



EDUCATION		
4420.06 Special Education: Procedural Safeguards with Respect to the Provision of FAPE	Effective	01/31/2019
	Replaces	4420.06
	Dated	07/02/2008

The Arizona Department of Juvenile Corrections (ADJC) ensures that students with a disability are guaranteed procedural safeguards with respect to the provision of a Free Appropriate Public Education (FAPE) [34 CFR§300.500(a)].

AUTHORITY

Arizona Revised Statutes (A.R.S.)	
41-2804	Duties and Powers of Director
15-761	Definitions
15-763.01	Surrogate parent; notification; appointment
15-764 (A)(5)	Powers and duties of the school district governing board or county school superintendent
15-765	Special Education in rehabilitation, corrective or other state and county supported institutions, facilities or homes
15-766	Evaluation of child for placement in special education program; due process hearing procedures
15-828 (F-G)	Birth certificate; school records; exception
15-1181	Definitions
Code of Federal Regulations	
34 CFR 300	Education
Arizona Administrative Code (AAC)	
R7-2-401	Special Education Standards for Public Agencies Providing Educational Services
R7-2-405	State Board of Education

DEFINITIONS

1. **FAPE- Free Appropriate Public Education (FAPE)** - means special education and related services that:
 - a. Are provided at public expense, under public supervision and direction, and without charge;
 - b. Meet the standards of the state education;
 - c. Include elementary school or secondary school education; and
 - d. Are provided in conformity with an individualized education program (IEP) that meets the requirements of §§ 300.340 and 300.350.

PROCEDURES

1. **Student participation in meetings: [34 CFR §§300.345, 300.501]**
 - a. The **PUBLIC EDUCATION AGENCY DESIGNEE (PEA DESIGNEE)** shall take steps to ensure that the student is present at each meeting or is given the opportunity to participate by:
 - i. Notifying the student of the meeting early enough to ensure that s/he has an opportunity to attend; and
 - ii. Scheduling the meeting at a mutually agreed time and place [§300.345(a)].

2. **Parent participation in meetings: [34 CFR §300.501]**
 - a. The **PEA DESIGNEE** shall ensure that the parent/guardian of the student is given an opportunity to inspect and review all education records with respect to the identification, evaluation, educational placement, and the provision of FAPE to the student;
 - b. The **PEA DESIGNEE** shall ensure that the parent/guardian of the student with a disability shall:
 - i. Be given an opportunity to participate in meetings that involve the student's identification, evaluation, educational placement, and the provision of FAPE to the student;
 - ii. Be provided notice consistent with 34 CFR §300.322 to ensure the parent has an opportunity to participate in the meeting(s); and
 - iii. Be members of any group that make decisions on the educational placement of his/her son/daughter.
 - c. The **PEA DESIGNEE** shall ensure that the meeting notice:
 - i. Indicates the purpose, time, and location of the meeting;
 - ii. Indicates who shall be in attendance; and
 - iii. Informs the students and their parents/guardians of the provisions in §300.344(a)(c) relating to the participation of other individuals on the Individualized Education Program (IEP) team who have knowledge or special expertise about the student. [§300.345(b)(1)(2)]

3. **Student and parent/guardians involvement in placement decisions: [34 CFR §300.501]**
 - a. The **PEA DESIGNEE** shall make reasonable efforts to ensure that the student and his/her parents/guardians understand and are able to participate in any group discussions relating to the educational placement, including arranging for an interpreter for students with deafness or whose native language is other than English: [§ 300.501(c)(5)]
 - i. If a student and/or parent/guardian cannot participate in a meeting in which a decision is to be made relating to the educational placement, the **PEA DESIGNEE** shall use other methods to ensure their participation, including individual or conference telephone calls or video conferencing [§300.501(c)(3)]; and
 - ii. If the Education Principal or Designee is unable to obtain the student's and/or parent's/guardian's participation in the placement decision, the **PEA DESIGNEE** shall have a record of their attempt to ensure student/parental/guardian involvement. [§§300.345(d) and 300.501(c)(4)]

