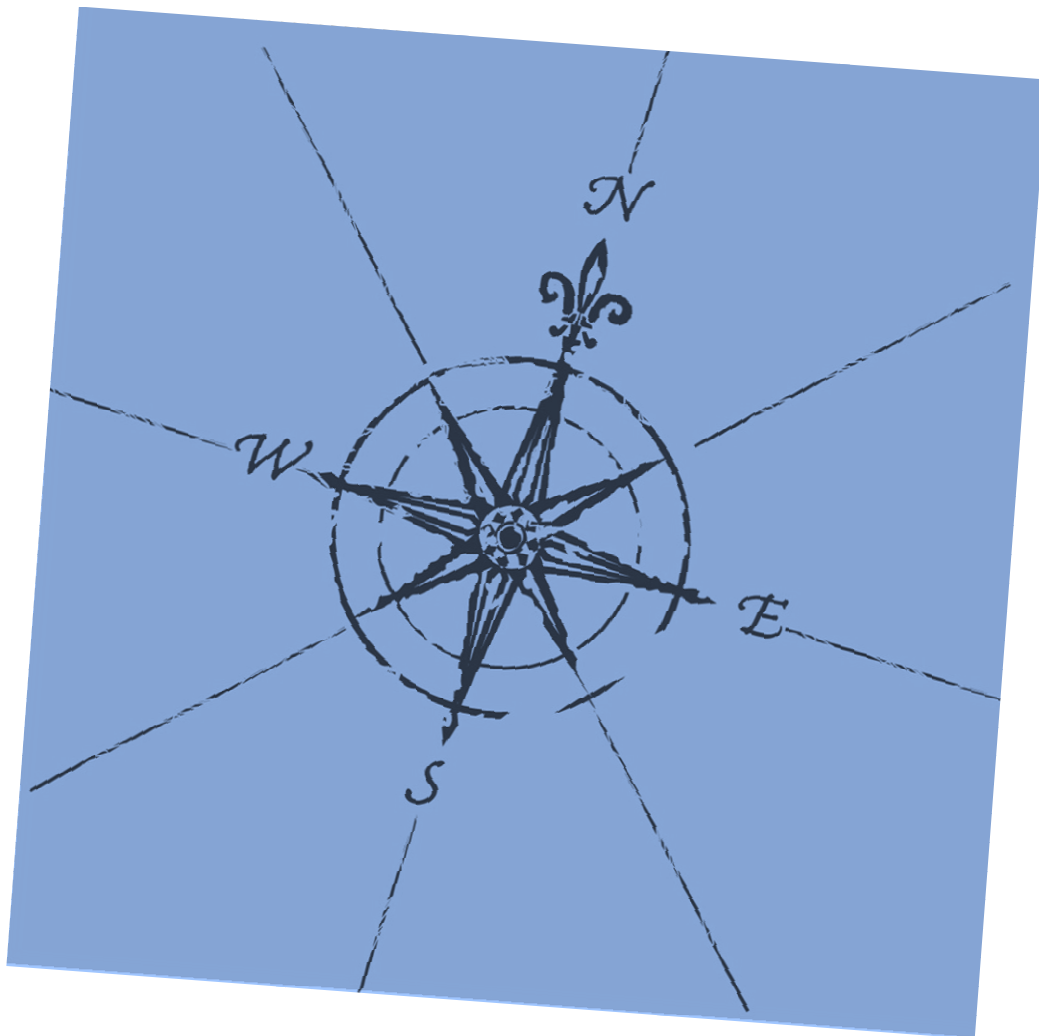


# Navigating the Course:

Finding Your Way Through  
Indiana's Special Education Rules



A companion guide to:

## **ARTICLE 7**

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# TABLE OF CONTENTS

Table of Contents.....	1
<b>Section I: INTRODUCTION .....</b>	<b>7</b>
PURPOSE .....	7
ARTICLE 7 .....	8
SPECIAL EDUCATION OVERVIEW .....	9
PARENT AND SCHOOL PARTNERSHIP.....	10
<b>Section II: EVALUATION, REFERRAL, INITIAL EVALUATION, REEVALUATION AND INDEPENDENT EDUCATION EVALUATIONS .....</b>	<b>12</b>
OVERVIEW .....	12
INITIAL EVALUATION REFERRAL/REQUEST .....	13
WRITTEN NOTICE .....	14
PARENTAL CONSENT .....	14
ADDITIONAL PARENTAL RIGHTS OR REQUESTS .....	15
EVALUATION REPORT .....	15
CONDUCTING THE EDUCATIONAL EVALUATION.....	16
EDUCATIONAL EVALUATION REPORTS .....	17
<i>What happens if the student’s parent(s) disagree with the educational evaluation?.....</i>	<i>18</i>
REEVALUATION.....	19
<i>What happens after a request for reevaluation is made?.....</i>	<i>20</i>
<i>How long does the school have to conduct the reevaluation?.....</i>	<i>20</i>
INDEPENDENT EDUCATIONAL EVALUATION .....	20
EARLY INTERVENING SERVICES AND RESPONSE TO INTERVENTION .....	21

USE OF RTI EVALUATION DATA.....	22
<b>Section III: CASE CONFERENCE COMMITTEE.....</b>	<b>24</b>
PARTICIPATION IN THE CCC.....	24
CCC MEETINGS.....	25
NOTIFICATION OF CCC MEETING.....	26
<i>Can participants be excused from participating in all or part of a CCC meeting?.....</i>	<i>26</i>
CCC RESPONSIBILITIES.....	27
<i>How Are decisions made in the CCC?.....</i>	<i>27</i>
<i>What happens if the parent(s) and school representative disagree?.....</i>	<i>27</i>
<b>Section IV: INDIVIDUALIZED EDUCATION PROGRAM.....</b>	<b>29</b>
IEP DEVELOPMENT.....	29
CONTENTS OF THE IEP.....	30
RELATED SERVICES.....	34
ACCOMMODATIONS.....	35
<i>What is the difference between an “accommodation” and a “modification?”.....</i>	<i>36</i>
POSITIVE BEHAVIORAL INTERVENTIONS, STRATEGIES, AND SUPPORTS.....	36
TEACHER OF RECORD.....	37
<i>What is the difference between “Teacher of Service” And “Teacher of Record?”.....</i>	<i>38</i>
AFTER THE IEP IS DEVELOPED.....	38
WRITTEN NOTICE.....	39
REVIEW OF THE IEP.....	39
CHANGING THE IEP.....	40
DISAGREEMENT OVER CHANGING AN IEP.....	40
IMPLEMENTATION OF THE IEP.....	41
REVOCATION OF CONSENT FOR SERVICES.....	42
RELOCATION OF STUDENTS WITH IEPS.....	42

