no longer needs personally identifiable information to provide services to your child, it must inform you. You have the right to ask for your child's record to be destroyed when it is no longer needed, but New Hanover County Schools can keep directory information.

5. REQUIREMENTS FOR UNILATERAL PLACEMENT OF CHILDREN WITH DISABILITIES BY THEIR PARENTS IN PRIVATE SCHOOLS AT PUBLIC EXPENSE 34 CFR §300.148 and NC 1501-6 through NC 1501-8

Placement of Children by Parents if FAPE is at Issue

IDEA does not require New Hanover County Schools to pay for the cost of education, including special education and related services, of your child with a disability at a private school or facility if New Hanover County Schools made a free appropriate public education (FAPE) available to your child and you chose to place your child in a private school or facility. However, the LEA where the private school is located must include your child in the population whose needs are addressed in the section of IDEA about children whose parents placed them in a private school.

- If New Hanover County Schools made a FAPE available to your child and you decided to enroll your child in a private school, then New Hanover County Schools is not required to pay for the private school. The LEA where the private school is located may provide some services through a private school service plan if those services are part of the services the LEA provides to parentally placed private school students.

Reimbursement for Private School Placement

If your child previously received special education and related services under the authority of New Hanover County Schools and you choose to enroll your child in a private preschool, elementary school, or secondary school without the consent of or referral by New Hanover County Schools, a hearing officer or court may require the agency to reimburse you for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education (FAPE) available to your child in a timely manner prior to that enrollment and that the private placement is appropriate. A hearing officer or court may find your placement to be appropriate, even if the placement does not meet the State standards that apply to education provided by NCDPI and New Hanover County Schools.

- If a hearing officer or court decides New Hanover County Schools did not make a FAPE available for your child, then New Hanover County Schools may have to pay for private school placement, if it is an appropriate placement.

Limitation on Reimbursement

The cost of reimbursement described in the paragraph above may be reduced or denied:

- If at the most recent IEP meeting that you attended prior to your removal of your child from the public school, you did not inform the IEP Team that you were rejecting the placement proposed by New Hanover County Schools to provide FAPE to your child, including stating your concerns and your intent to enroll your 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 your removal of your child from the public school, you did not give written notice to New Hanover County Schools of that information;
- If, prior to your removal of your child from the public school, New Hanover County Schools provided prior written notice to you of its intent to evaluate your child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but you did not make your child available for the evaluation; **or**
- Upon a court's finding that your actions were unreasonable.

- If you decide to enroll your child with a disability in a private school and ask New Hanover County Schools to pay, you must have told school officials at the last IEP Team meeting you attended **or** 10 business days before withdrawing your child that you were going to enroll your child in a private school. In this situation, business day includes any holidays that fall on Monday through Friday. You must have also told school officials what your concerns were about the public school program. The court may decide New Hanover County Schools does not have to pay or the court may lower the costs if you did not tell school officials, did not bring your child to an evaluation New Hanover County Schools wanted to conduct, or acted without reason.

However, the cost of reimbursement:

- Must not be reduced or denied for failure to provide the notice if:
 - The school prevented you from providing the notice;
 - You had not received notice of your responsibility to provide the notice described above; or
 - Compliance with the requirements above would likely result in physical harm to your child; **and**

- The court cannot deny or reduce the payment if the school kept you from providing the notice did not give you the Procedural Safeguards that tell you about providing the notice or if following the

- b. May, in the discretion of the court or a hearing officer, not be reduced or denied for your failure to provide the required notice if:
- The parent is not literate or cannot write in English; or
 - Compliance with the above requirement would likely result in serious emotional harm to your child.

In Other Words.....

requirements might result in physical harm to your child.

→ If you did not provide the notice because you cannot read, you cannot write in English, or if following the requirements might result in serious emotional harm to your child then the court cannot reduce or deny the payment.

6. REQUEST FOR PROCEDURAL REVIEW

Parents may request New Hanover County Schools to conduct a Procedural Review as an alternative means of dispute resolution. New Hanover County Schools will convene a Central Review Committee composed of impartial individuals who can assist with informally mediating the dispute, assisting the IEP Team with reaching consensus or assisting the IEP Team with identifying additional resources and information.

7. AVAILABILITY OF MEDIATION 34 CFR §300.506 and NC 1504-1.7

More information about mediation is located at <http://www.ncpublicschools.org/ec/policy/dispute/mediation/>

→ Mediation is a service offered free of cost to you and New Hanover County Schools and can be requested by sending a completed request form to:

Mediation Coordinator
NCDPI EC Division
6356 Mail Service Center
Raleigh NC 27699-6356
Fax: to 919-807.3755

General

The EC Division of NCDPI makes mediation available to allow you and New Hanover County Schools to resolve disagreements involving any matter under IDEA, including matters arising prior to the filing of a due process petition.

Mediation is available to resolve disputes under IDEA, whether or not you have filed a due process petition to request a due process hearing as described under the heading **Filing a Due Process Petition**.

→ You and/or New Hanover County Schools may request mediation any time you and New Hanover County Schools cannot resolve a dispute. You do not have to file a due process petition in order to request mediation.

Requirements

The procedures must ensure that the mediation process:

- a. Is voluntary on your part and New Hanover County Schools' part;
- b. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under IDEA; and
- c. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The EC Division maintains a list of people who are qualified mediators and know the laws and regulations relating to the provision of special education and related services. The EC Division must select mediators on a random, rotational or other impartial basis. The EC Division is responsible for the cost of the mediation process.

Note: The cost of the mediation process does not include any attorneys' fees, if you and/or New Hanover County Schools bring attorneys to the mediation.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and New Hanover County Schools.

If you and New Hanover County Schools resolve a dispute through the mediation process, both parties must enter into a legally binding agreement that sets forth the resolution and that:

→ A **mediator** is an impartial person who does not tell you or New Hanover County Schools what to do, but assists you and New Hanover County Schools to resolve differences and disputes.

→ If you and New Hanover County Schools to resolve the dispute, then the mediator writes an agreement for all parties to sign and it is legally binding.

- a. States that all discussions that happened during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- b. Is signed by both you and a representative of New Hanover County Schools who has the authority to bind New Hanover County Schools. A written, signed mediation agreement is enforceable in any state court of competent jurisdiction (a state court that has the authority to hear this type of case), federal court, or through a State complaint investigation.

Impartiality of Mediator

The mediator:

- a. May not be an employee of the NCDPI or New Hanover County Schools that is involved in the education or care of your child; and
- b. Must not have a personal or professional interest that conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of New Hanover County Schools or the EC Division solely because he or she is paid by New Hanover County Schools or the EC Division to serve as a mediator.

In Other Words.....

→ Discussions that happen during the mediation process must be kept confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any federal or state court.

→ The mediator does not work for NCDPI or New Hanover County Schools where your child goes to school.

→ The State pays the mediator, but that does not make the mediator a State employee. New Hanover County Schools may provide and pay for an impartial mediator, but that does not make the mediator an employee of New Hanover County Schools.

8. State Complaint Procedures 34 CFR §300.152 and NC 1501-10

Filing a Complaint

An organization or individual may file a signed written State complaint under the procedures described below.

The State complaint must include:

- a. A statement that New Hanover County Schools or other public agency has violated, Federal regulations, NC General Statutes 115C (Article 9), and/or Policies;
- b. The **facts** on which the statement is based;
- c. The signature and contact information for the complainant; and
- d. If alleging violations about a specific child:
 - The name and address of the residence of the child;
 - The name of the school the child is attending;
 - 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;
 - A description of the problem, including facts relating to it; and
 - A proposed resolution of the problem to the extent known and available to the party filing the complaint at the time the complaint is filed.

→ If the complaint does not have all the required items, it will be returned to you. If this happens, NCDPI will send you a letter and tell you what you need to do if you choose to change the complaint and file it again. It is important for you to include specific facts about what you believe the school did not do that the law says it must do. Send any documents (forms, papers, etc.) that support your complaint.

The complaint must allege a violation that occurred not more than **one year** prior to the date that the complaint is received as described under the sub-heading **Adoption of State Complaint Procedures**.

The party filing the State complaint must forward a copy of the complaint to New Hanover County Schools or other public agency serving the child at the same time the party files the complaint with the EC Division.

More information about State complaints is located at <http://www.ncpublicschools.org/ec/policy/dispute/complaints>

Note: Issues that are not part of federal regulations, Article 9, or the *Policies* will not be investigated. Examples are: promotion, retention, personnel issues, school assignment and discrimination.