4. **Independent educational evaluation: [34 CFR §§300.501-300.502]**
 - a. The student and parent/guardian have the right to request an independent educational evaluation of their child. If a parent/guardian requests an independent evaluation, the **PEA DESIGNEE**:
 - i. May ask for the parent's reasons for the objections but may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a request for due process to defend it's evaluation;
 - ii. Shall provide information where an independent educational evaluation may be obtained; and

- iii. Provide agency criteria applicable for agency evaluations that is the same as the criteria the agency uses when it conducts an evaluation, to the extent consistent with the parent's right to an evaluation; and
 - iv. Due to the secure nature of the ADJC facility, the Agency will require that any evaluation shall be conducted pursuant to Agency security guidelines, including the requirement that any outside evaluators be subject to background screening.
 - b. If the student and parent/guardian request an independent educational evaluation **at public expense**, the **PEA DESIGNEE** shall without unnecessary delay either:
 - i. Initiate a due process hearing under §300.507 to show that the PEA's evaluation is appropriate; or
 - ii. Demonstrate that the evaluation obtained by the parent/guardian did not meet the Agency's criteria; or [§§300.502(b)(2)(i) and (ii)]
 - iii. Ensure if a due process hearing decision supports the Agency's evaluation as being appropriate, the parent/guardian still has the right to an independent education evaluation, but **not** at the public's expense; or
 - iv. Ensure the parent/guardian understands that s/he is only entitled to one independent educational evaluation at the public's expense each time the Agency conducts an evaluation with which the parent/guardian disagrees; and
 - v. Ensure that if a hearing officer requests an independent educational evaluation as part of a due process hearing, that the cost of the evaluation shall be at public expense.
 - c. If the student obtains an independent educational evaluation **at private expense**, the **PEA DESIGNEE**:
 - i. Shall consider the results of the evaluation, if it meets Agency criteria, in any decision made with respect to the provision of FAPE to the student;
 - ii. The evidence may presented by any party at a due process hearing regarding the student [§§300.502(c)(1) and (2)]; and
 - iii. May establish a range of payments for independent educational evaluations.
5. **Prior notice by the public agency-content of notice: [34 CFR §300.503]**
- a. **PEA DESIGNEE** shall give prior written notice to a parent/guardian of a student with a disability at a reasonable time before the Agency proposes, refuses, or changes the:
 - i. Identification;
 - ii. Evaluation;
 - iii. Educational placement of a student with a disability; or
 - iv. Provision of FAPE to the student [§300.503(a)(1)].
 - b. The **PEA DESIGNEE** shall:
 - i. Give prior written notice to the parent/guardian of a student with a disability; and
 - ii. Obtain consent if the prior written notice relates to an action proposed by the PEA Designee that also requires student and parent/guardian to attend it [§300.503(a)(2)].
6. **Consent of an Evaluation: [34 CFR §300.505]**
- a. The **PEA DESIGNEE** shall:
 - i. Obtain parent/guardian informed, written consent if, after a review of existing data, additional data is needed for an initial evaluation or reevaluation, and before initial provision of special education and related services are provided [§300.505(a)(1)].
 - b. If the parent/guardian refuses consent for initial evaluation or reevaluation, the **PEA DESIGNEE** may pursue those evaluations by using:
 - i. Due process procedures under §§300.507 and 300.509; and
 - ii. Mediation procedures under §§300.506 and 300.505(b).
 - c. Informed written consent need not be obtained for the gathering of additional data for reevaluation if the PEA designee or IEP team can demonstrate that they have taken reasonable measures to obtain that consent and the student and parent/guardian has failed to respond [§300.505(c)];

