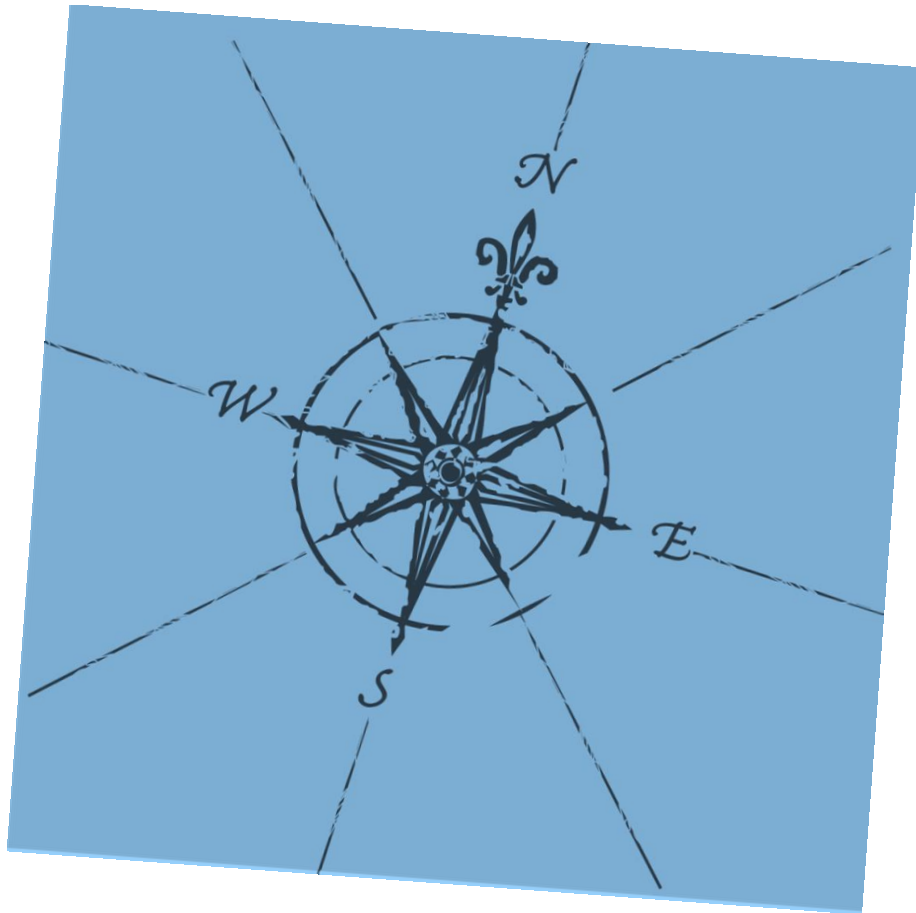


# Navigating the Course:

Finding Your Way through Indiana's Special  
Education Rules



**A Companion Guide to:  
ARTICLE 7  
2017**

## Acronym Index

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ASD	Autism Spectrum Disorder	IFSP	Individualized Family Service Plan
BIP	Behavioral Intervention Plan	IHO	Independent Hearing Officer
BLV	Blind or Low Vision	ISTAR	Ind. Standards Tool for Alternative Reporting
CCC	Case Conference Committee	LRE	Least Restrictive Environment
CSEP	Choice Scholarship Education Plan	LSI	Language or Speech Impairment
CD	Cognitive Disability	MD	Multiple Disabilities
DB	Deaf-Blind	M-TEAM	Multidisciplinary Team
DD	Developmental Delay	NOPS	Notice of Procedural Safeguards
DHH	Deaf or Hard of Hearing	OHI	Other Health Impairment
ECA	End of Course Assessment	OI	Orthopedic Impairment
ED	Emotional Disability	OT	Occupational Therapy
EI	Educational Interpreter	PAR	Public Agency Representative
ESY	Extended School Year	PLOPs	Present Levels of Performance
FAPE	Free Appropriate Public Education	PT	Physical Therapy
FBA	Functional Behavioral Assessment	RTI	Response to Intervention
FERPA	Family Educational Rights and Privacy Act	SBOE	State Board of Education
IAC	Indiana Administrative Code	SLD	Specific Learning Disability
IAES	Interim Alternative Educational Setting	SOP	Summary of Performance
IDEA	Individuals with Disabilities Education Act	TBI	Traumatic Brain Injury
IDOE	Indiana Department of Education	TOR	Teacher of Record
IEE	Independent Educational Evaluation	TOS	Teacher of Service
IEP	Individualized Education Program		

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# SECTION I

## INTRODUCTION

The purpose of Navigating the Course: Finding Your Way through Indiana's Special Education Rules is to provide an overview and a practical resource to help parents, advocates, school personnel, and students understand the requirements of Indiana's special education rules, found at 511 IAC 7-32 through 47, commonly known as Article 7. It is intended to serve as a companion guide to Article 7 and is not a substitute for Article 7. Please refer to Article 7 for the specific language of the special education rules. Copies may be downloaded from the Indiana Department of Education's (IDOE) website at: <http://www.doe.in.gov/sites/default/files/specialed/art-7-english-january-2015-final-rule-update.pdf>.

Understanding the provisions of Article 7 helps parents, advocates, school personnel, and students work together more effectively. When positive relationships are established between the parent and the school, students with disabilities receive a better education and leave school better prepared to succeed as adults.

There are many decisions to be made for each student with a disability, and it is essential that these decisions are based on all information available. Each parent has valuable and unique information about the student's needs. Teachers and school personnel can provide valuable expertise and classroom-based data from their work with the student on a daily basis. Students themselves may also be consulted and actively involved in the decision-making process as appropriate.

Because all students receiving special education services must have an individualized education program (IEP), the parent and school personnel have a unique opportunity for partnership. Many students participate in special education from the ages of 3 to 22 and partnerships between the parent and the school may last many years. Good communication is essential to the ongoing success of this partnership.

**Parent** – Throughout *Navigating the Course* the term parent is used. The term is defined in Article 7 as any of the following: A biological or adoptive parent, whose parental rights have not been terminated, an authorized guardian, a foster parent, an individual with legal custody or acting in the place of the biological or adoptive parent, an educational surrogate, a student of legal age, or an educational representative. For clarity, this document will use the term parent to mean any individual defined as a parent under 511 IAC 7-32-70.



## ARTICLE 7

Article 7 (511 IAC 7) is the part of the Indiana Administrative Code (IAC) that contains Indiana's special education rules. These rules have been adopted by the State Board of Education (SBOE) in order to implement the requirements of the Individuals with Disabilities Education Act (IDEA).

Six major concepts of IDEA are:

- Free Appropriate Public Education (**FAPE**),
- Appropriate educational evaluation,
- Individualized Education Program (**IEP**),
- Least Restrictive Environment (**LRE**),
- Notice of Procedural Safeguards (**NOPS**), and
- Parental participation in decisions made by the Case Conference Committee (**CCC**).

IDEA requires public schools to provide students with disabilities with a FAPE in the LRE and requires the IDOE to have rules, policies, and procedures to ensure that the federal rules are fulfilled.

Article 7 describes the school's responsibility to provide a FAPE to a student with a disability, including evaluating the student, working with the parent as part of the CCC, implementing the student's IEP, and ensuring that procedural safeguards are provided. It also describes rights and responsibilities of the parent as a participant in identifying the student's needs and the special education and related services that the public school will provide to meet those needs. The rules in Article 7 address: definitions; programs and personnel; disability categories and eligibility; evaluations; CCC meetings; IEPs; related services; services to students in nonpublic schools, including choice scholarship students; discipline; due process procedures; child and data collection; and funding for excess costs.

**PARENT RESPONSIBILITIES:** In order for a student to receive a FAPE, the parent must:

- Give written consent for educational evaluations of the student (511 IAC 7-40-4(h)); and
- Give written consent for the school to implement the student's initial **IEP** (511 IAC 7-42-7(f)).

The parent has the right to participate as a full member of the CCC in determining eligibility for special education and related services, and developing and revising the IEP. (511 IAC 7-42-3(b)(5)).

Article 7 requires that each eligible student with a disability enrolled in a public school between the ages of 3 and 22 be provided with a FAPE. **A FAPE means special education and related services that are provided at public expense, and in accordance with an IEP.**

**A student with a disability is a student who has been evaluated in accordance with Article 7 and determined eligible for special education and related services by a CCC.**

**Special education is specially designed instruction provided to a student who has been determined eligible through an educational evaluation.** It must be provided at no cost to the parent and in accordance with the student's IEP.

**Related services are services** such as occupational therapy (OT), physical therapy (PT), an educational interpreter (EI), transportation, etc. **that are necessary to allow the student to benefit from his or her special education.**

**“At no cost” means that all specially designed instruction is provided without charge to the parent.** The school may charge fees that are normally charged to nondisabled students as a part of the general education program, such as textbook rental fees and fees for consumable materials.

It is the responsibility of the CCC to determine what services are appropriate depending on the student's individual educational needs. **The CCC is a group of individuals, including the parent and school personnel, that determines if the student is eligible for special education** and if so, determines the special education and related services to be provided to the student. The CCC must meet at least annually.

**An IEP is the written document, developed by the CCC, describing how the student will access the general education curriculum, if appropriate, and the special education and related services needed to enable the student to participate in the educational setting.**

**Special education services must be provided in the LRE, meaning a student with a disability is educated with students without disabilities to the maximum extent appropriate.**

## SECTION II

# IDENTIFICATION, REFERRAL, INITIAL EVALUATION, REEVALUATION, INDEPENDENT EDUCATIONAL EVALUATION

### 511 IAC 7-40

## OVERVIEW

For a student to be eligible for special education and related services, the **case conference committee (CCC)** must determine, based on the evaluation results that the child:

- is a student with a developmental delay, or that a student's disability or impairment adversely affects the student's educational performance, and
- needs special education or related services.

**Educational Evaluation** – A variety of procedures, including assessments, used to collect information about a student's disability or suspected disability, used to determine if the student is eligible for special education and related services and if eligible, the special education and related services needed.

The purpose of an educational evaluation is to assess areas of educational need, including academic achievement and functional performance. The school must ensure that the method it uses to assess the student provides meaningful information that directly helps the CCC make decisions regarding eligibility and educational services.

The process begins with a request that the student be evaluated for a suspected disability. This request is known as a **referral**. The parent or school personnel may make a request to have a student evaluated for special education. A parent's request must be made to licensed personnel, such as a teacher, principal, or special education director. Before the school can evaluate the student, the parent *must* provide the school with written consent for the evaluation.

After parental consent is provided, a multidisciplinary team (M-Team) consisting of qualified professionals, will conduct a comprehensive educational evaluation. When the

educational evaluation is completed, the CCC convenes to review the evaluation results and determine if the student is eligible for special education and related services. There are various timelines, notices, and procedural safeguards throughout the referral and evaluation process to ensure that the evaluation is completed in a timely manner and that the parent is informed of the educational evaluation results.

A student may be found eligible for special education and related services in one or more of the 13 disability categories:

- Autism Spectrum Disorder (ASD)
- Blind or Low Vision (BLV)
- Cognitive Disability (CD)
- Deaf or Hard of Hearing (DHH)
- Deaf-Blind (DB)
- Developmental Delay (DD) (early childhood only)
- Emotional Disability (ED)
- Language or Speech Impairment (LSI)
- Multiple Disabilities (MD)
- Other Health Impairment (OHI)
- Orthopedic Impairment (OI)
- Specific Learning Disability (SLD)
- Traumatic Brain Injury (TBI)

For more detailed information on the individual disability categories, see 511 IAC 7-41-1 through 7-41-13 in Article 7.

## INITIAL EVALUATION REQUEST, WRITTEN NOTICE, AND CONSENT

A student's parent or school personnel working with the student may make a referral or request for an educational evaluation. If the parent makes the request, the request must be made verbally or in writing to **licensed personnel**, such as a teacher, principal, or special education director.

**It is always a good idea for the parent to put the request in writing.**

### Written Notice

Within **10 school days** after the parent makes a request for an educational evaluation, the school must provide the parent with **written notice** responding to the request, as

well as a copy of the notice of procedural safeguards (NOPS). If the school makes the referral for the evaluation, the school must provide the parent with written notice.