<b>Section V: EARLY CHILDHOOD SPECIAL EDUCATION</b> .....	44
TRANSITION INTO EARLY CHILDHOOD SPECIAL EDUCATION FOR STUDENTS PARTICIPATING IN FIRST STEPS .....	44
EARLY CHILDHOOD SPECIAL EDUCATION SERVICES FOR STUDENTS NOT PARTICIPATING IN FIRST STEPS.....	45
EARLY CHILDHOOD EDUCATIONAL SERVICES .....	46
<b>Section VI: PREPARING FOR TRANSITION FROM SCHOOL TO ADULT LIFE, TRANSITION IEP, TRANSFER OF RIGHTS AND SUMMARY OF PERFORMANCE</b> .....	47
TRANSITION INDIVIDUALIZED EDUCATION PROGRAM (IEP) .....	47
ADDITIONAL COMPONENTS OF A TRANSITION IEP .....	48
PARTICIPATION OF TRANSITION SERVICES IN THE TRANSITION IEP .....	48
TRANSFER OF RIGHTS.....	50
GUARDIANS AND EDUCATIONAL REPRESENTATIVES.....	50
APPOINTING AN EDUCATIONAL REPRESENTATIVE.....	51
<i>Who decides if the student is not able to provide informed consent?</i> .....	51
AGE APPROPRIATE TRANSITION ASSESSMENTS.....	52
SUMMARY OF PERFORMANCE (SOP) .....	52
RESOURCES.....	53
<b>SECTION VII: SERVICES TO STUDENTS IN NONPUBLIC SCHOOLS, SPECIAL EDUCATION AND RELATED SERVICES FOR PARENTALLY-PLACED STUDENTS IN NONPUBLIC SCHOOLS</b> .....	55
SERVICES TO STUDENTS IN NONPUBLIC SCHOOLS.....	55
<i>If a student attends a nonpublic school in a school corporation other than the school     corporation where the student lives (has legal settlement), who conducts the initial     evaluation?</i> .....	56
<b>SECTION VIII: CONFIDENTIALITY OF INFORMATION</b> .....	60
RIGHTS TO INSPECT EDUCATIONAL RECORDS .....	60
<i>If a student's parents are divorced, does the non-custodial parent have the right to     access the student's educational record?</i> .....	61

REQUIRED PARENTAL CONSENT .....	61
AMENDING THE EDUCATIONAL RECORD .....	61
<i>How long must the school keep a copy of the student's educational record?.....</i>	<i>62</i>
<b>SECTION IX: PROCEDURAL SAFEGUARDS.....</b>	<b>63</b>
THE NOTICE OF PROCEDURAL SAFEGUARDS .....	63
<b>SECTION X: STUDENT DISCIPLINE.....</b>	<b>65</b>
REMOVALS.....	65
<i>If the student's individualized education program (IEP) or behavioral intervention plan (BIP) states the student can be removed for short periods of time, does this count toward the "days of removal?" .....</i>	<i>65</i>
<i>If the school asks the parent(s) to pick up the student due to the student's behavior, does this count as a removal?.....</i>	<i>66</i>
<i>Does an "in-school suspension" count as a removal?.....</i>	<i>66</i>
<i>If the student is suspended from transportation, does this count as a removal? .....</i>	<i>66</i>
DISCIPLINARY CHANGE OF PLACEMENT .....	66
<i>What is a "series of removals," and how does the principal decide if it "constitutes a pattern?" .....</i>	<i>67</i>
EXAMPLE 1 .....	68
EXAMPLE 2 .....	69
REMOVALS THAT DO NOT RESULT IN A CHANGE OF PLACEMENT.....	70
REMOVALS THAT RESULT IN A CHANGE OF PLACEMENT.....	70
MANIFESTATION DETERMINATION .....	70
MISCONDUCT AS A MANIFESTATION OF THE STUDENT'S DISABILITY .....	70
MISCONDUCT NOT AS A MANIFESTATION OF THE STUDENT'S DISABILITY .....	71
DISAGREEMENT OVER MANIFESTATION DETERMINATION .....	71
INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES).....	72
<i>What is the definition of "serious bodily injury?" .....</i>	<i>72</i>
<i>What can the parent(s) do if they disagree with the IAES?.....</i>	<i>72</i>

PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE.....	73
<i>What happens if the parent(s) requests an evaluation during the time a student is suspended, expelled, or placed in an interim alternative educational setting? .....</i>	<i>73</i>
<i>If the parent(s) revoked consent for services and the student was no longer receiving special education services when the incident occurred (the student violated school rules), is the student still protected as a student with a disability?.....</i>	<i>74</i>
<b>SECTION XI: RESOLVING DISAGREEMENTS, COMPLAINTS, MEDIATION AND DUE PROCESS HEARINGS .....</b>	<b>75</b>
COMPLAINTS .....	76
FILING A COMPLAINT .....	76
AFTER THE COMPLAINT IS FILED .....	77
<i>What if the person filing the complaint or the school does not agree with the complaint investigator's report? .....</i>	<i>78</i>
MEDIATION .....	78
REQUESTING MEDIATION .....	79
THE ROLE OF THE MEDIATOR.....	79
DUE PROCESS HEARINGS .....	80
REQUESTING A DUE PROCESS HEARING .....	81
AFTER THE REQUEST FOR A DUE PROCESS HEARING IS FILED.....	81
WRITTEN RESPONSE TO A REQUEST FOR DUE PROCESS HEARING .....	82
RESOLUTION MEETINGS .....	83
<i>Can the student's parent(s) bring an attorney or an advocate to the resolution meeting?.....</i>	<i>83</i>
RESULTS OF THE RESOLUTION MEETING.....	83
CONDUCTING THE DUE PROCESS HEARING .....	84
DUE PROCESS HEARING APPEALS .....	85
EXPEDITED DUE PROCESS HEARINGS.....	85
RESOURCES.....	86

<b>APPENDIX</b> .....	87
Parent Resources .....	87
Communication Strategies .....	88
<b>A Decision-Making Guide for Case Conference Committees (CCC)</b> .....	91

# SECTION I

## INTRODUCTION

**DEFINITION: Parent(s)** – Throughout *Navigating the Course* the term parent(s) 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(s) to mean any individual defined as a parent under 511 IAC 7-32-70.

### PURPOSE

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, replacing the previous *Live, Learn, Work, and Play* document and is not a substitute for Article 7. Please refer to Article 7 for the specific language of the special education rules. You may obtain a copy of Article 7 by:

- Downloading a copy from the Indiana Department of Education's website at: <http://www.doe.in.gov/exceptional/speced/docs/2008-08-06-Article7.pdf>.
- Requesting a copy from the Indiana Department of Education at 1-317-232-0570 or 1-877-851-4106.
- Requesting a copy from your child's principal or the local special education director.
- Requesting a copy from the Indiana Resource Center for Families with Special Needs (IN\*SOURCE) at 1-800-332-4433 or 1-574-234-7101.

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



## ARTICLE 7

Article 7 is 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 (SBE) in order to implement the requirements of the Individuals with Disabilities Education Improvement Act as amended in 2004, commonly known as IDEA '04.

The **six principles** of IDEA '04:

- **Free Appropriate Public Education (FAPE)**,
- Appropriate educational evaluation,
- **Individualized Education Program (IEP)**,
- **Least Restrictive Environment (LRE)**,
- Procedural safeguards (sometimes referred to as the Notice of Parent Rights or NOPS), and
- Parent(s) participation in decision.

IDEA '04 requires public schools to provide students with disabilities with a **FAPE** in the **LRE** and requires the Indiana Department of Education (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(s) as part of the case conference committee (CCC), implementing the student's individualized education program (IEP), and ensuring that procedural safeguards are provided. It also describes parental rights and responsibilities of the parent(s) 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. There are 16 rules in Article 7 that address definitions, programs and personnel, disability categories and eligibility, evaluations, CCC meetings, IEPs, related services, services to students in nonpublic schools, discipline, child count, and funding for extraordinary educational services.

### **DEFINITION: Days**

- **Calendar days:** Everyday
- **Business days:** Monday-Friday, except federal and state holidays
- **Instructional (school) days:** Any day or part of a day that students are expected to be in attendance at the school the student attends or will attend. Please note that a full instructional day is counted if the student only attends a half day of school.

## SPECIAL EDUCATION OVERVIEW

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 **Free Appropriate Public Education** or a **FAPE**. A FAPE is defined as special education and related services that are provided at public expense, and in accordance with an IEP [at no cost to the parent(s)].

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 students who have been determined eligible through an educational evaluation. It must be provided at no cost to the parent(s) and in accordance with the student's IEP.