→ You must file a complaint within one year of the date you believe the school did not follow federal regulations, Article 9, or the *Policies*.

→ You must send a copy to the other party (New Hanover County Schools or other public agency).

→ Submit the signed original to:
Mary N. Watson, Director of EC Division
NC Department of Public Instruction
6356 Mail Service Center
Raleigh, NC 27699-6356

Adoption of State Complaint Procedures

NCDPI has written procedures for:

- a. Resolving any complaint, including a complaint filed by an organization or individual from another state;
- b. The filing of a complaint with the NCDPI; and

Widely disseminating the State complaint procedures to parents and other interested individuals, including parent training and information

→ **Note:** Before filing a complaint, you should talk with your child's teacher, principal, the local EC Director, or other personnel in New Hanover County Schools.

centers, protection and advocacy agencies, independent living centers, and other appropriate entities

Minimum State Complaint Procedures Time Limit

Within 20 calendar days after a complaint is filed, the NCDPI will:

- a. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint; and
- b. Provide New Hanover County Schools or other public agency with the opportunity to respond to the complaint, including, at a minimum, at the option of the agency, a proposal to resolve the complaint and an opportunity for a parent who has filed a complaint and the agency agree to voluntarily engage in mediation.

Within 60 calendar days after a complaint is filed, the EC Division will:

- a. Review all relevant information and make an independent determination as to whether New Hanover County Schools or other public agency is violating a requirement of Federal regulations, Article 9, and/or *Policies*;
- b. Carry out an independent on-site investigation, if the investigator determines that an investigation is necessary; and
- c. Issue a written decision to the complainant that addresses each allegation in the complaint, contains findings of fact, conclusions, and the reasons for the EC Division's decision(s).

Time Extension; Final Decision; Implementation

The formal State complaint procedures described above also must:

- a. Permit an extension of the 60 calendar day time limit only if exceptional circumstances exist with respect to a particular State complaint, or you and New Hanover County Schools or other public agency involved voluntarily agree to extend the time to resolve the matter through mediation or alternative means of dispute resolution; and
- b. Include procedures for effective implementation of the NCDPI's final decision, if needed, including technical assistance activities; negotiations and corrective actions to achieve compliance.

Remedies for Denial of Appropriate Services

In resolving a formal State complaint in which the NCDPI has found a failure to provide appropriate services, the NCDPI will address:

- a. The failure to provide appropriate services, including corrective action appropriate to address the needs of your child; and
- b. Appropriate future provision of services for all children with disabilities.

State Complaints and Due Process Hearings

If a written State complaint is received that is also the subject of a due process hearing as described under the heading **Filing a Due Process Petition** or the State complaint contains multiple issues of which one or more are part of such a hearing, the State must set aside the State complaint or any part of the State complaint that is being addressed in the due process hearing, until the hearing is over. Any issue in the State complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above.

If an issue in a State complaint has previously been decided in a due process hearing involving the same parties (you and New Hanover County Schools), then the due process hearing decision is binding on that issue and the EC Division must inform the complainant that the previous decision is binding.

A complaint alleging New Hanover County Schools or other public agency's failure to implement a due process hearing decision must be resolved by filing a written complaint with the EC Division of the NCDPI.

In Other Words.....

→ You have 20 days after filing a complaint to send more information to NCDPI. New Hanover County Schools also has 20 days to respond and send any information.

→ It takes up to 60 days to investigate a formal written complaint and send the report to you.

Note: By using mediation, you may be able to resolve the issue(s) about your child's special education services and related services more quickly and not have to wait 60 days.

→ The timeline for completing the investigation and sending you the report can be made longer than 60 days if there are unusual circumstances, or you and New Hanover County Schools are trying to resolve the issues using mediation.

→ The EC Division will monitor New Hanover County Schools' correction of any violations until they are completed.

→ The NCDPI will order New Hanover County Schools to correct any violations of the law that were found during the complaint investigation.

→ If you file a State complaint and a due process petition about the same issue or issues, then the State complaint will not be investigated until the judge makes a decision about the due process petition.

→ If you file a State complaint on an issue or issues that have already been ruled on during a due process hearing, then the EC Division will let you know that the judge's decision is the one New Hanover County Schools must follow. If New Hanover County Schools does not follow the judge's decision, you can file a State complaint about that.

Differences Between the State Complaint and Due Process Procedures

Note: In addition to mediation, you have the right to use the State complaint process or a due process hearing to resolve disagreements with New Hanover County Schools. These methods have different procedures, which are described in the Federal regulations and the *Policies*.

The federal regulations for IDEA specify separate procedures for State complaints and for requests for due process hearings.

| State Complaint | Due Process |
|---|--|
| Any individual or organization may file. | Parents of a child, an adult student (age 18 or older), or New Hanover County Schools may file. |
| Allegations of procedural violations of IDEA, Article 9 of the NC General Statutes 115C, and/or Policies. | Disputes about the identification, evaluation, educational placement of a child with a disability, FAPE, or a manifestation determination. |
| Must file within one calendar year of alleged violation. | Must file within one calendar year of disputed activity. |
| Sixty (60) calendar days for investigation to be completed and report sent to you and New Hanover County Schools. | Thirty (30) days for resolution period and 45 days for hearing and decision to be issued, unless the hearing officer grants a specific extension of the timeline at the request of parent or New Hanover County Schools. |
| Decision made by NCDPI staff after investigation of evidence. | Decision by impartial Administrative Law Judge (ALJ) after a hearing. |
| Decision is final and cannot be appealed. | Decision is final unless appealed. |

Model Forms

The EC Division has developed model forms to help you file a State complaint and/or a due process petition. However, the EC Division does not require you to use these model forms. You can use the EC Division's forms or other appropriate model forms, as long as they contain the required information. The model forms are located at <http://www.ncpublicschools.org/ec/policy/dispute/complaint/> and <http://www.ncpublicschools.org/ec/policy/dispute/dueprocess/>

In Other Words.....

- To make sure that you include all the required items in a State complaint or a due process petition, you can use the forms developed by the EC Division.

9 . FILING A DUE PROCESS PETITION 34 CFR §§ 300.507 - 300.518 and NC 1504-1.8 through NC 1504-1.19

More information about due process petition is located at <http://www.ncpublicschools.org/ec/policy/dispute/dueprocess/>

- **Note:** IDEA uses the term due process *complaint*. North Carolina uses due process *petition*.

General

You or New Hanover County Schools may file a due process petition on any matter relating to a proposal or a refusal to initiate or change the identification, evaluation or educational placement of your child or the provision of a free appropriate public education (FAPE) to your child. Parents **must** file the petition with the Superintendent **or** the Executive Director of Special Education and Related Services of New Hanover County Schools **and** the Office of Administrative Hearings (OAH).

- New Hanover County Schools can also file a due process petition. You cannot file a due process petition on issues that are not part of the federal regulations, Article 9, and/or *Policies*. Some of these are promotion, retention, personnel issues, and discrimination.

The due process petition may be hand-delivered or mailed to your local Superintendent **or** Executive Director of Special Education and Related Services at 6410 Carolina Beach Road, Wilmington NC 28412.

- You must file the petition with New Hanover County Schools' Superintendent **or** the Executive Director **and** the Office of Administrative Hearings.

The due process petition **must** be sent to:

Chief Hearings Clerk
Office of Administrative Hearings
1711 New Hope Church Rd.
Raleigh, NC 27609
Phone 919.431.3000
Fax 919.431.3102

A copy of your due process petition **must** be sent to:

In Other Words.....

Consultant for Due Process

NCDPI, EC Division
6356 Mail Service Center
Raleigh, NC 27699-6356
Phone 919.807.3969
Fax 919.807.3755

→ Sending it to the EC Division is not an official filing.

The timelines begin when the Superintendent **or** the New Hanover County Schools' Executive Director of Special Education and Related Services receives the petition you filed. If New Hanover County Schools files a due process petition, the timelines begin when you receive it.

→ The hearing timelines begin the day New Hanover County Schools receives the due process petition, or if New Hanover County Schools files a petition the timelines begin the day you receive it.

The due process petition must indicate an action or actions that happened not more than **one calendar year** before you or New Hanover County Schools knew or should have known about the alleged action that forms the basis of the due process petition.