**Written notice must:**

- Inform the parent whether the school intends to conduct the evaluation,
- Describe the information the school used to make its decision,
- Explain the reason for the decision,
- Advise the parent of procedural safeguard protections, and
- Provide a list of sources to contact for help in understanding special education rules.

**If the school intends to conduct the educational evaluation,** the notice must also include:

- The evaluation timeline,
- A description of the evaluation procedures, and
- How the parent may obtain a copy of the evaluation report or schedule a meeting to discuss the results of the educational evaluation prior to the CCC meeting.

**If the school does not intend to conduct the educational evaluation,** the notice must also include an explanation of what the parent may do to contest the school's decision not to complete the evaluation.

The parent may ask the school to participate in mediation or request a due process hearing if the school does not intend to conduct the requested evaluation. However, in an effort to better understand the school's position and perhaps reach an agreement on the requested evaluation, the parent may wish to meet with representatives from the school to talk with school personnel before deciding upon further action.

**Day**

- **Day:** means a calendar day unless otherwise indicated.
- **Business day:** Monday-Friday, except federal and state holidays
- **Instructional (school) day:** Any day or part of a day that students are expected to be in attendance.

## Parental Consent

Before the school can conduct the evaluation, the parent must provide written consent. Although parental consent is required for an initial educational evaluation, the school is not required to obtain parental consent to:

- Review existing data as part of an educational evaluation,

- Administer tests or other evaluations administered to all students unless parental consent is required for all students,
- Screen students if school personnel is using the information to determine appropriate instructional strategies, or
- Collect progress monitoring data as part of the response to intervention (RtI) process.

### Right to Refuse an Evaluation

The parent has the right to refuse an evaluation. The school may, but is not required to, ask the parent to participate in mediation or request a due process hearing if the parent refuses to provide written consent for an educational evaluation or fails to respond to the school's request for consent. If the parent does not provide written consent and the school does not pursue mediation or a due process hearing, the school is not required to conduct the educational evaluation.

### Additional Parental Rights

At the request of the parent, the school must provide a copy of the evaluation report at least **5 school days** before the CCC meeting. If the parent requests to have the results explained prior to the scheduled CCC meeting, the school must arrange a meeting with the parent and an individual who can explain the evaluation results within 5 school days prior to the CCC meeting.

## CONDUCTING THE EDUCATIONAL EVALUATION

A **multidisciplinary team (M-Team)** is a group of qualified professionals who conduct the educational evaluation, and must include a teacher licensed in, or other specialist with knowledge in, the area of suspected disability. The M-team may also include: a general education teacher; a special education teacher; a school psychologist; a speech language pathologist; or other qualified professional based on the student's unique needs or suspected disability. The parent plays an important role with the M-Team by providing input and information about the student.

The M-Team reviews existing information related to the student and input from the parent. Through this review process the M-Team identifies the suspected disability or disabilities for which the student should be evaluated, and determines what additional information is needed to help the CCC determine whether the student is eligible for special education services. This process may include administering tests, conducting observations, and collecting information from a variety of sources. In most situations,

the M-Team must complete its evaluation and the CCC must convene a meeting within 50 school days from the date written parental consent is provided to licensed school personnel.

### Disagreement with the Educational Evaluation

If the parent disagrees with the educational evaluation, the parent may request an independent educational evaluation (IEE) to be conducted at public expense.

## REEVALUATION

Once the student is eligible for special education and related services, any subsequent evaluation of the student is considered a reevaluation even if the student is being evaluated because a different or additional eligibility category is suspected. The school must consider the potential need for a reevaluation at least once every **3 years**. However, the reevaluation may be waived if the parent and school agree that a reevaluation is unnecessary.

The CCC, parent, or the school may request a reevaluation at any time if additional information is needed to address the special education or related services needs of the student or an additional area of disability is suspected. If the parent requests a reevaluation, the request may be made verbally or in writing to licensed personnel.

**It is always a good idea for parents to put the request in writing.**

Written parental consent must be sought before the school can conduct the reevaluation. However, if the parent fails to respond to the school's request for consent, the school may conduct the reevaluation without parental consent. The school must document in detail the attempts made to obtain written consent from the parent. If the parent refuses to consent to a reevaluation, the school has the option, but is not required, to pursue mediation or a due process hearing.

### Written Notice

Before conducting a reevaluation the school must provide the parent with written notice.

#### Written notice must:

- Inform the parent whether the school intends to conduct a reevaluation,
- Describe the information the school used to make its decision,
- Explain the reason for the decision,
- Advise the parent of procedural safeguard protections, and
- Provide a list of sources to contact for help in understanding special education rules.

**If the school intends to conduct the reevaluation**, the notice must also include the reevaluation timeline, a description of the reevaluation procedures, and how the parent may obtain a copy of the reevaluation report or schedule a meeting to discuss the results of the reevaluation prior to the CCC meeting.

**If the school does not intend to conduct the educational evaluation**, the notice must also include an explanation of what the parent may do to contest the school's decision not to complete the reevaluation.

The parent may ask the school to participate in mediation or request a due process hearing if the school does not intend to conduct the requested reevaluation. However, in an effort to better understand the school's position and perhaps reach an agreement on the requested reevaluation, the parent may wish to meet with representatives from the school to talk with school personnel before deciding upon further action.

### Conducting the Reevaluation

The timeline for conducting the reevaluation can vary depending on why the reevaluation is needed. If the purpose of the reevaluation is to reestablish the student's eligibility under the current disability category, the school has until the next annual CCC meeting to complete the reevaluation.

If the purpose of the reevaluation is to determine if the student is eligible under a different or additional disability category, or to provide information to the CCC about the student's needs, the reevaluation must be conducted and the CCC convened within **50 school days** of the date the parent provides written consent to licensed personnel.

## INDEPENDENT EDUCATIONAL EVALUATION

An independent educational evaluation (IEE) is an evaluation conducted by a qualified professional who is not an employee of the school. If the parent disagrees with the school's evaluation the parent may request an IEE at public expense. Within 10 business days of the parent's request for an IEE at the public's expense, the school must either:

- Notify the parent in writing that the school will pay for the IEE; or
- Initiate a due process hearing in which the school must show that the school's educational evaluation is appropriate.

If an IEE is paid for by the school, a copy of the IEE must be received by the school and considered by the student's CCC.



If the parent obtains an IEE at the parent's own expense, the parent chooses whether to share the IEE with the CCC. If the parent shares the IEE, the CCC must consider that information in making decisions about the student's educational needs.

## COMPREHENSIVE AND COORDINATED EARLY INTERVENING SERVICES

Article 7 permits schools to implement a process known as **comprehensive and coordinated early intervening services**. Early intervening services are provided to students who have not been identified as needing special education and related services, but who need additional academic and behavioral support to succeed in the general education classroom.

As part of early intervening services, many schools are utilizing a systematic process commonly referred to as **response to intervention (Rtl)**. The **Rtl** process utilizes screening and periodic progress monitoring of all students. Through this process, students identified as needing additional educational or behavioral assistance are provided help through interventions to support each student's unique needs for success.

It is important for the parent to know that the Rtl process is useful with any student who is not making sufficient educational gains in the core curriculum. Parental consent is not required as part of the Rtl process. However, the parent must be provided with written notice if a student requires an intervention that is not provided to all students in the general education classroom.

A referral for an educational evaluation can be made by the parent or school personnel at any time during the Rtl process, and the school must evaluate the student and convene the CCC within 50 school days. The use of an Rtl process cannot delay the appropriate educational evaluation of a student suspected of having a disability.

### Use of Response to Intervention Education Data

When Rtl is determined necessary for a student, the school and the parent decide what progress they hope the student will make in a given period of time.

The Rtl process can provide useful information about the provision of appropriate instruction and opportunities for the student to learn in the general education curriculum. It is also a means for analyzing the student's educational difficulties and determining instructional strategies to address them. Information from the Rtl process should be considered in any subsequent educational evaluation.

## Student Fails to Make Adequate Progress

In the event the student fails to make adequate progress **after** an appropriate period of time, as previously determined by the school and the parent, the school will request an educational evaluation. If the parent gives consent for an educational evaluation, the school has **20 school days** from the date it receives the consent to conduct the evaluation and convene the CCC meeting (rather than the 50 school days for other initial educational evaluations).

## Timeline for Completing the Educational Evaluation

**GENERAL RULE:** The evaluation must be completed and the CCC convened within **50 school days** from the date written parental consent is received.

### EXCEPTIONS:

- School initiates a referral where the student failed to make adequate progress after engaging in Rtl. **20 school days.**
- Student transitioning from First Steps. Evaluate, convene CCC, and services made available by **3rd birthday.**
- Student moves while evaluation is pending, the new school must complete the educational evaluation **promptly** and within a time period agreed upon by the school and the parent.
- Referral is made during the time the student is suspended, expelled, or placed in interim alternative educational setting (IAES). **20 school days.**
- Parent repeatedly fails to make student available for educational evaluation. School is not necessarily held to 50 school days.

## SECTION III

# CASE CONFERENCE COMMITTEE

### 511 IAC 7-42-1 THROUGH 7-42-5

**Case Conference Committee (CCC)** – The CCC is a group of individuals, including the parent and school personnel, that determines if the student is eligible for special education and if so, determines the special education and related services to be provided to the student.

## CCC PARTICIPANTS

The case conference committee (CCC) must include:

- A representative of the school (sometimes referred to as the public agency representative (PAR)) who:
  - Knows about the school's resources and has the authority to commit or expend them,
  - Knows about the general education curriculum, and
  - Can provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
- The student's teacher of record (TOR) or a teacher licensed in the area of the student's suspected disability if the student has not yet been determined eligible. A speech language pathologist serves as the TOR for a student with a language or speech impairment only;
- At least one of the student's general education teachers, unless it is certain that the student is not or will not be participating in the general education environment;
- A person able to describe what the evaluation information means; and
- The parent of a student less than 18 years of age or the student of legal age.

School personnel may fulfill more than one role in the CCC meeting. For example, the student's TOR may also serve as the PAR if the TOR otherwise meets the PAR requirements.

If the purpose of the CCC meeting is to develop or revise the transition IEP, the student must be invited.

Depending on the purpose of the meeting, the CCC must include other individuals.

## CCC MEETINGS

The CCC must meet:

- Within the stated timeline for an initial evaluation or reevaluation;
- At least annually;
- When requested by the parent or school personnel;
- Within 10 school days of the date a student with a disability enrolls from another school district or state;
- Within 10 school days of a disciplinary change of placement;
- To determine an Interim Alternative Educational Setting (IAES); and
- Every 60 school days when a student with a disability has been placed on full time homebound services.

The school schedules the CCC meeting at a “mutually agreed upon time, date and place.”

### Notification of the CCC Meetings

Once the CCC meeting is arranged, the school will send the parent a written notice that includes the date, time, location, purpose, and the names and titles of participants expected to be in attendance. The notice must also advise the parent of the right to invite anyone with special knowledge or expertise about the student.

If the parent wants to participate but is unable to attend, the school should ensure parental participation through other methods. The school must document all attempts to arrange for parental participation and any response received from the parent.

If the parent chooses not to participate, either in person or by other means, the school may conduct the CCC meeting without the parent. However, before the school can do this, it must make reasonable efforts to encourage the parent to participate, and it must document its efforts (such as telephone calls, emails, letters, home visits, etc.).

### Excusing Participants from All or Part of CCC Meeting

In some circumstances, a required member may be excused from all or part of the CCC meeting if the school and the parent agree in writing that the member's attendance is not necessary. However, if that member's area of curriculum or related services will be discussed or modified during the meeting and the member will miss the entire meeting, the member must provide input in writing to the parent and the other CCC members prior to the meeting and the parent must provide written consent for the excusal. If the

parent does not agree to excuse a required member of the CCC, the required member must participate in the CCC meeting or the meeting must be rescheduled.

### **CCC Responsibilities**

The CCC is responsible for:

- Reviewing the educational evaluation report and determining a student's eligibility for special education and related services (for initial evaluations and any subsequent reevaluation of the student);
- Reviewing the student's present levels of educational performance and any progress monitoring information that is available;
- Developing, reviewing, and revising a student's individualized education program (IEP);
- Determining appropriate special education and related services;
- Determining where, when, and how long the services will be provided; and,
- Addressing other matters that relate to providing the student with a free appropriate public education (FAPE).

