

## PROCEDURAL SAFEGUARDS NOTICE

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# GENERAL INFORMATION

## PRIOR WRITTEN NOTICE

34 CFR §300.503

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### Notice

McCormick School District must give you written notice (provide you certain information in writing), within a reasonable amount of time before it:

1. 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
2. Refuses to initiate or to change the identification, evaluation, or educational placement of your child, or the provision of FAPE to your child.

### Content of notice

The written notice must:

1. Describe the action that McCormick School District proposes or refuses to take;
2. Explain why McCormick School District is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report McCormick School District used in deciding to propose or refuse the action;
4. Include a statement that you have protections under the procedural safeguards provisions in Part B of IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that McCormick School District is proposing or refusing is not an initial referral for evaluation;
6. Include resources for you to contact for help in understanding Part B of IDEA;
7. Describe any other options that your child's individualized education program (IEP) Team considered and the reasons why those options were rejected; and
8. Provide a description of other reasons why McCormick School District proposed or refused the action.

### Notice in understandable language

The notice must be:

1. Written in language understandable to the general public; and
2. 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, McCormick School District must ensure that:

1. The notice is translated for you orally or by other means in your native language or other mode of communication;
2. You understand the content of the notice; and
3. There is written evidence that the requirements in paragraphs 1 and 2 have been met.

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 your consent for your child's initial evaluation or your child's reevaluation, or you fail to respond to a request to provide your consent, McCormick School District may not use its dispute resolution procedures (i.e., mediation, due process complaint, resolution meeting, or an impartial due process hearing) and is not required to consider your child as eligible to receive equitable services (services made available to some parentally-placed private school children with disabilities).

## **INDEPENDENT EDUCATIONAL EVALUATIONS**

### **34 CFR §300.502**

#### **General**

As described below, 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 obtained by your school district.

If you request an independent educational evaluation, the school district must provide you with information about where you may obtain an independent educational evaluation and about the school district's criteria that apply to independent educational evaluations.

#### **Definitions**

*Independent educational evaluation* means an evaluation conducted by a qualified examiner who is not employed by the school district responsible for the education of your child.

*Public expense* means that the McCormick School District either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you, consistent with the provisions of Part B of IDEA, which allow each State to use whatever State, local, Federal, and private sources of support are available in the State to meet the requirements of Part B of the Act.

#### **Right to 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 obtained by McCormick School District, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, McCormick School District must, without unnecessary delay, either: (a) File a due process complaint to request a hearing to show that its evaluation of your child is appropriate; or (b) Provide an independent educational evaluation at public expense, unless McCormick School District demonstrates in a hearing that the evaluation of your child that you obtained did not meet the McCormick School District's criteria.
2. If McCormick School District requests a hearing and the final decision is that McCormick School District's evaluation of your child is appropriate, you still have the right to an independent educational evaluation, but not at public expense.
3. If you request an independent educational evaluation of your child, McCormick School District may ask why you object to the evaluation of your child obtained by McCormick. However, McCormick School District may not require an explanation and may not unreasonably delay either providing the independent educational evaluation of your child at public expense or filing a due process complaint to request a due process hearing to defend the school district's evaluation of your child.

**34 CFR §300.619**

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

**HEARING PROCEDURES**

**34 CFR §300.621**

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

**RESULT OF HEARING**

**34 CFR §300.620**

If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the participating agency 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 the participating agency.

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

1. Be maintained by the participating agency as part of the records of your child as long as the record or contested portion is maintained by the participating agency; and
2. If the participating agency discloses the records of your child or the challenged information to any party, the explanation must also be disclosed to that party.

**CONSENT FOR DISCLOSURE OF PERSONALLY IDENTIFIABLE INFORMATION**

**34 CFR §300.622**

Unless the information is contained in education records, and the disclosure is authorized without parental consent under the Family Educational Rights and Privacy Act (FERPA), your consent must be obtained before personally identifiable information is disclosed to parties other than officials of participating agencies. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of IDEA.

Your consent, or consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.

If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

# DUE PROCESS COMPLAINT PROCEDURE

## FILING A DUE PROCESS COMPLAINT

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34 CFR §300.507

### General

You or McCormick School District may file a due process complaint 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.