→ In North Carolina, you **must file within one calendar year** of the alleged violation(s) of the federal regulations, Article 9, and/or *Policies*, unless New Hanover County Schools stated it had resolved the issues or it withheld required information from you.

The above timeline does not apply to you if you could not file a due process petition within the timeline because:

- a. New Hanover County Schools specifically misrepresented that it had resolved the issues identified in the petition; or
- b. New Hanover County Schools withheld information from you that it was required to provide under IDEA.

Information for Parents

New Hanover County Schools must inform you of any free or low-cost legal and other relevant services available in the area if you request the information.

→ You may ask New Hanover County Schools about any free or low-cost attorneys in your area.

Due Process Petition

The petition must contain all of the content listed below and must be kept confidential:

- a. The name, age, and disability category of your child;
- b. The address of your child's residence;
- c. The name of your child's school;
- d. If your child is a homeless child or youth, your child's contact information and the name of your child's school;
- e. A full description of the nature of the problem of your child relating to the proposed or refused action, including specific facts relating to the problem; and
- f. A proposed resolution of the problem to the extent known and available to you or New Hanover County Schools at the time.

Notice Required Before a Hearing on a Due Process Petition

You or New Hanover County Schools may not have a due process hearing until you or New Hanover County Schools (or your attorney or New Hanover County Schools' attorney) files a due process petition that includes the required information listed above.

Sufficiency of Petition

In order for a due process petition to go forward, it must be considered sufficient. The due process petition will be considered sufficient (to have met the content requirements above) unless the party receiving the due process petition (you or New Hanover County Schools) notifies the hearing officer and the other party in writing, within 15 calendar days of receiving the petition, that the due process petition does not meet the requirements listed above.

→ If you do not include all of the items listed under the sub-heading **Due Process Petition** (a-f), New Hanover County Schools can ask the judge to dismiss it. New Hanover County Schools must do this within 15 days of receiving the petition.

Within five (5) calendar days of receiving the notification that the receiving party (you or New Hanover County Schools) considers a due process petition insufficient, the hearing officer must decide if the due process petition meets the requirements listed above, and notify you and New Hanover County Schools in writing immediately.

→ The judge must make a decision within five (5) days.

Petition Amendment

You or New Hanover County Schools may make changes to the petition only if:

- a. The other party approves of the changes in writing and is given the chance to resolve the issue(s) in the due process petition through the resolution process, described below; or
- b. By no later than five (5) days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or New Hanover County Schools) makes changes to the due process petition, the timelines for the resolution meeting (within 15 calendar days of receiving the petition) and the timeline for resolution (within 30 days of receiving the petition) start again on the date the amended petition is filed.

Response to a Due Process Petition

The party receiving a due process petition must send (within 10 calendar days of receiving the petition) the other party a response that specifically addresses the issue(s) in the petition.

New Hanover County Schools Response to a Due Process Petition

If New Hanover County Schools has not sent a prior written notice to you about the issues contained in your due process petition, it must, within 10 calendar days of receiving the due process petition, send you a response that includes:

- a. An explanation of why New Hanover County Schools proposed or refused to take the action raised in the due process petition;
- b. A description of other options that your child's IEP Team considered and the reasons why those options were rejected;
- c. A description of each evaluation procedure, assessment, record, or report New Hanover County Schools used as the basis for the proposed or refused action; and
- d. A description of the other factors that are relevant to New Hanover County Schools' proposed or refused action.

Providing the information in items a-d above does not prevent New Hanover County Schools from asserting that your due process petition was insufficient.

Resolution Process

Within 15 calendar days of receiving the due process petition, New Hanover County Schools must convene a resolution meeting with you and the relevant member or members of the IEP Team who have specific knowledge of the facts in your due process petition. The meeting:

- a. Must include a representative of New Hanover County Schools who has decision-making authority on behalf of New Hanover County Schools; and
- b. May not include an attorney of New Hanover County Schools unless you are accompanied by an attorney.

You and New Hanover County Schools determine the relevant members of the IEP Team to attend the meeting. The purpose of the meeting is for you to discuss your due process petition and the facts that form the basis of the issue(s) in the petition, so that New Hanover County Schools has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

- a. You and New Hanover County Schools agree in writing to waive the meeting; or
- b. You and New Hanover County Schools agree to use the mediation process.

In Other Words....

- ➔ The party that filed the petition cannot make changes to it unless the other party agrees in writing.
- ➔ If the petition is changed, the timelines start over the day you file the amended petition with New Hanover County Schools Superintendent **or** Executive Director **and** OAH.
- ➔ Within 10 days, the party the petition was filed against must send a written response to the other party.
- ➔ If New Hanover County Schools never gave you prior written notice about the issues in your due process petition, it must do so within 10 days after it receives the petition.
- ➔ New Hanover County Schools can still challenge your petition as insufficient.
- ➔ IDEA requires you to meet with members of the IEP Team to try and resolve the issue(s). This is called a resolution meeting.
- ➔ All of the members of the IEP Team do not have to attend. You and New Hanover County Schools make that decision. New Hanover County Schools may not bring an attorney to the resolution meeting unless you do.
- ➔ You and New Hanover County Schools may agree in writing to not have a resolution meeting or to use the mediation process.

Resolution Period

If New Hanover County Schools has not resolved the due process petition to your satisfaction within 30 days of the receipt of the due process petition (during the time period for the resolution process), the due process hearing may occur.

The 45-day timeline for issuing a final decision begins the day after the 30-day resolution period ends.

Except where you and New Hanover County Schools have both agreed to waive the resolution process or to use mediation, your failure to participate in the resolution meeting will delay the timelines for the resolution process and due process hearing until you agree to participate in a meeting.

If after making reasonable efforts and documenting such efforts, New Hanover County Schools is not able to obtain your participation in the resolution meeting, New Hanover County Schools may, at the end of the 30-day resolution period, request that a hearing officer dismiss your due process petition. Documentation of such efforts must include a record of New Hanover County Schools attempts to arrange a mutually agreed upon time and place, such as:

- a. Detailed records of telephone calls made or attempted and the results of those calls;
- b. Copies of correspondence sent to you and any responses received; and
- c. Detailed records of visits made to your home or place of employment and the results of those visits.

If New Hanover County Schools fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process petition or fails to participate in the resolution meeting, you may ask a hearing officer to order that the 45-day due process hearing timeline begin.

Adjustments to the 30 Calendar Day Resolution Period

If you and New Hanover County Schools agree in writing to waive the resolution meeting, then the 45-day timeline for the due process hearing starts the next day.

After the start of mediation or the resolution meeting and before the end of the 30-day resolution period, if you and New Hanover County Schools agree in writing that no agreement is possible, then the 45-day timeline for the due process hearing starts the next day.

If you and New Hanover County Schools agree to use the mediation process at the end of the 30-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. In this case, you must submit a motion to the Administrative Law Judge (ALJ) requesting an extension and include the signed agreement to continue mediation. However, if either you or New Hanover County Schools withdraws from the mediation process, then the 45-day timeline for the due process hearing starts the next day.

Written Settlement Agreement

If a resolution to the dispute is reached at the resolution meeting, you and New Hanover County Schools must enter into a legally binding agreement that is:

- a. Signed by you and a representative of New Hanover County Schools who has the authority to bind New Hanover County Schools; and
- b. Enforceable in any state court of competent jurisdiction (a state court that has the authority to hear this type of case), in a district court of the United States, or through a State complaint.

In Other Words.....

- You and New Hanover County Schools have 30 days to try and resolve the issues before the 45-day timeline starts for a due process hearing.
- If you do not attend the resolution meeting, the judge will not hear your case, and the timelines may be delayed until you agree to participate in a meeting. If you still do not attend the resolution meeting, then at the end of the 30-day resolution period New Hanover County Schools can ask the judge to dismiss your case.
- New Hanover County Schools must keep detailed records of its attempts to schedule the resolution meeting with you.
- If New Hanover County Schools does not hold the resolution meeting within 15 days from receiving your petition or if New Hanover County Schools does not attend the meeting, then you can ask the judge to go ahead and start the 45-day hearing timeline.
- The 45-day timeline begins **the day after** one of these three things happens:
 1. You and New Hanover County Schools agree to not have the resolution meeting;
 2. You and New Hanover County Schools have met and agree a resolution is impossible; **or**
 3. You and New Hanover County Schools have been given an extension to continue mediation after the 30-day timeline, but one party quits the mediation process.
- If you and New Hanover County Schools resolve the dispute, then the agreement must be in writing and signed. The signed agreement is legally binding and can be enforced through the courts or the State complaint process.