### **CCC Decision Making**

Information about the student is shared with and by all CCC members. Each member can offer input into and participate in the discussion about the decisions to be made, such as:

- Is the student eligible as a student with a disability?
- If so, under what disability category or categories?
- If eligible, what are the student's educational needs, and what special education and related services are appropriate to meet the student's needs?

A CCC meeting is not a meeting controlled by a vote of 'majority rule'. Ultimately, decisions of the CCC should be based upon the input of all members of the CCC, including considering the parental participation and input.

After the initial evaluation the school must provide the parent with written notice about any action it is proposing or refusing to take with regard to the student's identification, evaluation, eligibility, services, placement, or anything else affecting the provision of a FAPE. Most schools use the IEP to fulfill the written notice requirement. The school must provide this notice regardless of whether there was agreement between the parent and the school. Before the school can implement the services described in the initial IEP, the parent must provide written consent. The act of signing the IEP serves as written consent.

After any subsequent CCC meetings, the school must provide the parent with written notice about any action it is proposing or refusing to take with regard to the student's identification, evaluation, eligibility, services, placement, or anything else affecting the provision of a FAPE. Most schools use the IEP to fulfill the written notice requirement. The school must provide this notice regardless of whether there was agreement between the parent and the school.

Although written parental consent is not required for a school to implement IEPs after the initial IEP, a parent has the right to challenge the IEP before it is implemented by asking for and participating in a meeting with a school official, initiating mediation, or requesting a due process hearing. If a parent does not challenge the proposed IEP within 10 school days of receipt of the IEP, the school may implement the proposed IEP.

Being a CCC member may seem intimidating or overwhelming to a parent. The following are some tips that have been offered to help the student's parent feel more comfortable during CCC meetings:

- Make a list of questions so you don't forget them during the CCC meeting;
- If there is an evaluation report, talk with someone who can explain it in easy to understand terms;
- Talk with the student's teacher or other school personnel before the meeting;
- Talk to other parents who have participated in CCC meetings;
- Take someone with you who knows the student; and
- Take this booklet with you to the CCC meeting.

## SECTION IV

# INDIVIDUALIZED EDUCATION PROGRAM

### 511 IAC 7-42-6 THROUGH 7-42-10 AND 511 IAC 7-43-1

If the case conference committee (CCC) decides the student is eligible for special education and related services, the next step is for the CCC to develop an individualized education program (IEP).

**Individualized Education Program (IEP)** – The written plan that describes how the student will participate in the general education curriculum (if appropriate) and identifies the special education and related services that the school will provide to the student.

## IEP DEVELOPMENT

The CCC develops the IEP after considering all of the information about the student and must consider the following general factors:

- The student's strengths;
- Parental concerns;
- The results of any recent educational evaluations or assessments; and,
- The student's academic, developmental, communicative, and functional needs.

In addition, the CCC must consider special factors (when applicable) such as:

- Positive supports and interventions when a student's behavior affects the student's learning;
- Supports to provide school personnel with knowledge and skills to implement the student's IEP;
- Language needs of a student with limited English proficiency; or,
- Instructional and communication needs for a student whose vision or hearing is impaired.

## Contents of the IEP

**An IEP must include:**

**The student's present levels of academic achievement and functional performance (PLOPs)**

- Academic achievement, such as progress in reading, math, language arts, and other subject areas.
- Functional performance, such as physical skills, sensory responses, fine and gross motor skills; personal care; behavioral, social, and emotional skills; and independent living skills.
- How the student's disability affects the student's involvement and progress in the general education curriculum.

**Measurable annual goals**

- Measurable goals that a student is expected to achieve within by the next annual case review, including academic and functional goals designed to meet the student's needs to enable the student to make progress in the general education curriculum and each of the student's other educational needs that result from the student's disability.
- A description of benchmarks or short term objectives for students who participate in alternate assessments aligned to alternative academic achievement standards.

**How the student's progress toward achieving the IEP goals will be measured.**

- How progress will be measured toward each goal.
- The CCC should discuss how often data will be collected, methods to collect the data, and the type of data that will be collected.

**Information on the student's progress will be reported to the parent**

- When the school will provide the parent with periodic reports on the student's progress toward meeting the annual goals.

**A description of the special education services and supports that will be provided to the student and a statement of the modifications or supports for school personnel that will be provided to enable the student to:**

- Advance appropriately toward attaining the annual goals.
- Be involved in and make progress in the general education curriculum; and
- Be educated and participate with other students with and without disabilities.

**An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education environment and in extracurricular and other nonacademic activities.**



**A statement concerning the student's participation in statewide or local assessments of student achievement, including:**

- Any appropriate accommodations necessary to measure the academic and functional performance of the student;
- If the CCC determines the student will participate in an alternate assessment, a statement of why the student cannot participate in the general assessment, why the particular alternate assessment is appropriate, and documenting that the school informed the parent that the student's performance will not be measured against grade-level academic achievement standards.

**The projected date the services will begin and end, and the length, frequency, location, and duration of the services:**

- The dates of when the school expects services to begin and end;
- How often the services and supports will occur;
- How long each service or support will last; and
- Where the student will receive the service or support.

**The student's need for extended school year (ESY) services:**

- ESY services mean special and education and related services that are provided to a student beyond the normal school year or school day.
- The CCC decides, based on the student's educational needs, if a student needs ESY services.
- If the CCC decides the student needs ESY services, the services must be described in the student's IEP.
- This description must be specific enough that all involved with the student understand the ESY services to be provided and when and they will occur.

**The student's participation with nondisabled students** – If the IEP does not limit a student's participation in any way, the student should be able to participate with nondisabled students in academic classes and other educational programs such as, art, music, career and technical education, field trips and convocations. The student should also be able to participate in nonacademic and extracurricular activities such as meals, recess, athletics, recreational activities, school-sponsored groups or clubs, graduation ceremonies, and student employment.

If the CCC decides that a student needs supplementary aids and services in order to participate with nondisabled students in extracurricular or nonacademic activities, the CCC should include these in the IEP. If the CCC decides that there are times that the student will not participate with nondisabled students, the CCC must identify those

situations in the IEP. This covers all educational, extracurricular, and other nonacademic activities.

**Least Restrictive Environment (LRE)** – Placement must allow the student to be educated with non-disabled students to the greatest extent appropriate for the student regardless of the student's disability. For some students, this means that they will be educated in the general education classroom, but for others it will mean that they are with non-disabled students only for certain periods of time such as lunch, recess, or a particular class.

**The student's placement in the least restrictive environment (LRE)** – To the maximum extent appropriate, a student with a disability, is educated with nondisabled peers. Removal from the general education classroom environment occurs only if the nature and severity of the student's disability is such that education in general education class using supplementary aids and services cannot be satisfactorily achieved.

The CCC determines the placement where the student will receive services. The student's placement is:

- Based on the student's IEP;
- Reviewed at least annually; and
- In the school that the student would attend if not disabled, unless the IEP requires some other arrangement. If another arrangement is required, the placement should be as close as possible to the student's home school.

The school must take steps to make available to a student with a disability the variety of educational programs and services that are made available to nondisabled students, including:

- Vocational education.
- Art.
- Music.
- Industrial arts.
- Consumer and homemaking education.
- Field trips.
- Convocations.

The school must take steps, including providing the disabled student with supplementary aids and services that the CCC determined appropriate and necessary, to afford the student with a disability an equal opportunity for participation in nonacademic and extracurricular services and activities. The school must ensure that the student with a disability participates with nondisabled students in the extracurricular

services and activities to the maximum extent appropriate to the needs of that student. Nonacademic and extracurricular services and activities may include the following:

- Meals and recess.
- Athletics.
- Recreational activities.
- Special interest groups or clubs sponsored by the school.
- Graduation ceremonies.
- Employment of students, including employment by the public agency and assistance in making outside employment available.

**Written notes to document the CCC meeting** – The IEP must include a section called written notes. The written notes contain the date and purpose of the meeting; names and titles of the participants; concerns of the parent; and the issues discussed. The written notes may also contain the rationale for various decisions and other educationally relevant information considered by the CCC as well as additional concerns of the parent brought up during the course of the meeting.

**Information on transfer of rights when the student turns 18** – When the CCC is developing an IEP for a student who will turn 17 when the IEP is in effect, the parent and the student must be notified that the parental rights will transfer to the student when the student turns 18. The statement that the parent and student have been notified of this transfer must be documented in the IEP (see the section on Preparing for Transition from School to Adult Life).

## RELATED SERVICES

A related service is a developmental, corrective, or other supportive service that is provided to help a student benefit from the special education program. The CCC decides what related services, if any, a student needs. For example, a student who is deaf or hard of hearing may need an educational interpreter in order to participate in the school setting. Or, if a student who is orthopedically impaired needs physical therapy to help the student learn to get around the school more independently, this would be considered a related service.

The IEP must state the type of related service to be provided, when the service will begin and end, how frequently the service will be provided (daily, weekly, monthly, etc.), the length of the service (15 minutes, 30 minutes, one hour, etc.), and where the service will be provided. The IEP should be specific and detailed enough so that both the parent and school personnel can clearly determine how much of a service the student should be receiving at any one time during and throughout the school year.

## ACCOMMODATIONS

Students with disabilities may require instructional or testing accommodations. An **accommodation** “levels the playing field” without changing what is being taught or tested. An accommodation is “intended to reduce or eliminate the effects of a student’s disability,” but does not reduce what the student is expected to learn. A student with a disability might have an accommodation during testing that allows the student to take the same test as everyone else, but provide extra time to complete the test.

In order for a student to receive an accommodation on standardized assessments, the accommodation must be required and used routinely in classroom situations. It is not permissible to use an accommodation during high stakes testing situations if the accommodation is not required, based on the student’s disability, routinely in classroom assessment.

On some standardized tests, some accommodations are not allowed because the accommodations may affect the validity of the test scores. However, there is no limitation on accommodations that can be provided to the student in other situations to support classroom learning on functional assessments.

Some examples of accommodations:

- The student is given extra time to complete assignments and tests.
- The student is allowed to complete assignments and tests using a computer instead of writing by hand.
- The student is provided with special lighting or work space.

**NOTE: Accommodations When Taking Statewide Assessments** - Certain accommodations are allowed for students with an identified disability during the administration of statewide assessments. However, there are some accommodations that are not permitted, even if the accommodation is listed in the student’s IEP.

## POSITIVE BEHAVIORAL INTERVENTIONS, STRATEGIES, AND SUPPORTS

When the student’s behavior interferes with the student’s learning or the learning of other students then the student’s case conference committee (CCC) should conduct a **functional behavioral assessment (FBA)**.

An FBA looks beyond the behavior itself and focuses on identifying significant, student-specific social, emotional, intellectual, and environmental factors associated with the specific behaviors. The FBA offers a better understanding of the function or purpose behind student behavior.

**Functional Behavioral Assessment (FBA)** – An FBA is a process where data is collected and used to identify both a pattern of behavior and the reason or purpose of the behavior for the particular student.

A **behavioral intervention plan (BIP)**, based on an understanding of "why" a student exhibits a behavior, is an extremely useful tool in addressing a wide range of challenging behaviors. The CCC may develop a **BIP** to address behaviors or may address behaviors through goals and objectives that are a part of the student's IEP. Remember that the **BIP** is a plan that is developed and agreed upon by the CCC and integrated in the student's IEP.

At minimum, the **BIP** describes:

- The student's behavior that interferes with the student's learning or the learning of others,
- The CCC's hypothesis of why the behavior occurs as identified in the **FBA**,
- The positive interventions, strategies and supports that may be necessary to address the behavior and make sure that interventions are consistently implemented across different settings,
- Any supports or technical assistance for staff that are necessary to ensure the plan is supported and implemented, and
- The new skills that will be taught and how the student's progress will be monitored in order to change the student's behavior, if applicable.