- d. The **PEA DESIGNEE** shall take the following reasonable measures to obtain informed student consent for a reevaluation:
 - i. Detailed records of telephone calls made or attempted and the results of those calls;
 - ii. Copies of correspondence (including electronic correspondence) sent to the student and any responses received; and
 - iii. Detailed records of visits made to the parent's/guardian's home or place of employment and the results of those visits [§300.505(c)(2)].
- e. The **PEA DESIGNEE** shall **not** use a parent's/guardian's refusal to consent to one service or activity under this section to deny the student any other service, benefit, or activity of the public agency, except as required by this part [§300.505(e)];
- f. The **PEA DESIGNEE** shall include in the content of the prior written notice:
 - i. A description of the action that the Agency proposed or refused;
 - ii. An explanation of why s/he proposes or refuses to take the action;
 - iii. A description of each evaluation procedure, test, record, or report that Agency used as a basis for the proposed or refused action;
 - iv. A statement that the student with a disability has protection under the procedural safeguards of this part;
 - v. If this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;
 - vi. Sources for students to contact to obtain assistance in understanding these provisions of this part [§§300.503(b)(1-7)];
 - vii. A description of any other options that the IEP team considered and the reasons why those options were rejected; and
 - viii. A description of any other factors relevant to the Agency's proposal or refusal.
- g. The **PEA DESIGNEE** shall ensure that the prior written notice is:
 - i. Written in language understandable to the general public [§300.503(c)(1)(i)]; and
 - ii. Provided in the native language of the parent/guardian or other mode of communication used by the parent/guardian, unless it is clearly not feasible to do so [§300.503(c)(1)(ii)].
- h. If the native language or other mode of communication used by the parent/guardian is not a written language, the **PEA DESIGNEE** shall take steps to ensure:
 - i. That the prior written notice is translated orally or by other means to the parent/guardian in his/her native language or other mode of communication;
 - ii. That the parent/guardian understands the content of the prior written notice; and
 - iii. That there is written evidence that the requirements of (a) and (b) have been met by documenting those results [§§300.503(c)(2)(i-iii)].

7. Procedural safeguards notice: [34 CFR §300.504]

- a. The **PEA DESIGNEE** shall:
 - i. Give a copy of the procedural safeguards notice to the parent/guardian only one time a school year. An additional copy shall be given to the parent/guardian:
 - (1) Upon request;
 - (2) Upon initial referral for evaluation or parent/guardian request for an evaluation;
 - (3) Upon receipt of a first complaint to the state of Arizona; or
 - (4) First request for a due process hearing in a school year [§§300.507 and 300.504(a)(1-4)];
 - (5) When a disciplinary change of placement/removal has been initiated;
 - (6) Upon annual IEP meeting; and
 - (7) Upon reevaluation of the student.
 - ii. Include in the procedural safeguards notice a full explanation of all of the procedural safeguards available under the law [§§300-148, §§300.151-153, §§300.300, §§300.502-503, §§300.505-515, §§300.520, §§300.530-536, and §§300.610-625] relating to:
 - (1) Independent educational evaluations;

- (2) Prior written notice;
- (3) Parent/guardian consent;
- (4) Access to educational records;
- (5) Opportunity to present and resolve complaints through the due process hearings and state of Arizona complaint procedures, including:
 - (a) The time period in which to file a complaint;
 - (b) The opportunity for the PEA to resolve the complaint; and
 - (c) The difference between the due process hearing and the State of Arizona complaint procedures, jurisdiction, issues that may be raised, timelines, and relevant procedures.
- (6) The student's placement during the due process proceedings;
- (7) Procedures for students who are subject to placement in an interim alternative educational setting;
- (8) Requirements for unilateral placement by parents of the students in private schools at the public's expense;
- (9) The availability of mediation;
- (10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
- (11) State-level appeals (if applicable);
- (12) Civil actions, including timelines;
- (13) Attorneys' fees; and
- (14) This notice meeting the same requirements for understandable language as for the written prior notice described 300.503.

8. Electronic mail: [34 CFR §300.505]

- a. The parent/guardian of a student with a disability may elect to receive required notices by an electronic mail communication if the PEA makes that option available.