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

**"At no cost"** means that the parent(s) do not have to pay extra for special education and related services. The school may charge for the same things that it charges the parent(s) of a student without disabilities (such as text book rental, lab fees, etc.).

It is the responsibility of the **case conference committee (CCC)** to determine what services are appropriate depending on the student's individual educational needs. The CCC is a group of individuals, including parent(s) 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.

Article 7 describes the process for parent(s) and school personnel to use in making educational decisions and developing the student's **individualized education program or IEP**. An IEP is the written document, developed by parent(s) and school personnel, describing how the student will participate in the general education curriculum, and any special education or related services to be provided.

Special education services must be provided in the **least restrictive environment (LRE)**. This means that a student with a disability is educated with students without disabilities to the maximum extent possible for each individual student.

**PARENT RESPONSIBILITIES:** In order for the parent(s) of a child with a disability to access a **FAPE** for a child, the parent(s) must:

- Give written consent for educational evaluations of the student;
- Participate as a member of the **CCC** in developing and revising the student's **IEP**;
- Give written consent for the school to implement the student's initial **IEP**;
- Partner with school personnel as the student's advocate to identify and ensure appropriate special education and related services; and
- Ensure the IEP is designed to meet the student's unique educational needs in the LRE appropriate for the child.

For assistance regarding Article 7 there are a variety of resources for parent(s). See the *Parent Resource* section in the Appendix for information.

*"Our vision for the education of Indiana's students centers on the understanding that family involvement is essential. This involvement is crucial for the academic achievement of every child."*

**- Indiana State Board of Education's Family Involvement Policy**

## PARENT AND SCHOOL PARTNERSHIP

IDEA '04 contains numerous references to parental participation in the early intervention and special education process. Such references are continuously repeated demonstrating the emphasis on the importance of parent participation. Congress found that:

*Over 20 years of research and experience have demonstrated that the education of children with disabilities can be made more effective by ... strengthening the role of parents and ensuring that families ... have meaningful opportunities to participate in the education of their children at school and at home. (1997 Amendments to the IDEA)*

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

Because all students receiving special education services must have an IEP, the parent(s) 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(s) and the school may last many years. Good communication is essential to the ongoing success of this partnership. For more information on establishing positive partnerships, see the *Communication* section in the Appendix.

## SECTION II

### EVALUATION

# IDENTIFICATION, REFERRAL, INITIAL EVALUATION, REEVALUATION, AND INDEPENDENT EDUCATIONAL EVALUATIONS 511 IAC 7-40

#### OVERVIEW

To be eligible for special education and related services, the **case conference committee (CCC)** must determine, based on the evaluation results and other information, that the child is a student with a disability. A student with a disability is a child who has been evaluated in accordance with Article 7 and been determined eligible for special education and related services by a CCC.

**DEFINITION: Educational Evaluation** – The process of gathering information from several sources and using that information to determine if a child has a disability and qualifies to receive special education and related services.

The purpose of an educational evaluation is to assess areas of educational need. The school must look at the student's academic achievement and functional performance to determine whether the student's disability has an impact on the student's educational performance. The school must ensure that the method it uses to assess students provides meaningful information that directly helps the CCC make decisions regarding eligibility and educational services.

The process begins with a request that a student be evaluated for a suspected disability. This request is known as a **referral**. The parent(s) or school personnel may make a request to have a student evaluated for special education. Before the school can evaluate the student, the parent(s) must give written consent for evaluation.

If written parental consent for evaluation is provided, a multidisciplinary team (M-Team) conducts a comprehensive educational evaluation. When the educational evaluation is completed, school personnel and the parent(s) meet (a process known as the CCC meeting) 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(s) are informed of the educational evaluation results.