Agreement Review Period

If you and New Hanover County Schools enter into an agreement at the resolution meeting, either party may void the agreement within three (3) business days of the time that both you and New Hanover County Schools signed the agreement.

Your Child's Placement While the Due Process Petition and Hearing are Pending

Except as provided under the heading **Disciplinary Procedures**, once a due process petition is sent to the other party, during the resolution process time period and while waiting for the decision of any impartial due process hearing or court proceeding, unless you and the New Hanover County Schools agree otherwise, your child must remain in his or her current educational placement.

If the due process petition involves an application for initial admission to public school, your child, with your consent, must be placed in the regular public school program until the completion of all proceedings.

If the due process petition involves an application for initial services under Part B of the IDEA for your child who is or will soon turn three (3) years old and is transitioning from being served under Part C of the IDEA because he/she is no longer eligible for Part C services, New Hanover County Schools is not required to provide the Part C services that your child had been receiving.

If your preschool child is found eligible under IDEA and you consent for your child to receive special education and related services for the first time, then, pending the outcome of the proceedings, New Hanover County Schools must provide those special education and related services that are not in dispute (those which you and New Hanover County Schools both agree upon).

In Other Words.....

- If you and New Hanover County Schools resolve the dispute, you have three (3) *business days* to change your mind.
- Except under the sub-heading **Special Circumstances** about disciplinary procedures, your child "stays put" in his/her current educational placement unless you and New Hanover County Schools decide to change the placement.
- If this is the first time your child is enrolling in public school, he/she must be placed in a public school program, with your permission, until the due process hearing is over.
- If your child is a preschool child and was receiving Infant-Toddler Program Services before turning three (3) years old, New Hanover County Schools does not have to provide the same services to your child. If your child was determined eligible for preschool special education and related services and you gave your permission for the services, then New Hanover County Schools must provide the services written in the IEP that you and New Hanover County Schools both agree upon.

10. HEARINGS ON DUE PROCESS PETITIONS 34 CFR §300.511 and NC 1504-1.12 through NC 1504-1.14 and NC 1504-1.16

Impartial Due Process Hearing

Whenever a due process petition is filed, you or New Hanover County Schools involved in the dispute must have an opportunity for an impartial due process hearing, as described under the sub-headings **Due Process Petition** and **Resolution Process**.

Impartial Hearing Officer

At a minimum, the Administrative Law Judge:

- a. Must not be an employee of the NCDPI or New Hanover County Schools that is involved in the education or care of your child. However, a person is not an employee of the agency solely because he/she is paid by the agency to serve as a hearing officer;
- b. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
- c. Must be knowledgeable and understand the provisions of the IDEA, federal regulations, Article 9 of NC General Statutes 115C, Policies, and legal interpretations of the IDEA by federal and state courts; and
- d. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

Note: In NC, the hearing officer is an Administrative Law Judge (ALJ).

- The judges who conduct special education hearings must meet certain qualifications.

Subject Matter of Due Process Hearing

The party (you or New Hanover County Schools) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process petition, unless the other party agrees.

- Neither you nor New Hanover County Schools can bring up issues at the hearing that were not in your due process petition, unless New Hanover County Schools agrees.

Timeline for Requesting a Hearing

You or New Hanover County Schools must request an impartial hearing by filing a due process petition within **one year** of the date you or New Hanover County Schools knew or should have known about the issue(s) addressed in the petition.

Exceptions to the Timeline

The above timeline does not apply to you if you could not file a due process petition because:

- a. New Hanover County Schools specifically misrepresented that it had resolved the problem or issue that you are raising in your petition; or
- b. New Hanover County Schools withheld information from you that it was required to provide to you under IDEA.

Hearing Rights General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) or an appeal, as described under the sub-heading **Appeal of Decisions and Impartial Review** has the right to:

- a. Be accompanied and advised by an attorney and/or persons with special knowledge or training about the problems of children with disabilities; (NC law does not recognize a non-attorney representing a party at a due process hearing);
- b. Present evidence and confront, cross-examine, and require the attendance of witnesses;
- c. Prohibit the introduction of any evidence at the hearing that has not been shared with the other party at least five (5) business days before the hearing;
- d. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
- e. Obtain written, or, at your option, electronic findings of fact and decisions.

Additional Disclosure of Information

At least five (5) business days prior to a due process hearing, you and New Hanover County Schools must share with each other all evaluations completed by that date and recommendations based on those evaluations that you or New Hanover County Schools intend to use at the hearing.

A hearing officer may prevent any party that fails to comply with this requirement from introducing the relevant evaluation or recommendations at the hearing without the consent of the other party.

Parental Rights at Hearings

You have the right to:

- a. Have your child present;
- b. Open the hearing to the public; and
- c. Have the record of the hearing, the findings of fact, and decisions provided to you at no cost.

Decision of Hearing Officer

The Administrative Law Judge's decision on whether your child received a free appropriate public education (FAPE) must be based on substantive grounds.

In matters alleging a procedural violation, a hearing officer may find that your child did not receive FAPE only if the procedural violations:

- a. Interfered with your child's right to a free appropriate public education (FAPE);
- b. Significantly interfered with your opportunity to participate in the decision-making process about the provision of a free appropriate public education (FAPE) to your child; or
- c. Caused a deprivation of an educational benefit.

These rules do not prevent a hearing officer from ordering

In Other Words.....

→ You may not file a due process petition for issues that are more than one (1) year old, unless New Hanover County Schools misled you about solving the issues, or did not share information it was required to give you.

→ A due process hearing is an administrative proceeding, and you may need to bring an attorney. You or your attorney, if you have one, may present evidence, examine or cross-examine witnesses and obtain a record of the proceedings, including the findings of fact and decision.

→ **You may represent yourself pro se but no one else may represent you unless s/he has a license to practice law.**

→ You and New Hanover County Schools cannot present evidence or an evaluation report at the hearing that was not shared with the other party at least five (5) business days before the hearing.

→ If you filed the due process petition on an issue that was a violation of the procedures New Hanover County Schools is supposed to follow, the judge has to decide if the procedural violation prevented your child from receiving a FAPE or making educational progress, or kept you from participating in making decisions about your child's FAPE.

New Hanover County Schools to comply with the requirements in the Procedural Safeguards section of the Federal regulations.

Timelines and Convenience of Hearings and Reviews

The Office of Administrative Hearings must ensure that no later than 45 days after the expiration of the 30-day resolution period or, as described under the sub-heading **Adjustments to the 30-day Resolution Period**, no later than 45 days after the expiration of the adjusted time period for resolution, a final decision is reached in the hearing and a copy of the decision is mailed to New Hanover County Schools and you, or your attorney if you are represented by an attorney.

A hearing officer may grant specific extensions of these timelines, if you or New Hanover County Schools make a request for a specific extension of the timeline.

Each hearing involving oral arguments must be conducted at a time and place that is reasonably convenient to you and your child.

Separate Request for a Due Process Hearing

Nothing in the Procedural Safeguards section of the IDEA regulations can be interpreted to prevent you from filing a separate due process petition on an issue separate from a due process petition already filed.

Findings and Decision to State Advisory Panel and General Public

The EC Division must provide the findings and decisions, with any personally identifiable information deleted, to the State Advisory Panel and make those findings and decisions available to the public.

Note: In North Carolina, the State Advisory Panel is called Council on Educational Services for Exceptional Children

Construction Clause

None of the provisions described above can be interpreted to prevent a hearing officer from ordering New Hanover County Schools to comply with the requirements in the Procedural Safeguards section of the federal regulations under IDEA. None of the provisions under:

Filing a Due Process Petition, Model Forms, Resolution Process, Impartial Due Process Hearing, Hearing Rights, and Hearing Decisions can affect your right to file an appeal of the due process hearing decision with the EC Division.

- ➔ **In Other Words.....**
After the 30-day period for resolving the issue(s) has ended, the judge has 45 days to give you and New Hanover County Schools his/her decision.
- ➔ If the judge gave you and New Hanover County Schools an extension on the 30-day timeline for resolution, then he/she must give you and New Hanover County Schools the decision 45 days after the end of the extension.
- ➔ The judge can grant more time if you or New Hanover County Schools make a specific request for him/her to do so.
- ➔ If you have filed a due process petition, you can file another one if it is about a different issue.