9. Mediation requirements: [34 CFR §300.506]

- a. The **PEA DESINGEE** shall ensure that the mediation process:
 - i. Is voluntary on the part of the parties;
 - ii. Is not used to deny or delay a parent's/guardian's right to a due process hearing under §300.507 or to deny any other right afforded under IDEA; and
 - iii. Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques; [§§300.506(b)(1)(i-iii)]
 - iv. Impartiality means:
 - (1) That the mediator is **not** an employee of any public or state agency as indicated in §300.194 or the Education Teacher, Director of Special Education, and/or School Psychologist who is providing direct services to the student who is the subject of the mediation process:
 - (a) A person is **not** an employee of the Education Division or the state solely because s/he is paid by ADJC to serve as a mediator.
 - (2) The mediator must not have a personal or professional conflict of interest.
- b. The **PARTIES TO THE MEDIATION PROCESS:**
 - i. Shall ensure discussions that occur during the mediation process:
 - (1) Are confidential; and
 - (2) Are not used as evidence in any subsequent due process hearings or civil proceedings [§300.506(b)(6)].
 - ii. May request a confidentiality pledge prior to the commencement of the process [§300.506(b)(6)].
- c. **ADJC** may establish procedures to offer the parent/guardians and the PEA designee who choose not to use mediation, an opportunity to meet at a time and location convenient to the parties, with a disinterested party who:
 - i. Is under contract with an appropriate alternative dispute resolution entity;

- ii. A parent/guardian training and information center or community parent resource center; or
- iii. Would explain the benefits of, and encourage the mediation process to, the parent/guardians.
- d. The **PEA DESIGNEE** shall notify the Arizona Department of Education/Exceptional Student Services when a written request for due process is received [R7-2-405].

10. Impartial due process hearing-student notice: [34 CFR §300.507 and A.A.C. R7-2-405]

- a. When a due process hearing is initiated under §300.503(a)(1), the **PEA DESIGNEE** shall inform the parent/guardian of a student with a disability of the availability of mediation [§§300.506 and 300.507(a)(2)].

11. Filing a due process complaint (hearing): [34 CFR §300.507]

- a. The **PEA DESIGNEE AND/OR PARENTS/GUARDIANS** may:
 - i. File a request for a due process hearing relating to the identification, evaluation, or educational placement of a student with a disability; and
 - ii. Request a due process hearing of an alleged violation that must have occurred not more than two years before the date the parent/guardian or PEA knew of or should have known about the alleged violation.
- b. The **PEA DESIGNEE** shall:
 - i. inform the parent/guardian of any free or low-cost legal and other relevant services available in the area upon request;
 - ii. At least five business days before a due process hearing is conducted, disclose to all parties:
 - (1) All evaluations completed by that day; and
 - (2) Recommendations based on the initiating party's evaluations and intent to use at the hearing [§§300.509(c)(1)(i) and (ii)];
 - (3) Students involved in the due process hearings have the right to:
 - (a) Be present at the hearing; and
 - (b) Open the hearing to the public pursuant to §300.509(c)(2), except that the public may be excluded pursuant to facility security policies.
 - (4) The **YHO** shall:
 - (a) Provide the record of the due process hearing and the findings of fact and decisions at no cost to the student and parent/guardian pursuant to §300.509(c)(2); and
 - (b) Ensure that each due process hearing and each impartial review involving oral arguments are conducted at a time and date that is reasonably convenient to the student and parent/guardian involved [§300.511(d)]; and
 - (c) All due process hearings shall be conducted at the ADJC Secure Care Facility.

12. Due process complaint (hearing): [34 CFR §300.508]

- a. The **PEA DESIGNEE** shall have procedures that require either party, or the attorney representing a party, to provide to the other party a confidential due process complaint;
- b. The **PARTY** filing the notice for a hearing shall forward a copy of the request to the State;
- c. If the **PEA DESIGNEE** has not sent a prior written notice to the parent/guardian regarding the subject matter contained in the due process complaint, it shall do so within ten days of receiving the complaint;
- d. Within 10 days of receiving the complaint, the **RECEIVING PARTY** shall send the other party a response that specifically addresses the issues raised in the due process complaint;
- e. The Due Process complaint shall include the following in order for the complaint to be heard:
 - i. The name of the student;
 - ii. The student's residential address;
 - iii. The school of attendance;