## Teacher of Record

Each student with a disability must have a **teacher of record (TOR)** identified and assigned to the student. The TOR must be appropriately licensed or trained to work with the student. The TOR's responsibilities include:

- Providing special education services to the student according to the student's IEP.
- Participating in the CCC meeting as the student's teacher to assist in developing measurable goals, benchmarks, and objectives to meet the student's needs.
- Monitoring, and implementing the IEP and providing progress reports to the parent.
- Making sure that all staff responsible for implementing the student's IEP have access to it and know their responsibilities for ensuring the IEP is implemented as written.

- Making sure that all supplementary aids and services, program modifications, supports for school personnel, and accommodations on statewide or districtwide assessments are provided as required in the student's IEP.
- Serving as a consultant and resource person for personnel who are working with the student.
- Participating in reevaluations of the student.
- Making sure that the relevant personnel are notified of any changes to the student's IEP when the parent and a public agency representative make changes without holding a CCC meeting.

### Teacher of Service

A **teacher of service (TOS)** is any teacher who provides services to a student with a disability. A teacher of service could be a general education classroom teacher or a special education teacher who provides instruction to the student. The student's teacher of record may also be a teacher of service.

## AFTER THE IEP IS DEVELOPED

The school must give the parent a copy of the student's IEP, at no cost, within 10 business days after the date of the CCC meeting. The school may give the parent the IEP at the end of the meeting, or may mail the copy as long as the parent receives the IEP no later than 10 business days after the CCC meeting.

Written parental consent must be obtained for the school to provide special education services for the first time. Once the parent has given initial written consent for the school to provide special education services, the school must continue to provide special education services included in the most recently agreed upon IEP unless the parent revokes consent for services.

Once parental consent to begin services is given the student's parent should always be included in any future decisions recommended by the CCC. However, written consent from the parent is not required to revise the IEP. After communicating with the parent about the proposed IEP changes being made, the school has to provide the parent with written notice before it can implement any of the proposed changes. This written notice must also inform the parent of what steps the parent may take, should the parent disagree with the proposed changes.

## Written Notice

In addition to providing the parent with a copy of the IEP, the school must also provide the parent with a written notice that:

- Describes what the school is proposing or refusing to offer;
- Describes all of the information the school used in decision-making;
- Explains why the school made its decisions;
- Describes any other options the CCC considered;
- Describes any other factors that are relevant to the school's proposal or refusal;
- Explains that the parent has protection under the procedural safeguards and how to obtain a copy of the safeguards;
- Explains what actions the parent can take to challenge what the school proposes
- Explains that if the parent takes an action to challenge the proposed IEP within the timeline, the school must continue to implement the student's current IEP (rather than the proposed IEP); and
- Provides a list of resources for the parent to contact if the parent wants help in understanding the notice or other special education rules.

**NOTE:** The IEP may serve as the written notice if it contains all of the information described above.

## Reviewing the IEP

The CCC must meet to review the IEP at least once a year to see if the student is achieving the annual goals and revise the IEP, as needed, to appropriately address the student's educational needs. The CCC also meets:

- After a reevaluation has been conducted;
- Upon the request of the parent or school staff;
- At least every 60 school days for a student who receives special education services at home or in an alternate setting;
- When the school makes a disciplinary change of placement;
- To determine the interim alternative educational setting if a student is removed for serious offenses (weapons, drugs, or serious bodily injury); and
- Within 10 school days of the enrollment of a student who had an IEP in another state or Indiana school district.

## Changing the IEP

If the CCC makes changes to a student's IEP, the school must provide the parent with written notice before it can implement the changes. This written notice must also inform



the parent of what steps the parent may take should the parent wish to challenge the proposed changes.

Once initial written parental consent to begin services is given the student's parent should always be included in decisions by the CCC. However, written consent from the parent is not required to revise the IEP. After communicating with the parent about the IEP changes being made, the school has to provide the parent with written notice before it can implement any of the proposed changes. This written notice must also inform the parent of what steps they may take, should the parent wish to challenge the proposed changes.

If the CCC has completed its annual review of the IEP the parent and the school may agree to make changes to the IEP without a CCC committee meeting. Any changes the parent and school agree to must be put in writing.

### Challenging the IEP

If the parent disagrees with the school's proposed action, within 10 school days of receiving notice of the school's proposed action, the parent must take one of the following actions:

- Request and participate in a meeting with someone from the district who has the authority to resolve the disagreement, like the special education director, and incorporate the changes by written agreement;
- Initiate mediation; or
- Request a due process hearing.

If the parent does not take any of the 3 actions, the school may implement the changes described in the written notice on the 11th school day after the parent receives the written notice about the IEP changes or the "effective date" written on the IEP, if this date is later than the 11th school day.

### Implementing the IEP

The school must implement the IEP as it is written and must provide the services described in the student's IEP:

- No later than 10 school days after the school receives the written parental consent to implement the initial IEP, or
- On the 11th school day after the parent receives the written notice of proposed changes to the IEP unless the parent
  - Has given the school written permission to implement the changes earlier, or
  - Has taken a Due Process action disagreeing with the proposed changes, or:



- By the student's 3rd birthday if the student is moving from early intervention services (First Steps) to early childhood special education (see the section on Early Childhood Special Education).
- The effective or start date indicated in the IEP in all other cases.

### Revocation of Consent for Services

Any time after the parent has given the school permission to provide special education services, the parent may revoke consent. To revoke consent, the parent must state in writing that the parent is revoking consent for special education services. This written statement from the parent must be given to licensed personnel, such as a teacher, principal, or special education director. Before the school stops providing special education services, the school must provide the parent with written notice explaining the consequences of the request for revocation of services.

All special education instruction, related services, accommodations, and any other services and supports provided to the student will stop 10 school days after the parent receives written notice unless the parent gives consent to stop services sooner. The student will be instructed in the general education classroom and will receive education as a nondisabled student. After consent is revoked, neither the parent nor the student will be entitled to the protections or the safeguards under Article 7 or the Individuals with Disabilities Education Act (IDEA). If the parent revokes consent for services and later wants to initiate services again, the parent must request an initial evaluation and go through the CCC process to determine if the student is eligible for services (see the section on Evaluation).

## WHEN A STUDENT WITH AN IEP MOVES

**For a student moving from one Indiana school district to another:** When a student with an IEP moves from one school district to another within Indiana, the current school must immediately provide the student with a free appropriate public education (FAPE). The current school must provide services similar to those described in the student's IEP from the previous school, until the CCC meets. The CCC must meet within 10 school days of the date the student enrolls in the current school and either adopt the student's IEP from the previous school or develop a new IEP.

**For a student moving into an Indiana school district from another state:** The current school must immediately provide the student with a FAPE, including services that are similar to the services provided by the out of state school district. If the school determines that an evaluation is necessary, it may request written consent from the parent to conduct a reevaluation of the student. The CCC must meet within 10 school

days of the date the student enrolls in the current school and either adopt the student's IEP from the previous state's old school or develop a new IEP.

## **SECTION V**

# **EARLY CHILDHOOD SPECIAL EDUCATION**

### **511 IAC 7-36-5 AND 511 IAC 7-43-2**

Children who are 3 years of age and have a disability may be eligible for special education and related services provided by the public school. A child who is not yet school aged may receive special education and related services through one of two paths:

1. in transition from services received from First Steps (Indiana's program of early intervention services required under Part C of the IDEA), or
2. through a referral by a family member or health care worker who is working with the family and child.

## **TRANSITIONING FROM FIRST STEPS TO EARLY CHILDHOOD SPECIAL EDUCATION**

Children who participated in First Steps, Indiana's early intervention program for infants, toddlers, and their families, may be transitioned into an early childhood special education program at age 3, with parental consent.

With parental consent, the First Steps provider must transmit the most recent individualized family service plan (IFSP) report and evaluation reports from any source to the public school at least 6 months prior to the student's 3rd birthday. A transition planning conference must be convened before the child's 3rd birthday.

By the time of the student's 3rd birthday, the public school must:

- Complete an evaluation of the student;
- Convene the CCC to decide if the student is eligible for special education services;
- Develop an individualized education program (IEP) if the student is eligible for services; and
- On the student's 3rd birthday, implement the IEP, unless the CCC determines that services will start at the beginning of the school year.

If the student's 3rd birthday occurs during the summer, services must be provided during the summer only if the student's IEP requires extended school year services (ESY). Otherwise, the IEP should indicate that services will start at the beginning of the school year.

## **EARLY CHILDHOOD SPECIAL EDUCATION SERVICES FOR A STUDENT NOT PARTICIPATING IN FIRST STEPS**

Children who are 3 years of age and have a disability are eligible to receive services at age 3, even if the child did not participate in the First Steps program. To receive services, the parent must contact the school to request an initial educational evaluation. The parent will need to provide the school with written consent in order for the school to evaluate the child. Once the child is evaluated, the CCC will meet to determine the student's eligibility and, if eligible, develop an IEP for services.

## **EARLY CHILDHOOD SERVICES**

The student's CCC determines the number of hours per day and days per week of special education instructional time the student will receive. The CCC also determines whether the student needs related services in order to benefit from the special education. The parent is an equal partner in the CCC meeting. Services are to be tailored to meet the unique developmental and educational needs of the individual student. The school cannot decide on its own (unilaterally) to limit the instructional time or services based on disability categories, the age of the student, or administrative convenience.

An early childhood student with a disability (a 3 year old, 4 year old, or 5 year old who is not yet eligible for kindergarten enrollment) may receive special education and related services in a general education preschool, a special education preschool, a community preschool setting, at home, or any combination of these settings as determined appropriate by the CCC.

## SECTION VI

### PREPARING FOR TRANSITION FROM SCHOOL TO ADULT LIFE: TRANSITION IEP, TRANSFER OF RIGHTS, AND SUMMARY OF PERFORMANCE 511 IAC 7-43-3 THROUGH 7-43-7

**Transition IEP** – An IEP that is in effect when the student enters into 9th grade or becomes 14 years of age, whichever occurs first, or earlier if determined appropriate by the CCC.

#### TRANSITION INDIVIDUALIZED EDUCATIONAL PROGRAM (IEP)

The case conference committee (CCC) must develop a transition IEP that will be in effect as soon as one of the following occurs:

- The student enters grade 9;
- the student turns 14; or
- the CCC determines the need.

The student must be invited to the transition CCC meeting. If the student does not attend the meeting, the school must ensure the student's interests and preferences are considered. In developing an appropriate Transition IEP for the student, the school must collect and analyze data from age appropriate transition assessments. Age appropriate transition assessments are used to identify the student's strengths, preferences, and interests. The assessments also help identify transition services needed to assist the student in reaching the student's postsecondary goals. The CCC must use all of the information from the age appropriate assessments when developing the student's Transition IEP.

#### Additional Components of a Transition IEP

A transition IEP is similar to the IEP, but the main focus is to develop a plan to help the student move from high school to adult life. A transition IEP must include:

- Present levels of academic achievement and functional performance;
- Measurable postsecondary goals related to training, education, employment, and (if appropriate) independent living skills;
- Annual goals which are reasonably designed to enable the student to meet postsecondary goals;
- Courses that the student needs to take while in high school to reach postsecondary goals;
- Documentation of whether the student will work toward a high school diploma or a certificate of completion;
- The transition services needed to help the student reach the postsecondary goals;
- The names of the individuals or agencies who will provide the transition services; and
- Documentation that the CCC reviewed and provided information to the parent on the kinds of adult services available through the state or local community, if appropriate.

