

## Part B PROCEDURAL SAFEGUARDS NOTICE

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The Education of the Deaf Act (EDA), the Federal law concerning the education of students at the Clerc Center, incorporates some of the provisions of the Individuals with Disabilities Education Act (IDEA). Based on the EDA, and the incorporated provisions of the IDEA, this notice explains procedural safeguards that apply to students who are placed at the Clerc Center by their parents. A copy of this notice must be given to parents only one time a school year, except that a copy must be given to the parents: (1) upon initial referral or parent request for evaluation; (2) upon receipt of the first due process complaint under 34 CFR §300.507 in a school year; (3) when a decision is made to take a disciplinary action that constitutes a change of placement; and (4) upon parent request. [34 CFR §300.504(a)]

# Contents

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General Information .....	1
Prior Written Notice .....	1
Dismissal - 60-Day Notice .....	2
Native Language .....	2
Electronic Mail .....	2
Parental Consent - Definition .....	2
Parental Consent .....	2
Independent Educational Evaluations .....	3
Confidentiality of Information .....	5
Definitions .....	5
Personally Identifiable .....	5
Access Rights .....	5
Record of Access .....	6
Records on More Than One Child .....	6
List of Types and Locations of Information .....	6
Fees .....	6
Amendment of Records at Parent’s Request .....	6
Opportunity for a Hearing .....	7
Hearing Procedures .....	7
Result of Hearing .....	7
Consent For Disclosure of Personally Identifiable Information .....	7
Safeguards .....	8
Destruction of Information .....	8
Due Process Complaint Procedures .....	9
Filing a Due Process Complaint .....	9
Due Process Complaint .....	9
Model Form .....	11
Mediation .....	11
The Child’s Placement While the Due Process Complaint and Hearing are Pending .....	12
Resolution Process .....	13
Hearings on Due Process Complaints .....	15
Impartial Due Process Hearing .....	15
Hearing Rights .....	16
Hearing Decisions .....	16
Appeals .....	18
Finality of Decision; Appeal .....	18
Timelines and Convenience of Hearings .....	18
Civil Actions, Including the Time Period in Which to File Those Actions .....	18
Procedures When Disciplining Children at the Clerc Center .....	20
Authority of School Personnel .....	20
Change of Placement Because of Disciplinary Removals .....	22

Determination of Setting .....22  
Appeal.....23  
Placement During Appeals .....23  
Referral to and Action by Law Enforcement and Judicial Authorities.....24

# GENERAL INFORMATION

## PRIOR WRITTEN NOTICE

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### 34 CFR §300.503

#### Notice

The Laurent Clerc National Deaf Education Center (Clerc Center) must give you written notice (provide you certain information in writing), whenever 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 the Clerc Center proposes or refuses to take;
2. Explain why the Clerc Center is proposing or refusing to take the action;
3. Describe each evaluation procedure, assessment, record, or report the Clerc Center 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 the IDEA;
5. Tell you how you can obtain a description of the procedural safeguards if the action that the Clerc Center 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 the IDEA;
7. Describe any other choices that your child's Individualized Education Program (IEP) Team considered and the reasons why those choices were rejected; and
8. Provide a description of other reasons why the Clerc Center 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, the Clerc Center must ensure that:

1. The notice is translated for you orally, via signed language, 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 1 and 2 have been met.

## DISMISSAL – 60-DAY NOTICE

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### 20 U.S.C. §4304(b)(4)(C)(v)

Under the Education of the Deaf Act, the Clerc Center may dismiss any child as long as it provides the child's parents and the local education agency in which the child resides with at least 60 days written notice of their intent to dismiss the child.

## NATIVE LANGUAGE

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### 34 CFR §300.29

*Native language*, when used with an individual who has limited English proficiency, means the following:

1. The language normally used by that person, or, in the case of a child, the language normally used by the child's parents;
2. In all direct contact with a child (including evaluation of the child), the language normally used by the child in the home or learning environment.

For a person with deafness or blindness, or for a person with no written language, the mode of communication is what the person normally uses (such as sign language, Braille, or oral communication).

## ELECTRONIC MAIL

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### 34 CFR §300.505

The Clerc Center offers parents the choice of receiving documents by e-mail. You may choose to receive the following by e-mail:

1. Prior written notice;
2. Procedural safeguards notice;
3. Notices related to a due process complaint; and
4. Other documents as requested.