- iv. A description of the nature of the problem of the student relating to the proposed or refused initiation or change, including the facts relating to the problem; and
 - v. A proposed resolution of the problem to the extent known and available to the party at the time.
- f. If either party believes that the due process complaint does **not** meet the content requirement, **THAT SAID PARTY** shall notify the hearing officer and the other party in writing within 15 days of receipt of the complaint;
 - g. Within five days of receipt of notice, the **HEARING OFFICER** shall determine whether the complaint meets the requirements and notify the parties in writing of his/her determination;
 - h. **A PARTY** may amend its due process complaint, only if:
 - i. The other party consents in writing;
 - ii. Is given an opportunity to resolve the complaint through the resolution process; or
 - iii. The Hearing Officer grants permission but no later than five days before the due process hearing begins.
 - i. If a party files an amended complaint, the relevant time frames begin again.

13. Resolution process: [34 CFR §300.510]

- a. Within 15 days of receiving the notice of the parent's/guardian's due process complaint, and prior the initiation of a due process hearing, the **PEA DESIGNEE** shall convene a meeting with the following:
 - i. Parent/guardian;
 - ii. The relevant members of the IEP Team who have specific knowledge of the facts identified in the complaint;
 - iii. A representative of the Education Division who has decision-making authority; but
 - iv. May **not** include an attorney from PEA unless the parent is accompanied by an attorney.
- b. The **PARENTS/GUARDIANS AND THE PEA DESIGNEE** shall determine the relevant IEP Team members to attend the meeting:
 - i. The purpose of the meeting is for the parent/guardian of the student to discuss the due process complaint and the factual basis of the complaint so the PEA has the opportunity to resolve the dispute;
 - ii. The resolution meeting need not be held if:
 - (1) The parents/guardians and the PEA agree in writing to waive the meeting; or
 - (2) The parents/guardians and the PEA agree to use the mediation process.
- c. If the complaint has not been resolved to the satisfaction of the parent/guardian within 30 days of receipt of the complaint, the due process hearing may proceed. The timeline for issuing a final decision begins at the end of the 30-day period;
- d. The failure of the parent/guardian to participate in the resolution meeting that has not been mutually agreed to be waived, will delay the timelines for the resolution process and due process hearing, until the meeting is held;
- e. If the PEA or designee:
 - i. Is unable to obtain the participation of the parent/guardian, after reasonable efforts have been made and documented, the **PEA** may, at the conclusion of the 30 day period, request the Hearing Officer dismiss the parent's/guardian's due process complaint; and
 - ii. Fails to hold the resolution meeting within 15 days of receiving the complaint or fails to participate in the meeting, the **PARENTS/GUARDIANS** may request that the Hearing Officer begin the hearing timeline.

14. Timeline for due process hearings: [34 CFR §300.511]

- a. A 45 day timeline for the due process hearing starts the day after:
 - i. Both parties agree in writing to waive the resolution meeting;
 - ii. The mediation or resolution meeting starts but before the end if the 30 day resolution period and parties agree in writing that no agreement is possible; and

- iii. Both parties agree in writing to continue the mediation at the end of the 30 day resolution period, but later, one party withdraws from the mediation process.
- b. If a resolution is reached at the meeting, the **PARENTS/GUARDIANS, THE PEA DESIGNEE, AND THE ADJC COUNSEL** shall execute a legally binding agreement that is:
 - i. Signed by both the parent/guardian and the PEA designee and the ADJC counsel who has the authority to legally bind ADJC; and
 - ii. Enforceable in any State of Arizona court of competent jurisdiction or in a district court of the United States.
- c. **EITHER PARTY** may void the agreement within three (3) business days of the agreement's execution.

15. Finality of decision; appeal; impartial review: [34 C.F.R. §§300.510]

- a. A decision made in a due process hearing conducted pursuant to §§300.507, 300.520 and 300.528 is final, except:
 - i. That **ANY PARTY INVOLVED IN THE HEARING** may appeal the decision under the provisions of §§ 300.510, 300.512 and 300.510(a); and
 - ii. The decision made by the reviewing official is final unless a party brings a civil action under §§ 300.512 and 300.510(d).