11. STATE-LEVEL APPEALS 34 CFR §300.514 and NC 1504-1.15 through NC 1504-1.16

Finality of Hearing Decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, unless appealed. Either party involved in the hearing (you or New Hanover County Schools) may appeal the decision to the EC Division within 30 days of receipt of the decision from the Office of Administrative Hearings.

Appeal of Decisions and Impartial Review

If a party (you or New Hanover County Schools) disagrees with the findings and decision in the due process hearing, the party may appeal to the EC Division.

If there is an appeal, the EC Division must appoint an impartial review officer to conduct an impartial review of the findings and decision appealed.

The review officer conducting the review must:

- a. Examine the entire hearing record;
- b. Ensure that the procedures at the hearing were consistent with the requirements of due process;

- ➔ If you disagree with the judge's decision in a due process hearing, you may appeal it to the EC Division within 30 days of receiving the decision.
- ➔ The EC Division will appoint an impartial State review officer to review the record from the hearing. The review officer will examine the record, may ask you and New Hanover County Schools for more evidence or may ask you and New Hanover County Schools to present an oral or written argument.

- c. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the hearing rights described above under the sub-heading **Hearing Rights** apply;
- d. Give the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
- e. Make an independent decision on completion of the review; and
- f. Give you and New Hanover County Schools a copy of the written or, at your option, electronic findings of fact and decisions.



In Other Words.....

The review officer will make a decision and give New Hanover County Schools and you a report.

Timelines and Convenience of Hearings and Reviews

The EC Division must ensure that no later than 30 days after the receipt of an appeal of the Administrative Law Judge's decision a final decision is reached in the review and a copy of the decision is mailed to you and New Hanover County Schools, or your attorney if you are represented by council.



The review official must make a decision and send it in writing to you and New Hanover County Schools within 30 days of receiving the appeal.

A review officer may grant specific extensions of time beyond the periods described above (45 days for a hearing decision and 30 days for a review decision) if you or New Hanover County Schools make a request for a specific extension of the timeline. Each review involving oral arguments must be conducted at a time and place that is reasonably convenient to you and your child.



The review officer can grant more time if you or New Hanover County Schools make a specific request for him/her to do so.

Finality of Review Decision

The decision made by the reviewing official is final unless you or New Hanover County Schools brings a civil action, as described below under the heading **Civil Actions**.



If you disagree with the decision the review official makes, you can file a law suit in civil court. (See information below.)

Findings and Decision to State Advisory Panel and General Public

The EC Division, after deleting any personally identifiable information, must provide the findings and decisions of the appeal to the State Advisory Panel and make those findings and decisions available to the public.

Note: In North Carolina, the State Advisory Panel is called the Council on Educational Services for Exceptional Children.

12. CIVIL ACTIONS 34 CFR §300.516 and NC 1504-1.17

Any party (you or New Hanover County Schools) who does not agree with the findings and decision by a State review officer has the right to bring 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 state court of competent jurisdiction (a state court that has the authority to hear this type of case) or in a district court of the United States without regard to the amount in the dispute.



If you disagree with the review officer's decision, you may file a law suit in state or federal court.

Time Limitation

The party (you or New Hanover County Schools) bringing the action shall have 30 days from the date of the decision of the State review officer to file a civil action.



You have 30 days after receiving the review officer's decision to file civil action.

Additional Procedures

In any civil action, the court:

- a. Receives the records of the administrative proceedings;
- b. Hears additional evidence at your request or at New Hanover County Schools' request; and
- c. Bases its decision on the preponderance of the evidence and grants the relief that the court determines to be appropriate.

Jurisdiction of District Courts

The district courts of the United States have authority to rule on actions brought under IDEA without regard to the amount in dispute.

Rule of Construction

Nothing in IDEA restricts or limits the rights, procedures, and remedies available under the U.S. Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973 (Section 504) or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under these laws seeking relief that is also available under IDEA, the due process procedures described above must be exhausted to the same extent as would be required if the party filed the action under IDEA.

This means that you may have remedies available under other laws that overlap with those available under IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under IDEA (i.e., the due process petition, resolution meeting, and impartial due process hearing procedures) before going directly into court.

→ You may file an action in civil court under other Federal laws, but you must go through the due process procedure first.

In Other Words.....

13. ATTORNEYS' FEES 34 CFR §300.517 and NC 1504-1.18

In any action or proceeding brought under IDEA, if you prevail, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to you.

In any action or proceeding brought under IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to NCDPI or New Hanover County Schools, to be paid by your attorney, if the attorney filed a petition or court case that the court finds is frivolous, unreasonable, or without foundation or continued to litigate after the litigation clearly became frivolous, unreasonable, or without foundation.

In any action or proceeding brought under IDEA, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to NCDPI or New Hanover County Schools, to be paid by you or your attorney, if your request for a due process hearing or later court case was presented for any improper purpose, such as to harass, to cause unnecessary delay or unnecessarily increase the cost of the action or proceeding.

Note: North Carolina's Administrative Law Judges cannot award attorneys' fees.

Award of Fees

A court awards reasonable attorneys' fees as follows:

- a. Fees must be based on the rates established in the community in which the hearing was held for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded;
- b. Fees may not be awarded and related costs may not be reimbursed in any action or proceeding under IDEA for services performed after a written offer of settlement to you if:
 - The offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of a due process hearing or State-level review, at any time more than 10 calendar days before the proceeding begins;
 - The offer is not accepted within 10 calendar days; and
 - The court or administrative hearing officer finds that the relief finally obtained by you is not more favorable to you than the offer of settlement;
- c. Despite these restrictions, an award of attorneys' fees and related costs may be made to you if you prevail and you were substantially justified in rejecting the settlement offer;
- d. Fees may not be awarded relating to any meeting of the IEP Team unless the meeting is held as a result of an administrative proceeding or court action; and
- e. Fees also may not be awarded for mediation as described under the heading **Mediation**.

A resolution meeting, as described under the sub-heading **Resolution Process**, is not considered a meeting convened as a result of an

- If you win the case, the court may decide that New Hanover County Schools must pay your attorney's fees, if you have an attorney.
- The court may decide that **your attorney** must pay New Hanover County Schools' costs and/or the NCDPI's costs, if any, if your attorney filed a petition that was trivial, unreasonable, or without any basis; or if your attorney continued the case after it became clear that it was trivial, unreasonable, or without any basis.
- The court can decide that **you or your attorney** must pay New Hanover County Schools' costs and/or the NCDPI's costs, if you filed due process for inappropriate reasons, such as to harass, cause unnecessary delay or increase the cost of the action or proceeding.
- Attorneys' fees are based on the average rate in the community where the attorney practices.
- If a written settlement offer is made more than 10 days before the hearing begins, and you do not accept the offer within 10 days, the court may not order New Hanover County Schools to pay your attorney fees if it learns that the decision or ruling was less favorable than the settlement offer.
- However, the court may order the fees to be paid if you win the case and it is decided you were right to reject the settlement offer.
- Fees cannot be paid for IEP Team meetings, mediation, or a resolution meeting.

administrative hearing or court action, and also is not considered an administrative hearing or court action for purposes of these attorneys' fees provisions.

The court reduces, as appropriate, the amount of the attorneys' fees awarded under IDEA, if the court finds that:

- a. You, or your attorney, during the course of the action or proceeding, unreasonably delayed the final resolution of the dispute;
- b. The amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably similar skill, reputation, and experience;
- c. The time spent and legal services furnished were excessive considering the nature of the action or proceeding; or
- d. The attorney representing you did not provide to New Hanover County Schools the appropriate information in the due process petition as described under the sub-heading **Due Process Petition**.

However, the court may not reduce fees if the court finds that the State or New Hanover County Schools unreasonably delayed the final resolution of the action or proceeding or there was a violation under the Procedural Safeguards provisions of IDEA.

The court can reduce the amount of the attorneys' fees if it finds that you or your

In Other Words.....

attorney unreasonably delayed the final resolution, the fees unreasonably exceed the usual hourly rate in the attorney's community, the time and legal services were more than normally required for that type of action, or you or your attorney did not provide New Hanover County Schools with the appropriate information in the due process petition.

The court cannot lower the attorneys' fees if the State or New Hanover County Schools unreasonably delayed the final resolution or there was a violation under the Procedural Safeguards.