## PARENTAL CONSENT - DEFINITION

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### 34 CFR §300.9

#### Consent

*Consent* means:

1. 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.
2. 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
3. You understand that the consent is voluntary on your part and you may withdraw your consent at any time.

Your withdrawal of consent does not negate (undo) an action that has occurred after you gave your consent and before you withdrew it.

## PARENTAL CONSENT

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### 34 CFR §300.300

#### Consent for initial evaluation

The Clerc Center cannot conduct an initial evaluation of your child to determine, under the Education of the Deaf Act, whether your child will be admitted to the Clerc Center without first providing you with prior written notice of the proposed action and without obtaining your consent as described under the heading *Parental Consent - Definition*.

### Parental consent for reevaluations

The Clerc Center must obtain your informed consent before it reevaluates your child, unless the Clerc Center can demonstrate that:

1. It took reasonable steps to obtain your consent for your child's reevaluation; and
2. You did not respond.

If you refuse to consent to your child's reevaluation, the Clerc Center may, but is not required to, pursue your child's reevaluation by using the mediation, due process complaint, resolution meeting, and impartial due process hearing procedures to seek to override your refusal to consent to your child's reevaluation.

### Documentation of reasonable efforts to obtain parental consent

The Clerc Center must maintain documentation of reasonable efforts to obtain parental consent for evaluations, and reevaluations. The documentation must include a record of the Clerc Center's attempts in these areas, such as:

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

### Other consent requirements

Your consent is not required before the Clerc Center may:

1. Review existing data as part of your child's evaluation or a reevaluation; or
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

The Clerc Center may not use your refusal to consent to one service or activity to deny you or your child any other service, benefit, or activity.

## INDEPENDENT EDUCATIONAL EVALUATIONS

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### 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 the Clerc Center.

If you request an independent educational evaluation, the Clerc Center must provide you with information about where you may obtain an independent educational evaluation and about the school'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 Clerc Center.

*Public expense* means that the Clerc Center 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 the IDEA.

#### Parent 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 the Clerc Center, subject to the following conditions:

1. If you request an independent educational evaluation of your child at public expense, the Clerc Center 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 the Clerc Center demonstrates in a hearing that the evaluation of your child that you obtained did not meet the Clerc Center's criteria.

2. If the Clerc Center requests a hearing and the final decision is that the Clerc Center'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, the Clerc Center may ask why you object to the evaluation of your child obtained by the Center. However, the Clerc Center 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 Clerc Center's evaluation of your child.

You are entitled to only one independent educational evaluation of your child at public expense each time the Clerc Center conducts an evaluation of your child with which you disagree.

#### Parent-initiated evaluations

If you obtain an independent educational evaluation of your child at public expense or you share with the Clerc Center an evaluation of your child that you obtained at private expense:

1. The Clerc Center must consider the results of the evaluation of your child, if it meets the Clerc Center's 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
2. You or the Clerc Center may present the evaluation as evidence at a due process hearing regarding 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.

#### School criteria

If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the Clerc Center uses when it initiates an evaluation (to the extent those criteria are consistent with your right to an independent educational evaluation).

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

## CONFIDENTIALITY OF INFORMATION

### DEFINITIONS

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#### 34 CFR §300.611

As used under the heading Confidentiality of Information:

- *Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.
- *Education records* means the type of records covered under the definition of “education records” in 34 CFR Part 99 (the regulations implementing the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g (FERPA)).

### PERSONALLY IDENTIFIABLE

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#### 34 CFR §300.32

*Personally identifiable* means information that has:

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

### ACCESS RIGHTS

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#### 34 CFR §300.613

The Clerc Center must permit you to inspect and review any education records relating to your child that are collected, maintained, or used by the Clerc Center under Part B of the IDEA. The Clerc Center must comply with your request to inspect and review any education records on your child without unnecessary delay and before any meeting regarding an individualized education program (IEP), or any impartial due process hearing (including a resolution meeting or a hearing regarding discipline), and in no case more than 45 calendar days after you have made a request.

Your right to inspect and review education records includes:

1. Your right to a response from the Clerc Center to your reasonable requests for explanations and interpretations of the records;
2. Your right to request that the Clerc Center provide copies of the records if you cannot effectively inspect and review the records unless you receive those copies; and
3. Your right to have your representative inspect and review the records.

The Clerc Center 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 States' laws governing such matters as guardianship, or separation and divorce.