The due process complaint must allege a violation that happened not more than two years before you or McCormick School District knew or should have known about the alleged action that forms the basis of the due process complaint.

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

1. McCormick School District specifically misrepresented that it had resolved the issues identified in the complaint; or
2. McCormick School District withheld information from you that it was required to provide you under Part B of IDEA.

### Information for parents

McCormick School District must inform you of any free or low-cost legal and other relevant services available in the area if you request the information, or if you or McCormick School District file a due process complaint.

## DUE PROCESS COMPLAINT

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34 CFR §300.508

### General

In order to request a hearing, you or McCormick School District (or your attorney or the school district's attorney) must submit a due process complaint to the other party. That complaint must contain all of the content listed below and must be kept confidential.

Whoever files the complaint must also provide the SCDE with a copy of the complaint.

### Content of the complaint

The due process complaint must include:

1. The name of the child;
2. The address of the child's residence;
3. The name of the child's school;
4. If the child is a homeless child or youth, the child's contact information and the name of the child's school;
5. A description of the nature of the problem of the child relating to the proposed or refused action, including facts relating to the problem; and

### Resolution period

If McCormick School District has not resolved the due process complaint to your satisfaction within 30 calendar days of the receipt of the due process complaint (during the time period for the resolution process), the due process hearing may occur.

The 45-calendar-day timeline for issuing a final due process hearing decision, as described under the heading, *Hearing Decisions*, begins at the expiration of the 30-calendar-day resolution period, with certain exceptions for adjustments made to the 30-calendar-day resolution period, as described below.

Except where you and McCormick School District 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 the meeting is held.

If after making reasonable efforts and documenting such efforts, McCormick School District is not able to obtain your participation in the resolution meeting, the school district may, at the end of the 30-calendar-day resolution period, request that a hearing officer dismiss your due process complaint. Documentation of such efforts must include a record of the school district's attempts to arrange a mutually agreed upon time and place, such as:

1. Detailed records of telephone calls made or attempted and the results of those calls;
2. Copies of correspondence sent to you and any responses received; and
3. Detailed records of visits made to your home or place of employment and the results of those visits.

If McCormick School District fails to hold the resolution meeting within 15 calendar days of receiving notice of your due process complaint or fails to participate in the resolution meeting, you may ask a hearing officer to begin the 45-calendar-day due process hearing timeline.

### Adjustments to the 30-calendar-day resolution period

If you and McCormick School District agree in writing to waive the resolution meeting, then the 45-calendar-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-calendar-day resolution period, if you and McCormick School District agree in writing that no agreement is possible, then the 45-calendar-day timeline for the due process hearing starts the next day.

If you and McCormick School District agree to use the mediation process but have not yet reached agreement, at the end of the 30-calendar-day resolution period the mediation process may be continued until an agreement is reached if both parties agree to the continuation in writing. However, if either you or the school district withdraws from the mediation process during this continuation period, then the 45-calendar-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 McCormick School District must enter into a legally binding agreement that is:

1. Signed by you and a representative of McCormick School District who has the authority to bind the school district; and
2. Enforceable in any State court of competent jurisdiction (a State court that has authority to hear this type of case) or in a district court of the United States or by the SCDE-

5. Make an independent decision on completion of the review; and
6. Give you and the school district a copy of the written, or, at your option, electronic findings of fact and decisions.

Findings and decision provided to the advisory panel and general public

The SCDE, after deleting any personally identifiable information, must:

1. Provide the findings and decisions of the appeal to the State special education advisory panel; and
2. Make those findings and decisions available to the public.

#### Finality of review decision

The decision made by the reviewing official is final unless you or the school district brings a civil action, as described under the heading *Civil Actions, Including the Time Period in Which to File Those Actions*.