16. Attorneys' Fees: [34 C.F.R. §300.513]

- a. The **PEA DESIGNEE** shall ensure that the procedural safeguards notice includes a full explanation of all of the procedural safeguards relating to attorneys' fees: [§ 300.504(b)(13)]
 - i. Funds under Part B of the Act shall not be used to pay attorneys' fees or costs of a party related to an action or proceeding under section 615 of the Act and subpart E § 300.513(b)(1).

17. Student's status during proceedings: [34 CFR §300.518]

- The student involved in the due process complaint shall remain in his/her current educational placement: [§300.514(a)]
- a. Unless a discipline appeal has been filed as provided in [34 CFR §300.533];
 - b. Pending any administrative or judicial proceeding regarding a due process complaint notice requesting a hearing under [34 CFR §300.507]; or
 - c. Unless the PEA and parents/guardians of the student agree otherwise:
 - i. If the complaint involves an application for initial admission to public school, the student, with the consent of the parents/guardians, shall be placed in the public school until the completion of all the proceedings; and
 - ii. If the student is found eligible for special education and related services under Part B, and the parents/guardians consent to the initial provision of services under 34 CFR §300.300(b), then the **PEA DESIGNEE** shall provide those services that are not in dispute.
 - d. Unless the Hearing Officer agrees with the student's parent/guardian that a change of placement is appropriate, then that placement must be treated as an agreement between the State of Arizona and the parents/guardians; and
 - e. Unless the juvenile has been approved for Conditional Liberty Release or been discharged from the agency pursuant to statute.

18. Surrogate Parents: [34 CFR §300.515 and ARS §15-763.01]

- a. The **PEA DESIGNEE, AND ADJC COUNSEL** shall ensure that the rights of a student are protected by assigning an individual to act as a surrogate for the parents when reasonable efforts have been made, and:
 - i. No parent/guardian can be identified;
 - ii. No parent can be located;
 - iii. The student is a ward of the state with no foster parents; and/or

- iv. The student is unaccompanied homeless student as defined by the McKinney-Vento Homeless Assistance Act.
- b. The **PEA DESIGNEE** shall have a method for determining when a surrogate parent is needed and for making surrogate parent assignments;
- c. The **PEA DESIGNEE AND ADJC COUNSEL** shall ensure that a person selected as a surrogate parent:
 - i. Is not an employee of ADJC or any other agency that is involved in the education or care of the student;
 - ii. Has no personal or professional interest that conflicts with the interest of the student; and
 - iii. Has knowledge and skills that ensure adequate representation of the student.
- d. In the case of an unaccompanied homeless student, the following personnel may be appointed as temporary surrogate parents until a surrogate parent can be appointed that meets all the requirements of this section:
 - i. Appropriate staff or emergency shelter;
 - ii. Transitional shelters;
 - iii. Independent living programs; and
 - iv. Street outreach programs.
- e. The **PEA DESIGNEE AND ADJC COUNSEL** shall make a petition for the appointment of a surrogate parent to a court of competent jurisdiction [§ 15-763.01(A)];
- f. The **SURROGATE PARENT** may represent the student in all matters relating to the:
 - i. Identification;
 - ii. Evaluation;
 - iii. Educational placement of a student with a disability; and
 - iv. Provision of FAPE [§§300.515(e)(1) and (2)].

19. Transfer of parental rights at age of majority: [34 CFR §300.520]

- a. When a student with a disability reaches the age of majority (except for a student with a disability that has been determined to be incompetent under state law):
 - i. The **PEA DESIGNEE** shall:
 - (1) Provide any notice required by the IDEA regulations to both the student and the parents/guardians;
 - (2) All other rights accorded to a parent/guardian under Part B of the Act transfer to the student [§§300.517(a)(1)(i)and(ii)]; and
 - (3) When the rights are transferred, provide notice to the student and parents/guardians of the transfer of rights.

Signature Date

01/29/2019

Approved by

Original Signature on File

Dr. Kim Eger, Education Superintendent

Signature Date

01/30/2019

Approved by

Original Signature on File

Jeff Hood, Director

Effective Date

01/31/2019