## RECORD OF ACCESS

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### 34 CFR §300.614

The Clerc Center must keep a record of parties obtaining access to education records collected, maintained, or used under Part B of the IDEA (except access by parents and authorized employees of the Clerc Center), 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

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### 34 CFR §300.615

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

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### 34 CFR §300.616

On request, the Clerc Center must provide you with a list of the types and locations of education records collected, maintained, or used by the agency.

## FEES

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### 34 CFR §300.617

The Clerc Center may charge a fee for copies of records that are made for you under Part B of the IDEA, if the fee does not effectively prevent you from exercising your right to inspect and review those records.

The Clerc Center may not charge a fee to search for or to retrieve information under Part B of the IDEA.

## AMENDMENT OF RECORDS AT PARENT'S REQUEST

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### 34 CFR §300.618

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA is inaccurate, misleading, or violates the privacy or other rights of your child, you may request that the Clerc Center change the information.

The Clerc Center must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the Clerc Center 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 as described under the heading *Opportunity For a Hearing*.

## OPPORTUNITY FOR A HEARING

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### 34 CFR §300.619

The Clerc Center 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

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### 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

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### 34 CFR §300.620

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

If, as a result of the hearing, the Clerc Center 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 Clerc Center.

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

1. Be maintained by the Clerc Center as part of the records of your child as long as the record or contested portion is maintained by the Clerc Center; and
2. If the Clerc Center 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

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### 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 the Clerc Center. Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of the Clerc Center for purposes of meeting a requirement of Part B of the 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. *Participating agency* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

## **SAFEGUARDS**

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### **34 CFR §300.623**

The Clerc Center must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

One official at the Clerc Center 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 regarding confidentiality under Part B of the IDEA and the Family Educational Rights and Privacy Act (FERPA).

The Clerc Center must maintain, for public inspection, a current listing of the names and positions of those employees within the Clerc Center who may have access to personally identifiable information.

## **DESTRUCTION OF INFORMATION**

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### **34 CFR §300.624**

The Clerc Center 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, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

## DUE PROCESS COMPLAINT PROCEDURES

### FILING A DUE PROCESS COMPLAINT

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#### 34 CFR §300.507

##### General

You or the Clerc Center 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. An impartial due process hearing officer must hear a due process complaint (if not resolved through a resolution meeting or through mediation) and issue a written decision within 45 calendar days after the end of the resolution period, as described in this document under the heading **Resolution Process**, unless the hearing officer grants a specific extension of the timeline at your request or the Clerc Center's request. The due process complaint must allege a violation that happened not more than two years before you or the Clerc Center 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. The Clerc Center specifically misrepresented that it had resolved the issues identified in the complaint; or
2. The Clerc Center withheld information from you that it was required to provide you under Part B of the IDEA.

##### Information for parents

The Clerc Center 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 the Clerc Center file a due process complaint. Neither the Education of the Deaf Act nor the incorporated provisions of the Individuals with Disabilities Education Act require the Clerc Center to pay attorneys' fees to parents of students placed by their parents at Kendall Demonstration Elementary School or the Model Secondary School for the Deaf who prevail in a due process hearing or subsequent legal action based on that hearing.

### DUE PROCESS COMPLAINT

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#### 34 CFR §300.508

##### General

In order to request a hearing, you or the Clerc Center (or your attorney or the Clerc Center'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.

##### 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
6. A proposed resolution of the problem to the extent known and available to you or the Clerc Center at the time.

### Notice required before a hearing on a due process complaint

You or the Clerc Center may not have a due process hearing until you or the Clerc Center (or your attorney or the Clerc Center's attorney), files a due process complaint that includes the information listed above.

### Sufficiency of complaint

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

Within five calendar days of receiving the notification the receiving party (you or the Clerc Center) considers a due process complaint insufficient, the hearing officer must decide if the due process complaint meets the requirements listed above, and notify you and the Clerc Center in writing immediately.

### Complaint amendment

You or the Clerc Center may make changes to the complaint only if:

1. The other party approves of the changes in writing and is given the chance to resolve the due process complaint through a resolution meeting, described below; or
2. By no later than five days before the due process hearing begins, the hearing officer grants permission for the changes.

If the complaining party (you or the Clerc Center) makes changes to the due process complaint, the timelines for the resolution meeting (within 15 calendar days of receiving the complaint) and the time period for resolution (within 30 calendar days of receiving the complaint) start again on the date the amended complaint is filed.