### **Participation of Vocational Rehabilitation or Other Transition Service Providers in the Transition IEP**

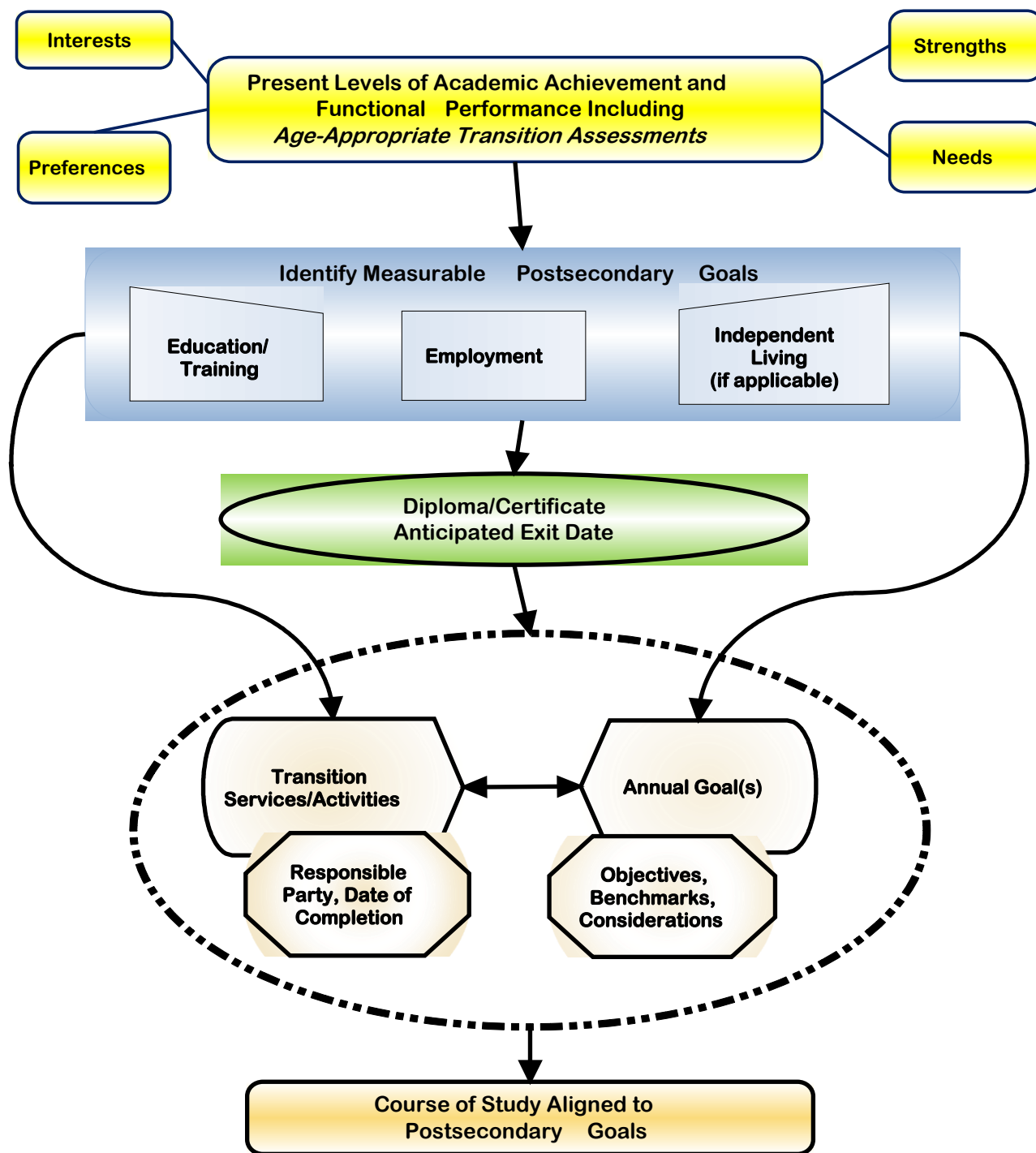
The school must obtain written consent from the parent or adult student before sharing confidential student information with a person from any outside agency that provides transition services, such as Vocational Rehabilitation, or before inviting an outside agency to attend the CCC meeting.

### **Participation of Vocational Rehabilitation or Other Transition Service Providers in the Transition IEP CCC**

The school must obtain written consent from the parent or adult student before sharing confidential student information with a person from any outside agency that provides transition services, such as Vocational Rehabilitation, or inviting an outside agency to attend the CCC meeting.

The following is a visual picture of how the Transition IEP process should work.

## TRANSITION IEP



NOTE: Discuss all other applicable IEP components

## TRANSFER OF RIGHTS

When a student turns 18 years of age, the special education rights given to the parent under federal and state special education laws transfer to the student **unless** a guardian or educational representative has been appointed for the student. The rights transferred to the student at age 18 include:

- consenting to evaluations;
- requesting and attending CCC meetings;
- inviting others to attend a CCC meeting;
- taking action if the student disagrees with the schools proposed IEP; and
- requesting mediation or a due process hearing.

At a CCC meeting before the student turns 17 years of age, the school must provide the parent and the student with written notice that the rights will transfer to the student at the age of 18. The school must also provide the student and the parent with written notice that the rights have transferred at the time the student turns 18 years of age, unless a guardian or educational representative has been appointed for the student. The school will continue to send all written notices to both the student and the parent, but the student of legal age has the right to make educational decisions and take the same actions the parent could take before the student turned 18 years of age.

### Guardians

A guardian is a person appointed by a judge to make decisions for an incapacitated individual. To be considered incapacitated, a judge must first determine that a student who is 18 years of age or older lacks sufficient understanding or capacity to make responsible decisions.

### Appointing an Educational Representative

If a guardian has not been appointed, the school may appoint an educational representative in either of the following situations:

1. The student makes a written request for a representative to be appointed.
  - The school must appoint the student's parent to serve as the educational representative. If the student's parent is not available, the school must appoint a trained educational surrogate parent.
  - The student may ask that the educational representative be removed or replaced at any time. The student's request to no longer have an educational representative must be made in writing to the school.



2. Two qualified individuals (see list below) examine or interview the student and certify in writing that the student is not able to give informed consent. This means the student is unable to:

- Consistently understand the nature, benefit, and consequences of the services or other program options offered by the school,
- Make rational educational decisions based on the benefits and consequences of one service or program over another, and
- Communicate his understanding of the decision in a meaningful way.

A qualified individual must be:

- A physician with an unlimited license,
- A licensed nurse practitioner,
- A licensed clinical psychologist,
- A licensed psychologist,
- A licensed school psychologist, or
- A licensed clinical social worker.

The 2 individuals cannot be related to the student, and only 1 of the 2 can be employed by the school.

The school is not responsible for the costs of the examination by someone not employed by the school. When the school receives the written information from both individuals, the school will appoint an educational representative. An educational representative may be appointed up to 60 calendar days before the student's 18th birthday or any time after that if appropriate.

## SUMMARY OF PERFORMANCE (SOP)

When a student graduates with a high school diploma, leaves high school with a certificate of completion, or exceeds the age of eligibility to receive special education services (turns 22 during the school year), the school must provide the student with a written summary of the student's academic achievement and functional performance. The **summary of performance (SOP)** is a written plan that describes what the student has achieved and provides recommendations for helping the student achieve the student's goals for life after high school.

The **SOP** should include the following basic items, but may include more.

- Basic demographic information about the student (name, address, date of birth, etc.).
- The student's goals for after high school that take into account the student's educational program and the student's interests, preferences, and strengths.

- A summary of the student's academic achievement and functional skill levels.
- Recommendations on what services and supports the student may need to reach the goals for after high school, such as accommodations, modifications, or assistive technology.

## **SECTION VII**

# **SERVICES TO STUDENTS IN NONPUBLIC SCHOOLS AND SPECIAL EDUCATION AND RELATED SERVICES FOR PARENTALLY-PLACED STUDENTS WITH DISABILITIES IN NONPUBLIC SCHOOLS**

### **511 IAC 7-34**

For students with disabilities who have been placed in nonpublic schools by their parents, public schools have a duty to:

- Locate, identify, and evaluate all students with disabilities,
- Consult with nonpublic school representatives and representatives of the parents of nonpublic school students with disabilities, and
- Make available special education and related services to all students with disabilities.

## **SERVICES TO STUDENTS IN NONPUBLIC SCHOOLS**

If a student has been determined eligible as a student with a disability through the evaluation and case conference committee (CCC) process the student is entitled to some level of special education services from the school corporation where the nonpublic school is located.

A nonpublic school student with a disability receives special education and related services from the public school in accordance with a service plan. A service plan is similar to an individualized education program (IEP), but does not contain all of the components of an IEP. A service plan includes:

- The student's present levels of educational performance;
- Measurable annual goals related to the services that will be provided;
- The special education and related services that will be provided;
- A statement regarding the student's participation in statewide or district testing and any appropriate accommodations the student will use;
- Projected dates of when services will begin and end, as well as the length and frequency of services to be provided; and

- Information on how the student's progress toward the annual goals will be measured and how the school will inform the parent of the progress.

Students generally receive a different level of service under a **service plan** than students receive under an IEP. The full array of services required to ensure that a student in a public school receives a **free appropriate public education (FAPE)** under an IEP are not required to be made available as part of a service plan for a student in a nonpublic school.

For example, the length and frequency of services to be provided may be less than the student would receive through an IEP; alternatively, the service plan may provide consultative services in the nonpublic school where, were the student enrolled in a public school program, the services may be more direct. If the public school decides to provide the services at a location other than the nonpublic school, it must provide transportation for the student to and from the location.

The parent of a student who is enrolled in a nonpublic school may request mediation or a due process hearing only if the parent disagrees with the school's child find activities, the appropriateness of an evaluation, or the determination regarding a student's eligibility to receive special education services. Due process hearing and mediation procedures are not available to resolve disagreements about annual goals, the special education and related services that the public school is offering, or where the services will be provided. If the parent believes the public school has not complied with the requirements of IDEA or Article 7, the parent may file a complaint with the Indiana Department of Education (IDOE).

### Child Find Responsibilities

Child find is the requirement that schools locate, identify, and evaluate all students between the ages of 3 to 22 years of age who are in need of special education and related services. The parent may request that an initial evaluation be conducted by either the public school corporation where the nonpublic school is located or the student's school corporation of legal settlement (the school corporation in which the student lives).

**If the parent requests the evaluation from the school corporation where the nonpublic school is located, the school must:**

- Explain to the parent the concept of a FAPE;
- Advise the parent that the parent has the right to ask the school corporation of legal settlement for an offer of a FAPE (e.g., an IEP developed by the CCC); and

- Ask the parent if the parent wants the evaluation conducted by the school corporation where the nonpublic school is located or the student's school corporation of legal settlement.

**If the parent chooses to have the evaluation conducted by the school corporation where the nonpublic school is located,** the chosen school corporation must:

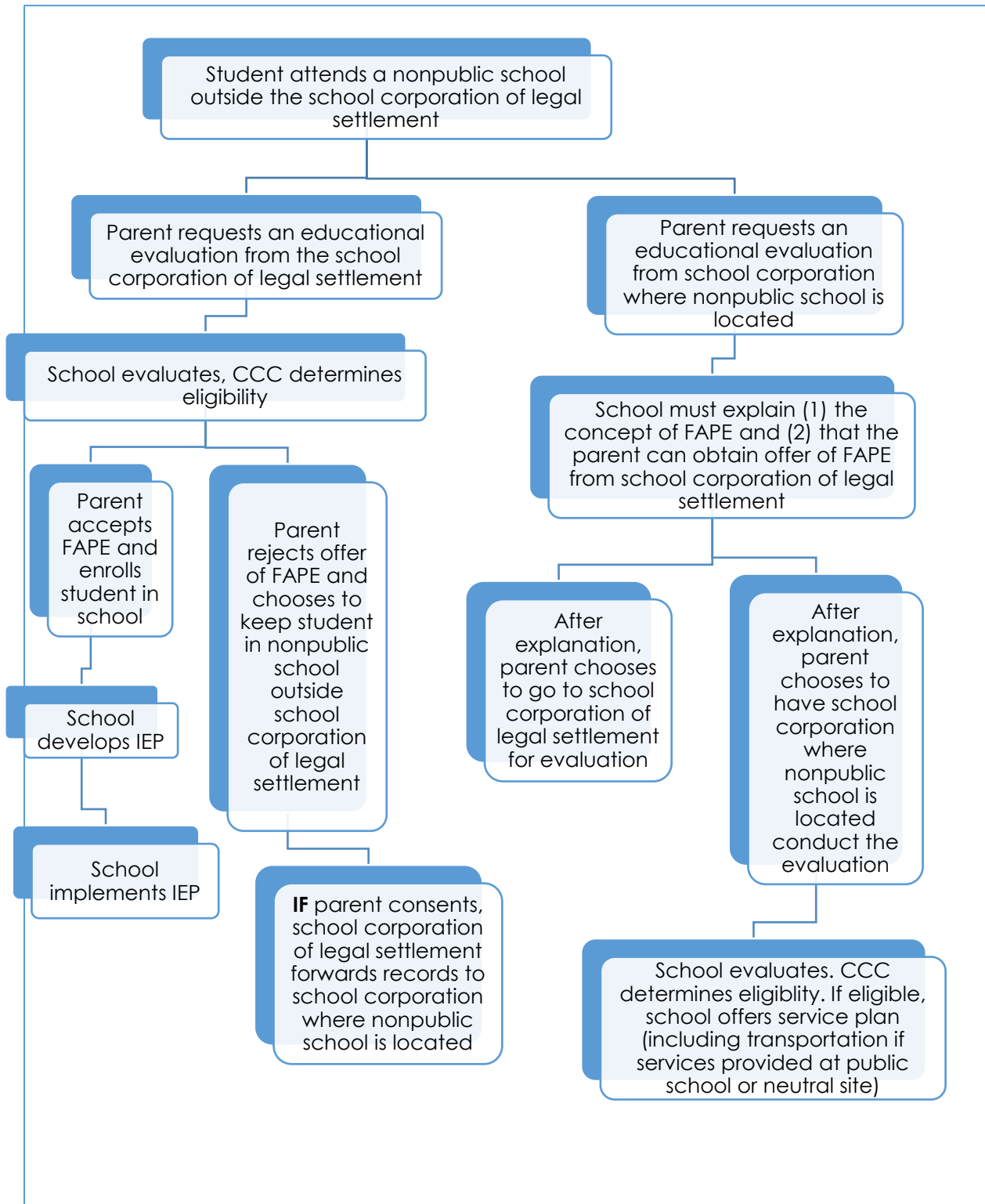
- follow the procedures for conducting an initial evaluation,
- including providing the parent with written notice, conducting the evaluation, and
- convening the CCC within the appropriate timeline.