A student may be found eligible for special education and related services in one or more of the thirteen (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 REFERRAL/REQUEST

A student's parent(s) or school personnel working with the student may make a referral or request for an educational evaluation. If the parent(s) make the request, the request must be made verbally or in writing to **licensed personnel** such as teachers, school counselors, school psychologists, school social workers, building principals, and other administrators. It is always a good idea for the parent(s) to put the request in writing.

If the school **refuses** to conduct the evaluation, the notice must tell the parent(s) what action(s) they can take if they want to disagree with the school's decision. An example may be that the school wants to institute an RtI process for the student instead of moving directly into conducting an educational evaluation.

The parent(s) may ask the school to participate in mediation or request a due process hearing if the school declines 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(s) may wish to meet with representatives from the school to talk

further with school personnel before deciding upon further action. Although there is no timeframe in which the parent(s) must take action, this should occur in a timely manner to ensure the educational needs of the student are fully addressed if needed.

## WRITTEN NOTICE

Within **10 school days** after the parent(s) makes a request for an educational evaluation, the school must provide the parent(s) with **written notice** responding to the request, as well as a copy of the *Notice of Procedural Safeguards*. The parent(s) must receive the written notice no later than 10 school days after making the request to licensed personnel employed by the school corporation of legal settlement.

Written notice must:

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

If the school **agrees** to conduct the educational evaluation, the notice will *also* include:

- The evaluation timeline,
- A description of the evaluation procedures, and
- How the parent(s) 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.

## PARENTAL CONSENT

If the school agrees to conduct the evaluation, the parent(s) must provide written consent before the school may proceed. This consent is only for the school to conduct an initial educational evaluation; it is not consent for any special education services.

There is no deadline by which the parent(s) must provide the school with written consent, but the sooner written consent is provided, the sooner the evaluation can be conducted.

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 RTI process.

If the parent(s) **refuses** to provide written consent for an educational evaluation or fails to respond to the school's request for consent, but the school believes that a student needs special education and related services, the school may, but is not required to, ask the parent(s) to participate in mediation or request a due process hearing. It is up to the school to decide if it will take either of these actions. If the parent(s) 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. (For more information on mediation and due process, see the section on *Complaints, Mediation, and Due Process*).

### ADDITIONAL PARENTAL RIGHTS OR REQUESTS

At the time the parent(s) provides consent for an educational evaluation, the parent(s) may also request a copy of the evaluation report and/or a meeting with someone who can explain the evaluation results prior to the CCC meeting. If the parent(s) make such request, the school must provide the evaluation report and/or meet with the parent(s) at least **five (5) school days** prior to the CCC meeting. If the parent(s) does not request a copy of the educational evaluation report before the CCC meeting, then the evaluation report will be provided to them at the scheduled CCC meeting.

### EVALUATION REPORT

An initial educational evaluation must be comprehensive and conclusive. Information must be gathered in all areas related to the suspected disability, including information and input from the parent(s).



**NOTE:** Each evaluation report must, for each disability category, include information and analysis in the categories of, if applicable:

- Development,
- Cognition (ability to acquire knowledge),
- Academic achievement,
- Functional performance or adaptive behavior,
- Communication skills,
- Motor skills and sensory responses,
- Social and developmental history, and
- Medical and/or mental health information and any other assessments or information that will help the CCC make its determination.

## CONDUCTING THE EDUCATIONAL EVALUATION

A **multidisciplinary team**, sometimes called the M-Team, conducts the educational evaluation. This team is a group of qualified professionals that may include a general education teacher; a special education teacher; a school psychologist or speech language pathologist; or other qualified professional(s) based on the student's unique needs or suspected disability. Parent(s) play an important role with the M-Team by providing input and information about the student.

The M-Team reviews existing information, identifies the suspected disability or disabilities for which the student should be evaluated, and determines what, if any, additional information is needed to help the CCC determine whether the student is eligible for special education services. After this review, if additional data is needed to make an eligibility determination, the M-Team gathers the additional information identified. This process may include administering tests, conducting observations, and collecting information from a variety of sources.