### The Clerc Center's response to a due process complaint

If the Clerc Center has not sent a prior written notice to you, as described under the heading *Prior Written Notice*, regarding the subject matter contained in your due process complaint, the Clerc Center must, within 10 calendar days of receiving the due process complaint, send to you a response that includes:

1. An explanation of why the Clerc Center proposed or refused to take the action raised in the due process complaint;
2. A description of other options that your child's Individualized Education Program (IEP) Team considered and the reasons why those options were rejected;
3. A description of each evaluation procedure, assessment, record, or report the Clerc Center used as the basis for the proposed or refused action; and
4. A description of the other factors that are relevant to the Clerc Center's proposed or refused action.

Providing the information in items 1-4 above does not prevent the Clerc Center from asserting that your due process complaint was insufficient.

### Other party response to a due process complaint

Except as stated under the sub-heading immediately above, *The Clerc Center's response to a due process complaint*, the party receiving a due process complaint must, within 10 calendar days of receiving the complaint, send the other party a response that specifically addresses the issues in the complaint.

## MODEL FORM

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### 34 CFR §300.509

The Clerc Center has developed a model form to help you file a due process complaint. However, the Clerc Center may not require you to use the model form. In fact, you can use this form or another appropriate model form, so long as it contains the required information for filing a due process complaint.

## MEDIATION

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### 34 CFR §300.506

#### General

The Clerc Center must make mediation available to allow you and the Clerc Center to resolve disagreements involving any matter under Part B of the IDEA, including matters arising prior to the filing of a due process complaint. Thus, mediation is available to resolve disputes under Part B of the IDEA, whether or not you have filed a due process complaint to request a due process hearing as described under the heading *Filing a Due Process Complaint*.

Mediation is a way to resolve a dispute without going to court. In mediation, a neutral third party (the mediator) meets with each side to help them find a mutually satisfactory solution. No formal rules control mediation. The mediator and the parties involved usually agree on their own informal ways to proceed. Mediation cannot be used to postpone a due process hearing or to deny any legal rights.

#### What are the benefits of using mediation?

1. **Voluntary:** Both sides agree to using mediation.
2. **No Cost:** Mediation is free for you.
3. **Fair:** Through a neutral, qualified third party, each side has an equal say in the process and they decide the terms of the settlement.
4. **Efficiency:** Mediation can resolve a dispute faster, cheaper and with less expended energy than litigation.
5. **Communication:** In mediation and through the assistance of the neutral mediator, each party has the opportunity to be heard and openly discuss their views. Each party also is assisted in understanding the views of the other side.
6. **Cooperation:** People work together to resolve the dispute.
7. **Confidential:** Discussions in a mediation must be kept confidential.
8. **Solution:** The goal of mediation is to find a mutually acceptable solution to the dispute. Parties decide for themselves how they would like to resolve a situation. Any solution from this process is legally binding for the parties involved in its development.
9. **Results:** Studies of mediation have shown that the people involved in the voluntary agreements resulting from mediation are more likely to adhere to the commitments made in the agreements than other forms of settlements.

### Requirements

The procedures must ensure that the mediation process:

1. Is voluntary on your part and the Clerc Center's part;
2. Is not used to deny or delay your right to a due process hearing, or to deny any other rights you have under Part B of the IDEA; and
3. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

The Clerc Center must have 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 Clerc Center must select mediators on a random, rotational, or other impartial basis.

The Clerc Center is responsible for the cost of the mediation process, including the costs of meetings.

Each meeting in the mediation process must be scheduled in a timely manner and held at a place that is convenient for you and the Clerc Center.

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

1. 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
2. Is signed by both you and a representative of the Clerc Center who has the authority to bind the Clerc Center.

A written, signed mediation agreement is enforceable in any State court of competent jurisdiction (a court that has authority under State law to hear this type of case) or in a district court of the United States.

Discussions that happened during the mediation process must be confidential. They cannot be used as evidence in any future due process hearing or civil proceeding of any Federal court or State court.

### Impartiality of mediator

The mediator:

1. May not be an employee of the Clerc Center or Gallaudet University; and
2. Must not have a personal or professional interest which conflicts with the mediator's objectivity.

A person who otherwise qualifies as a mediator is not an employee of the Clerc Center solely because he or she is paid by the Clerc Center to serve as a mediator.