**If the parent chooses to have the evaluation conducted by the school corporation of legal settlement,** the parent must contact the school corporation of legal settlement and request the initial evaluation. The school corporation of legal settlement must:

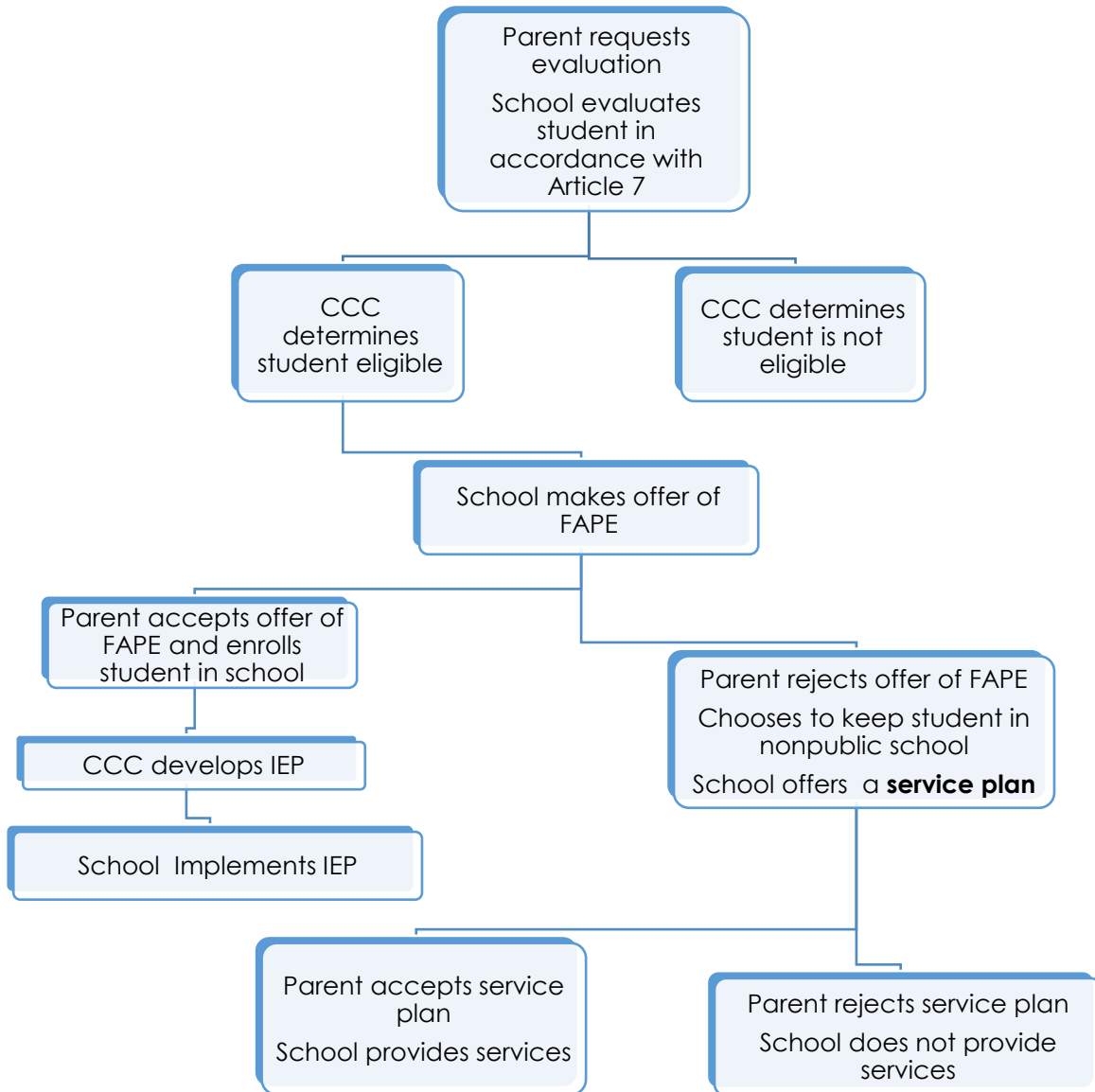
- provide the written notice,
- conduct the evaluation, and
- convene the CCC meeting as required.

**NOTE:** When a student with a disability attends a nonpublic school outside the school corporation where the student lives (which is the student's "school of legal settlement"), parental consent must be obtained before personally identifiable information about the student is shared between the school corporation where the student lives and the school corporation where the nonpublic school is located.

## Flow Chart – Student Enrolled in Nonpublic School outside the Student's School Corporation of Legal Settlement



## Flow Chart – Student Enrolled in Nonpublic School within the Student's School Corporation of Legal Settlement



## **SECTION VIII**

# **CHOICE SCHOLARSHIPS AND PROVISION OF SPECIAL EDUCATION AND RELATED SERVICES BY CHOICE SCHOOLS**

### **511 IAC 7-49**

## **INTRODUCTION TO CHOICE SCHOLARSHIP**

Indiana's Choice Scholarship Program, commonly referred to as the voucher program, provides scholarships to eligible Indiana students to offset tuition costs at participating nonpublic schools, known as choice schools. Students must satisfy both household income requirements and student eligibility criteria to qualify for this program. Students with disabilities who receive a choice scholarship are referred to as choice scholarship students.

## **SPECIAL EDUCATION SERVICE PROVIDER**

When a student with a disability applies for a choice scholarship, the choice school must inform the parent of the special education and related services it makes available. After receiving this information, the parent then selects either the choice school or the school corporation within whose boundaries the choice school is located as the provider of special education and related services. This service provider selection is valid for the entire school year for which the choice scholarship was awarded, unless the parent revokes consent (see below). The school chosen to be the service provider must be reselected every year that the student receives a choice scholarship and remains eligible for special education and related services.

### **Parent Chooses Choice School as Service Provider**

If the choice school is to be the service provider, within a reasonable time after the choice student enrolls in the choice school, the choice school must arrange a meeting with the parent of the choice scholarship student in order to: determine the student's special education and related service needs; and develop a choice scholarship education plan (CSEP) for the student.



## CHOICE SCHOLARSHIP EDUCATION PLAN REQUIREMENTS

The CSEP, similar to an IEP, describes the special education and related services that the choice school is required to provide to the choice scholarship student. A CSEP must be in writing and must contain the following:

- Measurable goals;
- Information on how the student's progress will be monitored and how parents will be informed of this progress;
- Accommodations that the choice school will provide to the student, including accommodations needed for the student to participate in statewide testing; and
- The length, frequency, and duration of the special education and related services to be provided.

### Parental Rights

Parental Consent: Written parental consent is required to implement all CSEPs.

Parental Right to Review the CSEP: A parent may request a meeting at any time to review the CSEP. The choice school must convene a meeting to review the CSEP within a reasonable time of receiving the request.

Beginning of Year Review. For returning choice students who already have a CSEP and re-elect the choice school as service provider, the prior year's CSEP must be reviewed at the beginning of the year by the choice planning team in order to develop a new CSEP.

Revocation of Consent A parent may revoke consent to the CSEP at any time by providing a signed written statement revoking the CSEP, and this revocation will revoke the entire CSEP. Upon receipt of the written revocation, the choice school MUST stop implementing the CSEP.

Result of Revocation of Consent. Upon receipt of the written revocation, the choice school must immediately notify the school corporation within whose boundaries the choice school is located that the student is no longer receiving services under the CSEP and the choice scholarship no longer includes the applicable special education funds. The choice school must immediately provide a copy of the CSEP to the school corporation. No later than 10 school days from the date the school corporation receives this written notice, the school corporation must convene a CCC meeting and develop a service plan.

## If the Local School Corporation is the Service Provider

The school corporation where the choice school is located must convene a CCC and develop a service plan. The practical effect of this parental selection is that the choice scholarship student receives services in the same manner as other special education students attending nonpublic schools.

## PARENT REQUESTS A REEVALUATION

If the parent of a choice student requests a reevaluation of the student, the school corporation must conduct the reevaluation, and the choice school must be included in the collaboration and sharing of relevant information related to the reevaluation.

## RESOLVING DISAGREEMENTS WITH THE CHOICE SCHOOL

There may be times when the parent and choice school have a disagreement about the provision of special education and related services that cannot be resolved by working together to reach an agreement. Because the choice school is a nonpublic school, 2 of the 3 dispute resolution options— requesting mediation and requesting a due process hearing—are NOT available.

However, the parent of a choice student has the right to **file a complaint. The parent must first file the complaint with the choice school.** If the choice school does not resolve the complaint to the parent's satisfaction, the parent may file a complaint with the IDOE. A special education complaint filed with the IDOE will be investigated in the same manner as any other special education complaint. Failure of the choice school to timely comply with any corrective action resulting from the complaint investigation may impact the choice school's continued eligibility as a choice school.

## SECTION IX

# CONFIDENTIALITY OF INFORMATION

### 511 IAC 7-38

## THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA)

The Family Educational Rights and Privacy Act (FERPA)), the Individuals with Disabilities Education Act (IDEA), and Article 7 generally require the school to obtain parental consent before disclosing or releasing personally identifiable information from the student's educational record. However, there are a number of situations in which the school may release certain information about a student without obtaining written parental consent.

## EDUCATIONAL RECORD

A student's **educational record** includes any records directly related to a student and maintained by the school or someone acting on the school's behalf. Among other things, an educational record includes test protocols that contain personally identifiable information regarding the student, the individualized education program (IEP), audio or video clips, scanned images, and other electronically recorded or produced items.

**Personally identifiable information** about a student means "information by which it is possible to identify a student with reasonable certainty," such as name, address, and social security or student test numbers.

### Right to Inspect the Educational Record

Parents and students of legal age have the right to inspect and review the educational record. When a parent or student of legal age makes a request to inspect and review the record, the school must provide access to the record:

- Without unnecessary delay;
- Before any meeting regarding an IEP, interim alternative educational setting (IAES) or manifestation determination;
- Before a resolution session or any due process hearing; and
- Within 45 calendar days of the request.

The right to inspect and review the student's record includes the right to:

- Have information interpreted or explained by school personnel;
- Receive copies if the failure to receive copies would prevent the parent or student of legal age from exercising the right to inspect and review the record;
- Have a representative inspect and review the record on behalf of the parent) or student of legal age; and
- Receive a copy of the record for use in a pending due process hearing.