14. DISCIPLINARY PROCEDURES 34 CFR §§300.530 - 300.536 and NC 1504-2

Authority of School Personnel and Case-by-Case Determination

School personnel may consider any unique circumstances on a case-by-case basis, when determining whether a change of placement, made in accordance with the following requirements related to discipline, is appropriate for a child with a disability who violates a school code of student conduct.

Note: A removal is usually called an out-of-school suspension (OSS), but it also includes any time the school calls and asks you to pick up your child before the end of the school day because of disciplinary reasons. It also includes in-school-suspension (ISS) if services are not provided to your child, and suspension from the bus, but **IF** transportation is a related services on your child's IEP.

General

To the extent that they also take such action for children without disabilities, school personnel may remove a child with a disability, who violates a code of student conduct, from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for no more than **10 school days in a row**.

School personnel may also impose additional removals of your child of no more than **10 school days in a row** in that same school year for separate incidents of misconduct, as long as those removals do not constitute a change of placement as described under the sub-heading **Change in Placement**.

Once a child with a disability has been removed from his or her current placement for a total of 10 school days in the same school year, New Hanover County Schools must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading **Services**. These services must begin on the 11th day of removal from school.

School personnel may take into consideration the type of disability your child has, the intent of the action(s), and other unique things about your child and/or the circumstances, but they are not required to do this.

If nondisabled children are removed for 10 or fewer school days for breaking the rules, then your child with a disability can also be removed.

Your child can be removed for 10 or fewer school days during the school year for separate disciplinary incidents, unless the removals cause a change in placement due to a pattern as described below.

New Hanover County Schools must begin providing educational services to your child beginning on the 11th day he/she has been removed in a school year.

Change in Placement for Disciplinary Reasons

A removal of your child with a disability from his/her current educational placement is a change of placement if:

- a. The removal is for more than 10 school days in a row; or
- b. Your child has been subjected to a series of removals that creates a pattern because:

Removing your child for more than 10 school days in a row is a change in placement.

Removing your child is a change in placement if there is a pattern to the removals. A pattern exists when:

- The series of removals total more than 10 school days in a school year;
- Your child's behavior is substantially similar to your child's behavior in previous incidents that resulted in the series of removals; **and**
- There are additional factors such as the length of each removal, the total amount of time your child has been removed, and the closeness of the removals to one another.

Whether a pattern of removals constitutes a change of placement is determined on a case-by-case basis by New Hanover County Schools and, if challenged, is subject to review through due process and judicial proceedings.

Services

The services that must be provided to your child with a disability who has been removed from his/her current placement may be provided in an interim alternative educational setting (IAES).

New Hanover County Schools is only required to provide services to a child with a disability who has been removed from his/her current placement for 10 school days or less in a school year, if it provides services to children without disabilities who have been similarly removed.

Your child with a disability who is removed from his/her current placement for more than **10 school days** must:

- Continue to receive educational services, so as to enable him/her to continue to participate in the general education curriculum, although in another setting;
- Continue to progress toward meeting the goals set out in his/her IEP; **and**
- Receive, as appropriate, a functional behavioral assessment (FBA), and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not happen again.

After your child with a disability has been removed from his or her current placement for **10 school days** in that same school year, and **if** the current removal is for **10 school days** in a row or less and if the removal is not a change of placement, **then** school personnel, in consultation with at least one of your child's teachers, determine the extent to which services are needed to enable your child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in his/her IEP.

If the removal is a change of placement, your child's IEP Team determines the appropriate services to enable him/her to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals in his/her IEP.

Notification

On the date school personnel make the decision that a disciplinary removal of your child is a change of placement, New Hanover County Schools must notify you of that decision, and provide you with the Procedural Safeguards notice.

Manifestation Determination

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

1. Your child has been removed for more than 10 school days in one school year;
2. Your child's behavior for the current

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discipline incident is very similar to the behavior for any removals he/she already has during the school year; **and**

3. There are other factors, such as the number of days of each removal, the total number of days removed and the closeness of each of the removals to each other.

New Hanover County Schools decides if there is a pattern. If you disagree, you can file due process.



If New Hanover County Schools provides services to nondisabled children when they are removed for 10 or less school days, it must provide services for your child with a disability.



When your child has been removed for more than 10 school days, the educational services must be such that your child can continue work in all classes, continue to make progress on the IEP annual goals, and if appropriate, have his/her behavior assessed and receive services and modifications to keep the behavior from happening again.



If the current removal **is not** a change in placement, then school personnel and at least one of your child's teachers decide what service is needed for your child to continue his/her work in all classes and continue to make progress on the IEP annual goals.



If the current removal **is** a change in placement, then the IEP Team decides what service is needed for your child, and where/when the service will be provided to your child so he/she can continue work in all classes and make progress on the IEP annual goals.



The day school personnel decide a disciplinary removal is a change in placement you must be given prior notice and the Procedural Safeguards (this document).

conduct, New Hanover County Schools; the parent; and relevant members of the IEP Team (as determined by the parent and New Hanover County Schools) must:

- a. Review all relevant information in the student's file, including your child's IEP, any teacher observations, and any relevant information provided by you to determine if the conduct in question was caused by or had a direct and substantial relationship to your child's disability; **or**
- b. If the conduct in question was the direct result of New Hanover County Schools' failure to implement your child's IEP.

If New Hanover County Schools, you, and relevant members of your child's IEP Team determine that either of the above conditions was met, the conduct must be determined to be a manifestation of your child's disability.

If New Hanover County Schools, you, and relevant members of your child's IEP Team determine that the conduct in question was the direct result of New Hanover County Schools' failure to implement the IEP, New Hanover County Schools must take immediate action to remedy those deficiencies.

Determination that Behavior was a Manifestation of Your Child's Disability

If New Hanover County Schools, you, and relevant members of the IEP Team determine that the conduct was a manifestation of your child's disability, the IEP Team must either:

- a. Conduct a functional behavioral assessment (FBA), unless New Hanover County Schools had conducted a functional behavioral assessment (FBA) before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan (BIP) for your child; **or**
- b. If a behavioral intervention plan (BIP) has been developed, review the behavioral intervention plan (BIP), and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading **Special Circumstances**, New Hanover County Schools must return your child to the placement from which your child was removed, unless you and New Hanover County Schools agree to a change of placement as part of the modification of the behavioral intervention plan through the IEP process.

Additional Authority

If the behavior that violated the student code of conduct was not a manifestation of your child's disability and the disciplinary change of placement would exceed **10 school days in a row**, school personnel may apply the disciplinary procedures to your child with a disability in the same manner and for the same length of time as it would to children without disabilities, except that the school must provide services, as described previously, to your child.

Your child's IEP Team determines the interim alternative educational setting (IAES) for such services.

Special Circumstances

Whether or not the behavior was a manifestation of your child's disability, school personnel may remove him/her to an interim alternative educational setting (determined by your child's IEP Team) for up to 45 school days, if your child:

- a. Carries a weapon to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the NCDPI or New Hanover County Schools;
- b. Knowingly has 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 the NCDPI or New Hanover County Schools; or

→ If school personnel decide to change your child's placement because of behavior, you and appropriate members of the IEP Team must meet to decide if the behavior was caused by your child's disability **or** a direct

In Other Words.....

result of the school not following the IEP. This is called a manifestation determination meeting.

→ If it is decided that the behavior was the direct result of the school not following the IEP, New Hanover County Schools must immediately take steps to correct this.

If the behavior **is** a manifestation of your child's disability, his/her behavior must be assessed unless it has already been assessed and the IEP Team must develop a behavioral intervention plan (BIP). If your child already has a BIP, then the IEP Team must review the BIP and change it if necessary to address the specific behavior.

→ If the behavior **is** a manifestation of your child's disability, he/she must return to the previous educational placement (except when there are **Special Circumstances**) unless you and New Hanover County Schools agree to change the placement using the IEP process.

→ If the behavior **is not** a manifestation of your child's disability and nondisabled children are removed for the same type of behavior, then your child can be removed, but New Hanover County Schools must provide services. The IEP Team decides where the services will be provided. This is called an interim alternative educational setting (IAES).

→ If your child carries or has a weapon; has, uses, solicits the sale of, or sells illegal drugs; or causes serious bodily injury to another person, he/she can be removed to an IAES for up to 45 school days. This may happen at school, on school property, or at a school function (such as, after school activity, school bus, field trip, etc.)