## THE CHILD'S PLACEMENT WHILE THE DUE PROCESS COMPLAINT AND HEARING ARE PENDING

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### 34 CFR §300.518

Except as provided below under the heading *PROCEDURES WHEN DISCIPLINING CHILDREN AT THE CLERC CENTER* and as provided above under *DISMISSAL – 60- DAY NOTICE*, once a due process complaint 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 Clerc Center agree otherwise, your child must remain in his or her current educational placement.

## RESOLUTION PROCESS

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### 34 CFR §300.510

#### Resolution meeting

Within 15 calendar days of receiving notice of your due process complaint, and before the due process hearing begins, the Clerc Center must convene a meeting with you and the relevant member or members of the Individualized Education Program (IEP) Team who have specific knowledge of the facts identified in your due process complaint. The meeting:

1. Must include a representative of the Clerc Center who has decision-making authority on behalf of the Clerc Center; specifically, the principal or the principal's designee; and
2. May not include an attorney of the Clerc Center unless an attorney accompanies you.

You and the Clerc Center 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 complaint, and the facts that form the basis of the complaint, so that the Clerc Center has the opportunity to resolve the dispute.

The resolution meeting is not necessary if:

1. You and the Clerc Center agree in writing to waive the meeting; or
2. You and the Clerc Center agree to use the mediation process, as described under the heading *Mediation*.

#### Resolution period

If the Clerc Center 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 decision 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 the Clerc Center 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, the Clerc Center is not able to obtain your participation in the resolution meeting, the Clerc Center 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 Clerc Center'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 the Clerc Center 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 order that the 45-calendar-day due process hearing timeline begin.

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

If you and the Clerc Center 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 the Clerc Center 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 the Clerc Center agree to use the mediation process, at the end of the 30-calendar-day resolution period, both parties can agree in writing to continue the mediation until an agreement is reached. However, if either you or the Clerc Center withdraws from the mediation process, 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 the Clerc Center must enter into a legally binding agreement that is:

1. Signed by you and a representative of the Clerc Center who has the authority to bind the Clerc Center, specifically, the principal or the principal's designee; **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.

#### Agreement review period

If you and the Clerc Center enter into an agreement as a result of a resolution meeting, either party (you or the Clerc Center) may void the agreement within 3 business days of the time that both you and the Clerc Center signed the agreement.

## HEARINGS ON DUE PROCESS COMPLAINTS

### IMPARTIAL DUE PROCESS HEARING

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#### 34 CFR §300.511

##### General

Whenever a due process complaint is filed, you or the Clerc Center involved in the dispute must have an opportunity for an impartial due process hearing, as described in the *Due Process Complaint* and *Resolution Process* sections. The Clerc Center is responsible for assigning a due process hearing officer, who convenes the hearing.

##### Impartial hearing officer

At a minimum, a hearing officer:

1. Must not be an employee of the Clerc Center or Gallaudet University. However, a person is not an employee of the Clerc Center solely because he/she is paid by the Clerc Center to serve as a hearing officer;
2. Must not have a personal or professional interest that conflicts with the hearing officer's objectivity in the hearing;
3. Must be knowledgeable and understand the provisions of the EDA, and the incorporated provisions of the IDEA, and Federal regulations pertaining to the IDEA, and legal interpretations of the IDEA by Federal and State courts; and
4. Must have the knowledge and ability to conduct hearings, and to make and write decisions, consistent with appropriate, standard legal practice.

The Clerc Center must keep a list of those persons who serve as hearing officers that includes a statement of the qualifications of each hearing officer.

##### Subject matter of due process hearing

The party (you or the Clerc Center) that requests the due process hearing may not raise issues at the due process hearing that were not addressed in the due process complaint, unless the other party agrees.

##### Timeline for requesting a hearing

You or the Clerc Center must request an impartial hearing on a due process complaint within two years of the date you or the Clerc Center knew or should have known about the issue addressed in the complaint.

##### Exceptions to the timeline

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

1. The Clerc Center specifically misrepresented that it had resolved the problem or issue that you are raising in your complaint; or
2. The Clerc Center withheld information from you that it was required to provide to you under Part B of the IDEA.

## HEARING RIGHTS

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### 34 CFR §300.512

#### General

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

1. Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the problems of children with disabilities;
2. Present evidence and confront, cross-examine, and require the attendance of witnesses;
3. Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
4. Obtain a written, or, at your option, electronic, word-for-word record of the hearing; and
5. Obtain written, or, at your option, electronic findings of fact and decisions.