The school is entitled to charge the parent a fee for copies of anything except IEPs and educational evaluation reports.

### **Divorced, Separated, or Never Married Parents: The Right to Access the Student's Educational Record**

If the school has not received a copy of a court order terminating or restricting a parent's authority to access a student's educational record, the school must allow non-custodial parents the same rights as custodial parents to inspect and review the record. If the school does not know this individual, the school must verify the identity of the individual as the student's parent.

### **Amending the Educational Record**

If there is information in the student's educational record that the parent or student of legal age believes is inaccurate, misleading, or otherwise violates the student's rights, the parent or student of legal age may submit a written request to the school that certain information be changed or deleted. The school must respond in writing to the request within 10 business days, indicating whether or not the school will amend (change) the student's educational record as requested.

If the school declines to amend the educational record, the letter must inform the parent or student of legal age of the right to request a hearing, including information on how to request a hearing and the procedures for the hearing.

### **Maintaining the Educational Record**

The school must maintain a student's educational record for at least 3 years after the student exits from the special education program and in accordance with the school's own policy for retaining student records. In addition, the school cannot destroy a student's record if there is a pending request to inspect and review the record or a pending due process hearing.

## SECTION X

# PROCEDURAL SAFEGUARDS

### 511 IAC 7-37

Article 7 provides several procedural safeguards for parents and students that are designed to promote parental participation, ensure that students with disabilities are provided a **free appropriate public education (FAPE)**, and provide a means of resolving disagreements. Procedural safeguards have been referred to as the “rights and responsibilities” of the parents and schools.

The **procedural safeguards** affirm the right of the student’s parent:

- To be fully informed;
- To participate in the process;
- To receive prior notice and provide consent;
- To have any information that could personally identify the student held in confidence;
- To examine all relevant records; and
- To a timely and impartial resolution of disputes.

To help parents understand the procedural safeguards, the school must provide the parents with a copy of the notice of procedural safeguards (NOPS) in language understandable to the general public.

The school may post the NOPS on its website. However, the school must also provide the parents a written copy of the NOPS, unless the school offers the option of receiving the NOPS by email, and the parent chooses that option.

## THE NOTICE OF PROCEDURAL SAFEGUARDS

The NOPS contains information about:

- The parent’s right to written notice before the school can take certain action;
- The situations in which the school must obtain the parent’s written consent before taking certain action and the parent’s right to revoke an existing consent;
- The parent’s right to participate as a member of the conference committee (CCC);
- The parent’s right to request a CCC;
- The parent’s right to request a copy of the initial educational evaluation report or a meeting with an individual who can explain the results of the evaluation
- The parent’s right to request a reevaluation;

- The parent's right to request an independent educational evaluation (IEE) if the parent disagrees with the school's evaluation;
- The parent's right to inspect and review the student's educational record, to provide consent before information from the record is disclosed, and to challenge information in the record;
- The transfer of rights to the student at 18 years of age;
- The availability of mediation to help resolve disputes;
- The right of a parent or other individual to file a complaint;
- The parent's right to request a due process hearing;
- The differences between a complaint and due process hearing;
- The student's placement during the pendency of a due process hearing;
- The requirements for a parent's unilateral placement of a student with a disability in a private school;
- The protections and procedures for students who are subject to certain disciplinary actions, including manifestation determinations and placement in an interim alternative educational setting (IAES);
- The protections for those students who have not yet been determined eligible for special education;
- The school's reporting of crimes allegedly committed by a student with a disability; and
- The contact information for the school and other agencies and organizations that can provide assistance to parents in understanding Article 7.

The school must provide the parents a copy of the NOPS at least once a year and upon:

- The initial referral or parent request for an evaluation;
- A parent's first complaint in a school year ;
- A parent's first request for a due process hearing in the school year;
- A school's decision to make a disciplinary change of placement; and
- A parent's request for a copy of the NOPS.

## SECTION XI

# STUDENT DISCIPLINE

### 511 IAC 7-44

A student with a disability generally may be disciplined the same as a student without a disability. However, a student with a disability has additional protections in certain situations.

## REMOVALS

IDEA and Article 7 use the term removal to refer to any situation in which a student is removed from the student's placement for any period of time, not pursuant to the student's IEP.

The school may remove a student with a disability for up to **10 consecutive school days** when the student breaks school rules as long as the same discipline would apply to a student without a disability who broke the same rule.

An **in-school suspension** does not count as a removal if the student:

- can continue to progress in the general curriculum;
- receives the special education services described in the student's IEP; and
- participates with nondisabled students to the same extent as in the student's current placement.

The school does not have to provide any services to the student during the first **10 school days** of removal during the school year.

If a student is **suspended from transportation**, and if transportation is a related service in the student's IEP, the suspension will count as a removal unless the school provides the student with alternate transportation. If transportation is not a related service in the student's IEP, the suspension from the bus does not count as a removal.

If the student is removed for only part of a day, it counts as a whole day of removal. If the school asks the parent to pick the student up early from school due to behavior, it counts as a whole day of removal unless pursuant to a student's IEP. A short-term removal pursuant to the student's IEP is not a removal.

## DISCIPLINARY CHANGE OF PLACEMENT

When a student has been removed for more than **10 cumulative school days** in a school year, the school decides if the series of removals **constitutes a disciplinary change of placement**. A removal or series of removals from a student's current educational placement results in a change of placement in the following situations:

- The student's removal is for more than 10 consecutive school days.
- The student is subjected to a series of removals that constitute a pattern because:
  1. The series of removals adds up to more than 10 school days in a school year;
  2. The student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removals; and
  3. Of such additional factors as length of each removal, the total time the student has been removed, and how close in time the removals are to one another.

**The school must provide special education services to the student during any removals beginning on the 11th day of the removal during the school year.**

### Removals That Do Not Result In a Change of Placement

If the removal does not result in a change of placement, the student's removal continues for the number of days decided by the school. The school, with input from at least one of the student's teachers, will determine the services needed to enable the student to continue to participate in the general education curriculum (although in a different setting due to the removal) and to make progress towards the goals in the student's IEP. These services must be provided beginning on the **11th** day of the removal in the school year.

### Removals That Result In a Change of Placement

If the removal results in a change of placement the school must immediately notify the parent of the change of placement and provide the parent with a copy of the Notice of Procedural Safeguards.

Within **10 school days** of the date of the change of placement for disciplinary reasons, the CCC must meet to decide if the student's behavior is a manifestation of the student's disability. Article 7 calls this a **manifestation determination**. If the CCC determines that the student's behavior is a manifestation of the student's disability, the CCC must take further action (see below).



## MANIFESTATION DETERMINATION

When a student's removal for disciplinary reasons is a change of placement, the CCC must determine if the conduct in question was:

- caused by the student's disability, or had a direct and substantial relationship to the student's disability, or
- the direct result of the school's failure to implement the student's IEP or **behavioral intervention plan (BIP)**.

### Conduct is a Manifestation of the Student's Disability

If the behavior is a manifestation of the student's disability, the CCC must:

- Conduct a **functional behavioral assessment (FBA)** (if the school has not already done so) and develop and implement a **BIP**.
- If a **BIP** has already been developed, review and revise the BIP as necessary to address the student's behavior.

Unless the behavior involved possession of weapons or drugs, or involved serious bodily injury, the student should be returned to the placement from which the student was removed. Alternatively, the parent and school can agree to a change of placement. If the CCC decides that the student's behavior was the direct result of the school's failure to implement the IEP, the school must take immediate steps to fix the problem.

### Conduct is Not a Manifestation of the Student's Disability

If the CCC decides that the behavior is not a manifestation of the student's disability, the student may be removed or otherwise disciplined in accordance with the school's disciplinary policies for nondisabled students. The school must provide educational services to the student while the student is removed. The CCC decides what educational services the student needs and where the student will be placed during the removal. The services designed by the CCC must allow the student to:

- Continue to participate in the general education curriculum, even though the student is in a different setting;
- Progress toward meeting the goals in the student's IEP; and
- Receive an FBA, and behavioral intervention services designed to address the student's behavior.

### Disagreement with the Manifestation Determination

If the parent disagrees with the manifestation determination the parent may request mediation, a due process hearing, or both. If the parent requests a due process hearing, the hearing will be expedited.

## INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

The school may place the student in an **interim alternative educational setting (IAES)** for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

- Carries or possess a weapon;
- Possess, uses, or sells illegal drugs or controlled substances; or
- Inflicts serious bodily injury on another person;

while at school, on school premises, or at a school function.

A manifestation determination must be conducted by the student's CCC. The student remains in the IAES whether or not the conduct is a manifestation of the student's disability. The student's CCC determines the IAES and appropriate services needed to enable the student to:

- Continue to participate in the general education curriculum, although in another setting;
- Progress toward meeting the goals in the student's IEP; and
- Receive, as appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so it does not recur.

### Definition of "Seriously Bodily Injury"

Serious bodily injury means bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

### Disagreement with IAES Placement

If the parent disagrees with the IAES placement the parent may request mediation, a due process hearing, or both. If the parent requests a due process hearing, the hearing will be expedited.

### Substantial Likelihood of Injury to Student or Others

If at the end of the period of suspension, expulsion, or placement in an IAES the school believes that returning the student to the placement prior to the removal is substantially likely to result in injury to the student or others, the school may request an expedited due process hearing to determine an appropriate placement for the student.

## PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE

A student who has not been determined eligible for special education and related services and engaged in behavior that violated any rule or code of conduct of the school may assert the protections provided by Article 7 if the school had knowledge that the student was a student with a disability.

A school is deemed to have knowledge that a student is a student with a disability if any of the following has occurred:

- The parent expressed concern in writing to licensed personnel, or a teacher of the student, that the student is in need of special education and related services;
- The parent or school requested an initial evaluation of the student; or
- The student's teacher or other school staff has expressed a specific concern about a pattern of behavior demonstrated by the student directly to a supervisor.

If a parent requests an initial educational evaluation during the time the student is suspended, expelled, or placed in an IAES the evaluation must be conducted in an expedited manner.

## SECTION XII

# RESOLVING DISAGREEMENTS: COMPLAINTS, MEDIATION, AND DUE PROCESS HEARINGS

### 511 IAC 7-45

There may be times when the parent and school do not agree about the provision of special education or related services. Sometimes the disagreement can be resolved by a meeting between the parent and school or by convening a case conference committee (CCC) meeting. By working together to reach an agreement, the parent and school are able to continue a positive relationship and often find a solution to the disagreement in less time than using a more formal dispute resolution process.

Before filing a complaint, requesting mediation, or requesting a due process hearing:

- Be sure to identify the specific disagreement.
- Discuss your concerns with the teacher of record (TOR), the principal, or special education director. If necessary, ask to hold a CCC meeting.
- If you need more information or assistance in understanding the law, contact one of the resources found in the Appendix.

When the parent and the school are unable to find a resolution for the disagreement, the parent may:

- File a complaint,
- Request and participate in mediation, or
- Request a due process hearing.

The school may also request mediation or a due process hearing.

## COMPLAINTS

A complaint is a claim that the school has violated federal special education rules or Article 7 or has failed to comply with an order issued by an independent hearing officer (IHO). A complaint requests an investigation of the alleged violation by the IDOE and may concern one child or student, or a group of students. There are a number of reasons a parent may file a written complaint. A few examples include:

- The school changed the student's placement without providing the parent with prior written notice.

- The school has failed to conduct an evaluation and convene the CCC within the required timelines.
- The parent believes the school is not providing the services included in the student's individualized education program (IEP).

**The alleged violation in the complaint must have occurred within 1 year of the date the complaint is filed.**

Instructions for filing a complaint can be found at:

<http://www.doe.in.gov/specialed/special-education-complaints>.

## Filing a Complaint

A complaint may be filed by the parent or any other individual, a group of individuals, or by an agency or organization.

### **All complaints must:**

- Be in writing and signed by the complainant;
- Include a statement that the school has not followed one or more requirements of Article 7 or IDEA (federal special education laws);
- Include the facts about the alleged violation;
- Include complainant's contact information; and
- Be submitted to the IDOE and the school.