Note: Your child may be removed for up to 45 days even if it is decided that the

- c. Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the NCDPI or New Hanover County Schools.

behavior was a manifestation of your child's disability.

Determination of Setting

The IEP Team must determine the interim alternative educational setting (IAES) for removals that are changes of placement and removals under the sub-headings **Additional Authority** and **Special Circumstances** above..

Appeal in General

The parent of a child with a disability may file a due process petition to request an expedited due process hearing if he or she disagrees with:

- Any decision about placement made under these discipline provisions; or
- The manifestation determination described above.

New Hanover County Schools may file a due process petition to request a due process hearing if it believes that maintaining the current placement of your child is substantially likely to result in injury to your child or to others. **Note:** Expedited **means the timelines are shorter.**

Authority of Hearing Officer

A hearing officer who meets the requirements described under the sub-heading **Impartial Hearing Officer** must conduct the due process hearing and make a decision.

The hearing officer may:

- Return your child with a disability to the placement from which your child was removed if the hearing officer determines that the removal was a violation of the requirements described under the sub-heading **Authority of School Personnel**, or that your child's behavior was a manifestation of your child's disability; or
- Order a change of placement of your child with a disability to an appropriate interim alternative educational setting (IAES) for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or to others.

These hearing procedures may be repeated after the 45 school days, if New Hanover County Schools believes that returning your child to the original placement is substantially likely to result in injury to your child or to others.

Whenever a parent or New Hanover County Schools files a due process petition to request an expedited hearing, all the requirements under the previous headings: **Filing a Due Process Petition, Hearings on Due Process Petitions, and State-Level Appeals** must be followed, except for the timelines and written response.

The timelines are expedited as follows:

- The Office of Administrative Hearings must arrange for an expedited due process hearing, which must occur within **20 school days** of the date the hearing is requested and must result in a determination within **10 school days** after the hearing; and
- Unless you and New Hanover County Schools agree in writing to waive the resolution meeting, or agree to use mediation, a resolution meeting must occur within **seven (7) calendar days** of the date New Hanover County Schools's Superintendent or Executive Director of Special Education and Related Services received notice of the expedited due process petition. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within **15 calendar days** of the date New Hanover County Schools's Superintendent or Executive Director of Special Education and Related Services received notice of the due process petition.



In Other Words.....

Note: In North Carolina, if the IEP Team determines that homebound instruction is the IAES for your child, then the appropriateness of the homebound instruction must be evaluated every month.



You can request an **expedited** due process hearing to appeal any decision made about the placement of your child because of behavior or the results of the manifestation determination meeting.



New Hanover County Schools can ask for an expedited due process hearing if it believes keeping your child in his/her current placement is very likely to cause injury to your child or anyone else.



If the judge decides that school personnel went beyond their authority to remove your child **or** that the behavior was a manifestation of his/her disability, then the judge may return your child to the placement your child was in before the removal.



The judge can order your child to an appropriate IAES for up to 45 school days if he/she believes keeping your child in the current placement is very likely to cause injury to your child or anyone else.



After 45 school days, New Hanover County Schools can go back to the judge to ask that your child stay in the IAES for up to 45 more school days.



The timelines for a due process hearing that is the result of a disciplinary decision are shorter. Everything else about the due process procedures stays the same, except that the filing party does not have to send a written response to the other party.



The hearing must be scheduled within 20 school days from the date the petition is received. The judge must send a written decision within 10 school days after the hearing.



New Hanover County Schools must schedule the resolution meeting within seven (7) days of receiving the due process petition.

A party may appeal the decision in an expedited due process hearing in the same way as for decisions in other due process hearings.

Placement During Appeals

When, as described above, the parent or New Hanover County Schools has filed a due process petition related to disciplinary matters, your child must (unless you and the NCDPI or New Hanover County Schools agree otherwise) remain in the interim alternative educational setting (IAES) pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the sub-heading **Authority of School Personnel**, whichever occurs first.

Note: Placement in special education is used in two different ways:

- a. That a child has been determined to be eligible for special education and related services; and
- b. The level on the continuum of services, which means the amount of time the student will be removed from his/her nondisabled peers or placement does not mean the location of services or school assignment.

Protections for Children Not Yet Eligible for Special Education and Related Services in General

If a child has not been determined eligible for special education and related services and violates a code of student conduct, but New Hanover County Schools had knowledge (as determined below) before the behavior that brought about the disciplinary action occurred that your child was a child with a disability, then you may assert any of the protections described in this notice on behalf of your child.

Basis of Knowledge for Disciplinary Matters

New Hanover County Schools must be deemed to have knowledge that a child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

- a. You expressed concern in writing that your child is in need of special education and related services to supervisory or administrative personnel of the appropriate educational agency, or a teacher of your child;
- b. You requested an evaluation related to eligibility for special education and related services under IDEA; or
- c. Your child's teacher, or New Hanover County Schools' personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the Executive Director of Special Education and Related Services or to other supervisory personnel of New Hanover County Schools.
- d. If the behavior and performance of the child clearly and convincingly establishes the need for special education.

Exception

New Hanover County Schools would not be deemed to have such knowledge if:

- a. You have not allowed an evaluation of your child or refused special education services; **or**
- b. Your child has been evaluated and determined not to be a child with a disability under IDEA.

Conditions that Apply if there is No Basis of Knowledge

If prior to taking disciplinary measures against your child, and New Hanover County Schools does not have knowledge that he/she is a child with a disability, as described above under the sub-headings **Basis of Knowledge for Disciplinary Matters** and **Exception**, your



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Your child must "stay put" in the IAES until the judge makes a decision, or until the removal days end.



If your child has not been identified as a child with a disability who is eligible for special education and related services, but New Hanover County Schools knew he/she might have a disability then you can ask for the protections described under the heading **Disciplinary Procedures**.



New Hanover County Schools is considered to have knowledge that your child might be a child with a disability:

- If you had written concerns that your child may need special education and related services and gave your written concerns to your child's teacher or administrators;
- You requested an evaluation for special education and related services; **or**
- School personnel, including your child's teacher, expressed concerns about a pattern of behavior to the Executive Director of Special Education and Related Services or New Hanover County Schools supervisors.



New Hanover County Schools did not have knowledge that your child may be a child with a disability if it asked to evaluate your child and you did not give permission **or** your child has been evaluated, but was not eligible for special education.



If New Hanover County Schools did not have knowledge that your child may be a child with a disability then New Hanover County Schools can discipline your child just like it does a nondisabled child. New Hanover County Schools is not required to provide services.

child may be subjected to the disciplinary measures that are applied to children without disabilities who engaged in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which he/she is subjected to disciplinary measures, the evaluation must be conducted in an expedited manner.

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

If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by New Hanover County Schools, and information provided by you, New Hanover County Schools must provide special education and related services in accordance with IDEA, including the disciplinary requirements described above.

Referral to and Action by Law Enforcement and Judicial Authorities

IDEA does not:

- a. Prohibit an agency from reporting a crime committed by your child with a disability to appropriate authorities; **or**
- b. Prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by your child with a disability.

Transmittal of Records

If New Hanover County Schools reports a crime committed by a child with a disability, New Hanover County Schools:

- a. Must ensure that copies of your child's special education and disciplinary records are transmitted for consideration by the authorities to whom the agency reports the crime; and
- b. May transmit copies of your child's special education and disciplinary records only to the extent permitted by the Family Educational Rights and Privacy Act (FERPA).

15. OTHER INFORMATION

Surrogate Parents 300.519

Under federal and state laws, New Hanover County Schools has the responsibility to appoint a surrogate parent for a child with a disability for the following reasons:

- when no parent can be identified;
- when New Hanover County Schools, after making reasonable efforts, cannot find or locate the parents; or
- when the child with a disability is in the custody of a county Department of Social Services.

New Hanover County Schools shall ensure that the surrogate is not an employee of the state or NHCS, or any other agency that is involved in the education or care of the child; has no interest that conflicts with the interest of the child; and that the surrogate has knowledge and skills to adequately represent the child.

Transfer of Parental Rights for Students 18 Years Old 300.520

When your child reaches 18, all rights under special education law will transfer to your child unless a court has appointed a legal guardian for your child. Parents retain the right to notice. Except for students incarcerated in correctional institutions, both your adult child and you will receive all the required notices contained within these parental rights. This is your notice of the transfer of rights to your child at age 18.