#### Legal and related expenses

Neither the Education of the Deaf Act nor the incorporated provisions of the Individuals with Disabilities Education Act require the Clerc Center to pay attorneys' fees to parents of students placed by their parents at Kendall Demonstration Elementary School or the Model Secondary School for the Deaf who prevail in a due process hearing or subsequent legal action based on that hearing.

#### Additional disclosure of information

At least five business days prior to a due process hearing, you and the Clerc Center must disclose to each other all evaluations completed by that date and recommendations based on those evaluations that you or the Clerc Center 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 recommendation at the hearing without the consent of the other party.

#### Parental rights at hearings

You must be given the right to:

1. Have your child present;
2. Open the hearing to the public; and
3. Have the record of the hearing, the findings of fact and decisions provided to you at no cost.

## HEARING DECISIONS

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### 34 CFR §300.513

#### Decision of hearing officer

A hearing officer'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 inadequacies:

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

**Construction clause**

None of the provisions described above can be interpreted to prevent a hearing officer from ordering the Clerc Center to comply with the requirements in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536).

**Separate request for a due process hearing**

Nothing in the procedural safeguards section of the Federal regulations under Part B of the IDEA (34 CFR §§300.500 through 300.536) can be interpreted to prevent you from filing a separate due process complaint on an issue separate from a due process complaint already filed.

**Findings and decision to general public**

The Clerc Center after deleting any personally identifiable information must make those findings and decisions available to the public.

## APPEALS

### FINALITY OF DECISION; APPEAL

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#### 34 CFR §300.514

##### Finality of hearing decision

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the Clerc Center) may appeal the decision by bringing a civil action, as described below.

### TIMELINES AND CONVENIENCE OF HEARINGS

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#### 34 CFR §300.515

The Clerc Center 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 each of the parties.

A hearing officer may grant specific extensions of time beyond the 45-calendar-day time period described above at the request of either party. Each hearing 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

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#### 34 CFR §300.516

##### General

Any party (you or the Clerc Center) who does not agree with the findings and decision in the due process hearing (including a hearing relating to disciplinary procedures) has the right to bring a civil action with respect to the matter that was the subject of the due process hearing. 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.

##### Time limitation

The party (you or the Clerc Center) bringing the action shall have 90 calendar days from the date of the decision of the hearing officer to file a civil action.

##### Additional procedures

In any civil action, the court:

1. Receives the records of the administrative proceedings;
2. Hears additional evidence at your request or at the Clerc Center's request; and
3. 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 Part B of the IDEA without regard to the amount in dispute.

**Rule of construction**

Nothing in Part B of the 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 Part B of the 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 Part B of the IDEA. This means that you may have remedies available under other laws that overlap with those available under the IDEA, but in general, to obtain relief under those other laws, you must first use the available administrative remedies under the IDEA (i.e., the due process complaint, resolution meeting, and impartial due process hearing procedures) before going directly into court.

## PROCEDURES WHEN DISCIPLINING CHILDREN AT THE CLERC CENTER

### AUTHORITY OF SCHOOL PERSONNEL

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#### 34 CFR §300.530

##### Case-by-case determination

School personnel at the Clerc Center 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 who violates a school code of student conduct.

##### General

Clerc Center personnel may, for not more than 10 school days in a row, remove a child who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting (which must be determined by the child's Individualized Education Program (IEP) Team), another setting, or suspension. Clerc Center 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 *Change of Placement Because of Disciplinary Removals* for the definition, below).

Once a child has been removed from his or her current placement for a total of 10 school days in the same school year, the Clerc Center 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 *Manifestation determination*, below), the Clerc Center may apply a disciplinary change of placement that would exceed 10 school days in a row, except that the Clerc Center 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

The services that must be provided to a child who has been removed from the child's current placement may be provided in an interim alternative educational setting.

The Clerc Center is not required to provide services to a child who has been removed from his or her current placement for 10 school days or less in that school year.

A child who is removed from the child's current placement for more than 10 school days must:

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

After a child 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 the Clerc Center, in consultation with at least one of the child's teachers, determines the

extent to which services are needed to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

If the removal is a change of placement (see definition below), the child's IEP Team determines the appropriate services to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.