**If the complaint involves a specific student**, the complaint must also include:

- The student's name and address;
- The name of the school the student attends;
- A description of the alleged violation, including facts related to it; and
- A proposed resolution if known.

The fully completed and signed complaint must be sent to the IDOE's Office of Special Education and the school's superintendent.

## After Filing the Complaint

Once the IDOE's Office of Special Education receives the complaint, it will be assigned to a **complaint investigator**. The complaint investigator will then contact the school and the complainant.

The school has **10 calendar days** from the date the IDOE receives the complaint to:

- Provide a written response to the IDOE;

- Agree with the complainant to engage in mediation (the mediation must be completed within **20 calendar days** from the date the IDOE receives the complaint);
- Resolve the complaint with a written agreement signed by both parties, submitted to the IDOE, and identifying any issues that remain for investigation; or.
- Notify the IDOE to investigate the complaint because the school will not be taking any of the other actions.

A complaint investigator will investigate the complaint if:

- The school does not respond;
- The school notifies the IDOE to begin the investigation; or
- The school and the parent are not able to reach an agreement on the issue.

After completing the investigation, the complaint investigator will issue a written report within **40 calendar days** from the date the IDOE received the complaint. The investigator will forward a copy of the report to the complainant and the school.

If the complaint investigator finds a violation, corrective action may be required. If corrective action is required, the report will include a timeline for the school to complete the corrective action. The investigator will monitor the school's progress and compliance with the corrective action.

## Reconsideration

The complainant or school may request that any part of the investigator's report be reconsidered by the Director of Special Education for the IDOE. The request for reconsideration must be made in writing and must specifically identify the findings of fact, conclusions, or corrective action to be reconsidered. The request for reconsideration must be submitted to IDOE's Office of Special Education within 7 calendar days of receiving the complaint investigator's report.

The Director of Special Education for the IDOE will review the complaint file and decide if any changes should be made to the original report. If changes are made to the original report, the IDOE will issue a revised complaint investigation report. If there are no changes, the IDOE will send a letter to all parties stating that no changes are being made. This must be done within **60 calendar days** of the date the IDOE received the written complaint.

## MEDIATION

Mediation is a voluntary and confidential process that allows the parent and school to attempt to resolve their issues with the help of a trained and impartial mediator. The goal of mediation is finding a solution that meets the educational needs of the child. The mediator helps the parties communicate with each other, so that everyone has an opportunity to express concerns and offer solutions. The mediator's focus is on resolving disagreements and working toward a solution that satisfies all participants. The mediator does not make decisions. The parent and school must both agree to any decisions made.

### **Mediation may be used to resolve:**

- A student's identification and eligibility for services;
- The appropriateness of an educational evaluation or the proposed or current special education services or placement;
- Any other dispute involving the provision of a FAPE to the student;
- Reimbursement for services obtained by the parent; or
- Any issues involved in a current complaint or due process hearing.

### **Requesting Mediation**

A request for mediation may be made by the parent or school, but the mediation process cannot begin unless both parties agree in writing to participate in the process. The completed mediation request, containing both the parent and the school's signatures, must be sent to the IDOE's Office of Special Education.

Instructions for requesting mediation can be found at:  
<http://www.doe.in.gov/specialed/special-education-mediation>.

### **The Role of the Mediator**

A mediator is an individual who is impartial and knowledgeable about the laws and regulations relating to special education and related services. Special education mediators must be trained in mediation techniques and listed on the Supreme Court's registry of mediators. An individual serving as a mediator cannot be an employee of the IDOE or the school involved in the education or care of the student.

The IDOE assigns mediators on a general rotation basis. This means that when the IDOE receives a request for mediation, the IDOE contacts the mediator at the top of the rotation list to check their availability to serve as a mediator. If that person is not available, the IDOE will contact the next person on the list.

The mediator:

- Works with the parent and school to schedule a convenient date, time, and location for the mediation;
- Helps the parent and the school identify and talk about the issues causing the disagreement;
- Gives everyone the opportunity to present their point of view; and
- Helps the parent and school find a solution to the disagreement that is acceptable to both sides.

Parties to mediation must agree that all discussions taking place during the mediation are confidential and cannot be used as evidence in a due process hearing or civil court. If an agreement is reached through the mediation process, the parties must execute a legally binding written agreement setting forth the terms of the agreement. The agreement can be enforced in civil court or through the complaint process.

#### KEY POINTS ABOUT MEDIATION

- Mediation may be requested by the parent or the school, is voluntary, and both the parent and the school must agree to mediate.
- There is no cost to the parent or the school.
- Mediation sessions are scheduled in a timely manner, in a location convenient to both parties.
- All discussions that occur in a mediation session are confidential and cannot be used as evidence in a due process hearing or court proceeding.
- Mediation may be used alone to resolve the disagreement.
- Mediation may also be requested before or at the same time as a due process hearing request or a complaint.
- If the disagreement is resolved through mediation, the parties must put the agreement in writing.
- The written mediation agreement:
  - Must be signed by both the parent and the school's representative,
  - Must describe the parties' agreement,
  - Must state that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in a due process hearing or other civil court proceeding, and
  - Is a legally binding agreement that may be enforced through the state complaint process or in federal or state court.



## DUE PROCESS HEARING

A due process hearing is a more formal process than other dispute resolution options mentioned above. It is a hearing held before an independent hearing officer (IHO). The parent and the school have the opportunity to testify and present evidence. At the conclusion of the hearing, the IHO considers all of the information and issues a written decision.

A due process hearing can be used to settle a disagreement about:

- The student's identification or eligibility as a student with a disability;
- The appropriateness of the educational evaluation, level of services, or placement;
- Reimbursement for services obtained by the parent; or
- Anything else related to the provision of a FAPE.

### Requesting a Due Process Hearing

Only a student's parent (or student of legal age), the school, or the IDOE may request a due process hearing.

**In general, a due process hearing must be requested within 2 years of the date that the parent or school knew or should have known about the issue or action that caused the disagreement.**

A request for a due process hearing must be in writing, signed, and include:

- The student's name and address;
- The parent's name, address, and phone number;
- The name of the school corporation and the school the child attends;
- The reason the parent is requesting the hearing including a description of the disagreement and any facts related to the it; and
- A proposed resolution if known.

A parent's request for a due process hearing must be sent to the Superintendent of Public Instruction at the IDOE and the school's superintendent. A school's request for a due process hearing must be sent to the Superintendent of Public Instruction and the parent. The Superintendent of Public Instruction will appoint an IHO and notify the parties of the appointment. The school must provide the parent with information on free or low-cost legal or other relevant services available in the area.

If a parent requests a hearing, the school has a **30 calendar day** "resolution period" to try to resolve the disagreement.

Instructions for requesting a due process hearing can be found at:

<http://www.doe.in.gov/specialed/special-education-due-process-hearings-511-iac-7-45-3-7-45-7>.

### Written Response for a Due Process Hearing

Within 10 calendar days of receiving the request for a due process hearing, the party receiving the request must send the other party a written response specifically addressing the issues in the due process hearing request. If the school has not already sent the parent a written notice about the action it wants to take or refuses to take, it must also provide the parent with this written notice.

### Notice of Insufficiency

If the party receiving the hearing request believes the request does not contain all the requirements of Article 7, the party must notify the IHO that the request does not meet the requirements. This “notice of insufficiency” must be filed within **15 calendar days** of receipt of the due process request. The IHO has **5 calendar days** after receiving the notice of insufficiency to decide if the request meets all of the requirements. If the IHO determines the request is not sufficient, the IHO must identify how the request is insufficient and send written notice to the parties. A party may amend the hearing request only if the other party consents or the IHO grants permission. If the hearing request is determined insufficient and is not amended, the request may be dismissed.

### Resolution Meeting

A resolution meeting is an opportunity for the parent and the school to talk about the issues in the parent’s due process hearing request to see if they can resolve them without a due process hearing. The parent and the school must participate in a resolution meeting, unless:

- The school is the requesting party;
- Both parties agree to waive the meeting; or
- Both parties agree to mediation instead of the resolution meeting.

The school must conduct the meeting within 15 calendar days of the date it received the parent’s request for a due process hearing. The resolution meeting includes the parent, a representative of the school district who has decision-making authority, and any members of the CCC who may have information that can help resolve the issues. The student’s parent may bring an attorney or an advocate to the resolution meeting. The school may not be represented by an attorney at the resolution meeting unless the parent is represented by an attorney.

If the parent does not participate in the resolution meeting, the school may ask the IHO to dismiss the parent's due process hearing request.

### AGREEMENT REACHED

If an agreement is reached during the resolution meeting, the agreement must be put in writing and signed by the parent and the school's representative. Once the agreement is signed, the parent and the school have 3 business days to change their minds and cancel the agreement. If either one wants to cancel the agreement, it must be done in writing. The agreement is a legally binding document (like a contract), and it can be enforced by a court. The complaint process can also be used to enforce the resolution agreement.

### NO AGREEMENT REACHED

Generally speaking, if the parties are unable to reach an agreement during the 30 day resolution period, the **45 calendar day** period in which to conduct the hearing and issue a written decision begins.

If the school requests a hearing, the hearing must be conducted and a final written decision reached within **45 calendar days**.

## The Hearing Process

The IHO will issue the **preliminary scheduling order** shortly after receiving the hearing assignment. The preliminary scheduling order identifies when key events in the hearing process will occur.

During the 30 day resolution period, the IHO will hold a **prehearing conference**, with both parties participating, to talk about the issues for the due process hearing, as well as when and where the hearing will take place. The prehearing conference may occur in person or by other means such as by phone.

The **hearing** will be held at a time and place that is convenient for the parent and the school. During the due process hearing, the parent and the school have a chance to present their side of the story. Each side can have witnesses testify (answer questions) and can provide documents in support of their position. It is similar to what happens in court, but it is not as formal. The IHO serves as the "judge." A court reporter will record the hearing and provide a written transcript of the hearing.

## EXPEDITED DUE PROCESS HEARING

There are times when a due process hearing must be expedited. This means that the hearing and the activities leading up to the hearing happen sooner than in a regular hearing, and the IHO cannot grant any extensions of time. The parties can agree that the hearing not be expedited.

There are 3 situations when an expedited hearing may occur:

1. If the parent disagrees with the school's determination that the student's behavior was not a manifestation of the student's disability;
2. If the parent disagrees with the school's decision regarding the student's disciplinary change of placement; or
3. If the school believes that it is dangerous for the student to return to the current placement after the expiration of the student's placement in an interim alternative education setting, or believes there is a substantial likelihood of the student causing harm to self or others.

## APPENDIX

### PARENT RESOURCES

ASK Indiana (About Special Kids), 1-800-964-4746: [www.aboutspecialkids.org](http://www.aboutspecialkids.org)

IN\*SOURCE, 1-800-332-4433: [www.insource.org](http://www.insource.org). To locate your county's representative, see: <http://insource.org/contact-us/staff-directory/>

Joseph Maley Foundation, 1-317-432-6657: <http://www.josephmaley.org/>

Indiana Disability Rights, 1-317-722-5555: <http://www.in.gov/idr/>

Office of Special Education, Indiana Department of Education, 1-317-232-0570,  
Toll Free: 1-877 851-4106: [www.doe.in.gov](http://www.doe.in.gov)

#### Policy Notification Statement

It is the policy of the Indiana Department of Education not to discriminate on the basis of race, color, religion, sex, national origin, age, or disability, in its programs, activities, or employment policies as required by the Indiana Civil Rights Law (I.C. 22-9-1), Title VI and VII (Civil Rights Act of 1964), the Equal Pay Act of 1973, Title IX (Educational Amendments), Section 504 (Rehabilitation Act of 1973), and the Americans with Disabilities Act (42 USC §12101 *et. seq.*).

Inquiries regarding compliance by the Indiana Department of Education with Title IX and other civil rights laws may be directed to the Human Resources Director, Indiana Department of Education, Room 229, State House, Indianapolis, IN 46204-2798, or by telephone to 317-232-6610, or the Director of the Office for Civil Rights, U.S. Department of Education, 500 West Madison Street, Suite 1475, Chicago, IL 60661, or by telephone to 312-730-1560.

-Dr. Jennifer McCormick, State Superintendent of Public Instruction

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