Extended School Year Service (ESY) 300.106

→ If a request is made for an evaluation during this time, New Hanover County Schools must conduct it quickly, but your child cannot return to his/her educational placement.

In Other Words.....

→ If your child is eligible for special education and related services, then New Hanover County Schools must provide those services.

→ If your child with a disability commits a crime, he/she can be referred to the police or courts.

→ In some instances, the police or courts may be able to get information from your child's education record.

→ A surrogate parent represents the interests of the child with a disability in all matters relating to identification, evaluation, educational services, and the provision of a free appropriate public education. Surrogate parents have the same rights of parents as described in this document.

→ Your parental rights transfer to your child when s/he turns 18.

→ Your child may be eligible for ESY. This is determined in a IEP meeting.

For some children with disabilities it may be necessary to provide services during summer or other long school breaks. Although all children with disabilities must be considered for ESY services, only those students who meet ESY service criteria will be eligible for such services. Eligibility for ESY services is determined by an IEP Team's consideration of educational performance data.

ESY services are determined and proposed as a part of the IEP Team process, which includes the child's parent.

RESOURCES FOR PARENTS

Local Agencies:

Family Support Network of Southeast North Carolina – 910.792.6133

<http://www.supportfamilies.org>

Email address – *fsnsoutheastern@gmail.com*

Exceptional Children's Assistance Center Southeast Office – 910.620.2295

800.782.2094 toll free

Email address - *ecacsoutheast@ecacmail.org*

State Agencies:

The organizations listed below are available to assist North Carolina's parents of children with disabilities.

Disabilities Rights of North Carolina :: 1.800.821.6922 or 1.888.268.5535 (TDD) or 919.856.2195

<http://www.disabilityrightsnc.org>

Disabilities Rights of North Carolina (DRNC) is a private, non-profit organization in North Carolina that works to improve the lives of people with disabilities by protecting their rights. It is part of a nationwide protection and advocacy system. DRNC has replaced the Governor's Advocacy Council (GAC).

Exceptional Children's Assistance Center (ECAC) :: 1.800.962.6817 or 910-520-5271

<http://www.ecac-parentcenter.org>

This is the North Carolina Parent Training and Information Center (PTI) that provides free information and assistance with educational issues to parents of children with disabilities. The Center offers workshops, a lending library, newsletter, and a Parent Information Line answered by parents.

Family Support Network of North Carolina :: 1.800.852.0042

<http://www.fsnc.org/>

The Family Support Network has a free statewide information and referral service, parent-to-parent programs, and workshops for parents of children with disabilities. Call the Network for specific disability information and for listings for all the different disability support groups.



Community Resources

Parent & Staff Information for Students with Disabilities

These resources represent agencies providing initial or primary supports to individuals or families

- **Trillium Health Resources**

**3809 Shipyard Blvd.
Wilmington, NC 28403**

Provides management of mental health, intellectual/developmental disabilities, and substance use services through a network of contracted service providers.
Access Care and Crisis Services
24 Hours a Day, 7 Days a Week
1-877-685-2415

Customer Services

(for questions, concerns, complaints and/or compliments)
Monday through Friday
8 a.m. to 5 p.m.
1-866-998-2597
Or email at
info@trilliumnc.org

- **North Carolina Infant Toddler Program Children's CDSA)**

**3311 Burnt Mill Drive, Suite 100
Wilmington, NC 28403-2654**

Provides supports and services for families and their children, birth to three who have special needs.

Phone: 910-251-5817

Fax: 910-251-2651

www.becarly.nc.gov

- **Family Support Network—SENC**

**4701 Wrightsville Avenue,
Wilmington, NC 28403**

Phone: (910) 792-6133

Toll Free Phone: 877-749-7011

Email: fsnsoutheastern@gmail.com

<http://www.fsnnc.org/node/18>

<http://iam.classics.unc.edu/>

- **Exceptional Children's Assistance Center (ECAC)**

Parent Information Line:

1-800-962-6817

<http://www.ecacparentcenter.org/>

ECAC Local Parent Educator

Karen Laughlin Phone: 910-520-6918

klaughlin@ecacmail.org

- **disAbility Resource Center (dRC)**

**140 C Cinema Drive
Wilmington, NC 28403**

Provides individuals with information & tools to live freely & independently. They can help with preparing a budget, creating a resume, teaching job searching skills, computer training, & peer monitoring. They also provide information on who to contact if you need a ramp, home modifications, assistive technology, problems with social security benefits, searching for affordable housing, support groups, disability rights advocacy, youth transition services, career summer camp and more.

Phone: (910) 815-6618

Fax: (910) 815-6658

Monday-Friday 9am-4pm

- **N.C Division**

Vocational Rehabilitation Services, Department of Health & Human Resources

**1802 S. 15th Street
Wilmington, NC 28401**

Partners with local high schools across the state to assist students with making a successful transition from their school life to jobs and careers. The program assists individuals with disabilities —physical, psychiatric, intellectual, communicative or learning-related — who require assistance to prepare for, locate, or maintain employment compatible with their interests, skills and potential. For eligible students, VR may be able to provide vocational guidance and assist with training, job placement, and other services.

Phone: (910) 254- 4105

Fax: (910) 254-4146

- **Coordination for Children (CC4C)**

Care Coordination for Children (CC4C) is a program offered at no charge children birth to 5 years of age. The goal of CC4C is to improve your child's care and meet the specific need of your child and family. CC4C care managers will work with you to help build a strong link to your child's medical home (regular doctor), offer referrals to community sources to meet your family's needs, assist families who are dealing with challenging levels of stress, and offer information on health and family topics including child growth and development.

Contact # [910-798-6575](tel:910-798-6575)

- **Parent ACES Survey**

<http://tinyurl.com/SurveyACES>



A.C.E.S.

Advisory Council for Exceptional Students

Purpose

The North Carolina State Board of Education

passed a resolution in April 1975, calling for the establishment of local advisory councils for students with special needs. The establishment of an advisory council for students with special needs is in keeping with the nationwide trend of obtaining broad citizen input to the educational process.

ACES's Goals

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|---|
| <i>Maintain the diversity of the advisory council membership.</i> |
| <i>Increase school and community awareness concerning children with special needs and their families.</i> |
| <i>Obtain information, report findings, and make recommendations regarding service delivery to the New Hanover County Board of Education.</i> |
| <i>Communicate appreciation and support to those who enhance and enrich the experiences of students with special needs in our community.</i> |

Responsibilities of this Council

Study the school offerings in-depth to determine the degree to which schools are serving students with special needs

Make recommendations for needed improvements to the New Hanover County Board of Education

Serve as an avenue of public sentiment for improvements in special education

For More Information :

Webpage: <https://sites.google.com/a/nhcs.net/aces/home>

Facebook: <https://www.facebook.com/pages/NHCS-ACES/201998096638446>

Twitter: https://twitter.com/NHCS_ACES

Annual Written Notification
Accessing Public Benefits and Releasing Personally Identifiable Information
to the North Carolina Medicaid Program

New Hanover County Schools
2814 Carolina Beach Rd. Wilmington, NC

The federal special education law, the Individuals with Disabilities Education Improvement Act 2004 (IDEA), specifies each State's obligation to develop agreements with non-educational public agencies to ensure that all services necessary to provide a free appropriate public education (FAPE) are provided to children with disabilities at no cost to the parent. This includes the State Medicaid agency. School districts are permitted to seek payment from public insurance programs (Medicaid) for some services provided at school.

Under the Family Education Rights and Privacy Act (FERPA), your consent is required for the school system to release information about your child to the North Carolina Division of Medical Assistance Medicaid program in order to access your or your child's public benefits. You are entitled to have a copy of any information the school system releases to the state Medicaid program.

If you have previously given consent for New Hanover County Schools to access your or your child's public insurance and to release information needed to access North Carolina Medicaid funding for services provided through your child's individualized education program (IEP), the school district may release:

- Your child's name and Social Security Number;
- Your child's date of birth;
- Your child's IEP documentation including evaluations;
- The dates and times services are provided to your child at school;
- Reports of your child's progress, including therapist notes, progress notes and report cards.

Your child will continue to receive all required IEP services at no cost to you.

You may revoke your consent at any time. Revoking your parental consent does not change the school district's responsibility to provide all required IEP services at no cost.

You may ask questions about this program or revoke your consent at any time by contacting Cindy Booth at 910-254-4442 or cindy.booth@nhcs.net