#### Manifestation determination

Within 10 school days of any decision to change the placement of a child because of a violation of a code of student conduct (except for a removal that is for 10 school days in a row or less and not a change of placement), the Clerc Center, the parent, and relevant members of the IEP Team (as determined by the parent and the Clerc Center) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:

1. If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability;  
or
2. If the conduct in question was the direct result of the Clerc Center's failure to implement the child's IEP.

If the Clerc Center, the parent, and relevant members of the child's IEP Team determine that either of those conditions was met, the conduct must be determined to be a manifestation of the child's disability.

If the Clerc Center, the parent, and relevant members of the child's IEP Team determine that the conduct in question was the direct result of the Clerc Center's failure to implement the IEP, the Clerc Center must take immediate action to remedy those deficiencies.

#### Determination that behavior was a manifestation of the child's disability

If the Clerc Center, the parent, and relevant members of the IEP Team determine that the conduct was a manifestation of the child's disability, the IEP Team must either:

1. Conduct a functional behavioral assessment, unless the Clerc Center had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
2. If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior.

Except as described below under the sub-heading *Special circumstances*, the Clerc Center must return the child to the placement from which the child was removed, unless the parent and the Clerc Center agree to a change of placement as part of the modification of the behavioral intervention plan.

#### Special circumstances

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

1. Carries a weapon (see the definition below) to school or has a weapon at school, on school premises, or at a school function under the jurisdiction of the Clerc Center;
2. Knowingly has or uses illegal drugs (see the definition below), or sells or solicits the sale of a controlled substance, (see the definition below), while at school, on school premises, or at a school function under the jurisdiction of the Clerc Center; or
3. Has inflicted serious bodily injury (see the definition below) upon another person while at school, on school premises, or at a school function under the jurisdiction of the Clerc Center.

### Definitions

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

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

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

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

### Notification

On the date it makes the decision to make a removal that is a change of placement of the child because of a violation of a code of student conduct, the Clerc Center must notify the parents of that decision, and provide the parents with a procedural safeguards notice.

## CHANGE OF PLACEMENT BECAUSE OF DISCIPLINARY REMOVALS

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### 34 CFR §300.536

A removal of a child from the child’s current educational placement is a change of placement if:

1. The removal is for more than 10 school days in a row; or
2. The child has been subjected to a series of removals that constitute a pattern because:
  - a. The series of removals total more than 10 school days in a school year;
  - b. The child’s behavior is substantially similar to the child’s behavior in previous incidents that resulted in the series of removals; and
  - c. Of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

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

## DETERMINATION OF SETTING

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### 34 CFR § 300.531

The Individualized Education Program (IEP) Team must determine the interim alternative educational setting for removals that are changes of placement, and removals under the headings *Additional authority* and *Special circumstances*, above.

## APPEAL

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### 34 CFR § 300.532

#### General

The parent of a child may file a due process complaint (see above) to request a due process hearing if he or she disagrees with:

1. Any decision regarding placement made under these discipline provisions; or
2. The manifestation determination described above.

The Clerc Center may file a due process complaint (see above) to request a due process hearing if it believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

#### Authority of hearing officer

A hearing officer that 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:

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

These hearing procedures may be repeated, if the Clerc Center believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

Whenever a parent or the Clerc Center files a due process complaint to request such a hearing, a hearing must be held that meets the requirements described under the headings *Due Process Complaint Procedures, Hearings on Due Process Complaints* except as follows:

1. The Clerc Center 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.
2. Unless the parents and the Clerc Center agree in writing to waive the meeting, or agree to use mediation, a resolution meeting must occur within seven calendar days of receiving notice of the due process complaint. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of receipt of the due process complaint.

A party may appeal the decision in an expedited due process hearing in the same way as they may for decisions in other due process hearings (see *Appeals*, above).

## PLACEMENT DURING APPEALS

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### 34 CFR §300.533

When, as described above, the parent or Clerc Center has filed a due process complaint related to disciplinary matters, the child must (unless the parent and the Clerc Center 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, except as provided above under *DISMISSAL – 60-DAY NOTICE*.

## REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES

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### 34 CFR §300.535

Part B of the IDEA does not:

1. Prohibit the Clerc Center from reporting a crime committed by a child to appropriate authorities; or
2. Prevent law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child.

### Transmittal of records

If the Clerc Center reports a crime committed by a child, the Clerc Center:

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