### TIMELINES AND CONVENIENCE OF HEARINGS AND REVIEWS

#### 34 CFR §300.515

McCormick School District must ensure that not later than 45 calendar days after the expiration of the 30-calendar-day period for resolution meetings or, as described under the sub-heading *Adjustments to the 30-calendar-day resolution period*, not later than 45 calendar days after the expiration of the adjusted time period:

1. A final decision is reached in the hearing; and
2. A copy of the decision is mailed to you and the school district.

The SCDE must ensure that not later than 30 calendar days after the receipt of a request for a review:

1. A final decision is reached in the review; and
2. A copy of the decision is mailed to you and the school district.

A hearing or reviewing officer may grant specific extensions of time beyond the periods described above (45 calendar days for a hearing decision and 30 calendar days for a review decision) if you or McCormick School District makes a request for a specific extension of the timeline.

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

### CIVIL ACTIONS, INCLUDING THE TIME PERIOD IN WHICH TO FILE THOSE ACTIONS

#### 34 CFR §300.516

#### General

Any party (you or McCormick School District) who does not agree with the findings and decision in the State-level review 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 authority to hear this type of case) or in a district court of the United States without regard to the amount in dispute.

conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension. School personnel may also impose additional removals of the child of not 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 (see the heading *Change of Placement Because of Disciplinary Removals* for the definition).

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, McCormick School District must, during any subsequent days of removal in that school year, provide services to the extent required below under the sub-heading *Services*.

#### **Additional authority**

If the behavior that violated the student code of conduct was not a manifestation of the child's disability (see the subheading *Manifestation determination*) and the disciplinary change of placement would exceed 10 school days in a row, school personnel may apply the disciplinary procedures to that child with a disability in the same manner and for the same duration as it would to children without disabilities, except that the school must provide services to that child as described below under *Services*. The child's IEP Team determines the interim alternative educational setting for such services.

#### **Services**

McCormick School District is not required to provide services to a child with a disability or a child without a disability who has been removed from his or her current placement for 10 school days or less in that school year.

#### **South Carolina law limits suspensions as described below:**

**SECTION 59-63-220.** Suspension of pupils by administrator. Any district board may confer upon any administrator the authority to suspend a pupil from a teacher's class or from the school not in excess of ten days for any one offense and for not more than thirty days in any one school year but no such administrator may suspend a pupil from school during the last ten days of a year if the suspension will make the pupil ineligible to receive credit for the school year without the approval of the school board unless the presence of the pupil constitutes an actual threat to a class or a school or a hearing is granted within twenty-four hours of the suspension.

A child with a disability who is removed from the child's current placement for more than 10 school days and the behavior is not a manifestation of the child's disability (see subheading, *Manifestation determination*) or who is removed under special circumstances (see the subheading, *Special circumstances*) must:

1. Continue to receive educational services (have available a free appropriate public education), so as to enable the child to continue to participate in the general education curriculum, although in another setting (that may be an interim alternative educational setting), and to progress toward meeting the goals set out in the child's IEP; and
2. Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, which are designed to address the behavior violation so that it does not happen again.

After a 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 (see definition below), then school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed to enable the child to



**34 CFR §300.533**

When, as described above, you or McCormick School District file a due process complaint related to disciplinary matters, your child must (unless you and the school district agree otherwise) remain in the interim alternative educational setting pending the decision of the hearing officer, or until the expiration of the time period of removal as provided for and described under the heading *Authority of School Personnel*, whichever occurs first.

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**PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES**


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**34 CFR §300.534****General**

If your child has not been determined eligible for special education and related services and violates a code of student conduct, but McCormick School District 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 your child may assert any of the protections described in this notice.

**Basis of knowledge for disciplinary matters**

McCormick School District will be deemed to have knowledge that your child is a child with a disability if, before the behavior that brought about the disciplinary action occurred:

1. You expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or to your child's teacher that your child is in need of special education and related services;
2. You requested an evaluation related to eligibility for special education and related services under Part B of IDEA; or
3. Your child's teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by your child directly to the school district's director of special education or to other supervisory personnel of the school district.

**Exception**

McCormick School District would not be deemed to have such knowledge if:

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

**Conditions that apply if there is no basis of knowledge**

If prior to taking disciplinary measures against your child, McCormick School District does not have knowledge that your child is a child with a disability, as described above under the sub-headings *Basis of knowledge for disciplinary matters* and *Exception*, your child may be subjected to the disciplinary measures that are applied to children without disabilities who engage in comparable behaviors.

However, if a request is made for an evaluation of your child during the time period in which your child 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.