## TIMELINES FOR COMPLETING THE EDUCATIONAL EVALUATION

The M-Team must complete its evaluation, and the CCC must convene within **50 school days** from the date written parental consent is provided to licensed school personnel, except in five situations.

- If the student has completed the RTI process and not made adequate progress within an appropriate period of time, the school has **20 school days** from the date licensed personnel receive written parental consent to conduct the evaluation and convene the CCC.
- There is a similar **20 school day** timeline if the parent(s) requests an initial evaluation during the time a student is suspended or expelled. This is often referred to as an expedited evaluation. See the section on *Discipline* for more information.
- For a student who is receiving *First Steps* early intervention services (from birth to age 3) and transitions from the *First Steps* program to the public school early childhood program the timeline is different. In this situation, the initial educational evaluation must be completed, the CCC convened, and any necessary special education services made available for the student no later than the **student's 3<sup>rd</sup> birthday**. For more information, see the section on *Early Childhood*.
- If the parent(s) provides written consent for an educational evaluation in one school corporation and the student moves to another school corporation while the evaluation is pending, the "new" school corporation must complete the educational evaluation as quickly as possible and within a time period agreed upon by the school and the parent(s). At 511 IAC 7-40-5(d)(4)(A) it states that the receiving school must ensure 'prompt completion' of the educational evaluation.
- If the parent(s) repeatedly fails to make the student available for the educational evaluation the school must document these events and will not necessarily be held to the 50 school day timeline.

## EDUCATIONAL EVALUATION REPORTS

The M-Team compiles the information into an evaluation report, and the school sends a written notice to the parent(s) that includes:

- A summary of the evaluation results,
- The school's proposal on the student's eligibility (at 511 IAC 7-42-4 it states the written notice must include a description of any action that may be proposed), and

- An explanation of the reasons for the school's proposal.

The school must prepare the written notice at least **five (5) school days** before the CCC meeting, in the event the parent(s) is requesting a copy be made available prior to meeting with the school. Although the written notice describes what the school proposes in regard to the student's eligibility, the ultimate decision about the student's eligibility is made by the student's CCC.

The final step in the educational evaluation process is the initial CCC meeting. The CCC reviews the evaluation results and other information, determines if the student is eligible, and if so, develops an individualized education program.

If, at the time the parent(s) provided written consent for the educational evaluation, and requested to receive a copy of the evaluation report prior to the CCC meeting; the school must provide the report to the parent(s) at least **five (5) school days** prior to the CCC meeting. If the parent(s) requested a meeting with someone to explain the evaluation results prior to the CCC meeting, the school must conduct the meeting with the parent(s) at least **five (5) school days** before the CCC meeting. If no request was made by the parent(s) at the time written consent was provided, the school must provide the parent(s) with a copy of the report at the CCC meeting.

**NOTE:** Article 7 specifically prohibits the M-Team from using a severe discrepancy between academic achievement and global cognitive functioning to demonstrate or establish that the student exhibits a pattern of strengths and weaknesses in performance or achievement.

#### WHAT HAPPENS IF THE STUDENT'S PARENT(S) DISAGREE WITH THE EDUCATIONAL EVALUATION?

If the parent(s) meets with the school and disagrees with the educational evaluation there are a few options available. The parent(s) may explain to the school personnel the specific reason(s) for the disagreement. The parent(s) may also want to seek input from other professionals who know the student well or have worked with the student in the past. These discussions should occur in the CCC meeting so that all who are involved with or familiar with the student may provide input as well. Finally, the parent(s) may ask the school for an independent educational evaluation to be conducted at public expense. See *Independent Educational Evaluation* below. Please see the *Appendix* for resources and services regarding educational evaluations.

**NOTE:** Students suspected of having a specific learning disability cannot be found eligible for special education on the basis of a specific 'point discrepancy' between the student's intellectual ability and classroom performance. To find a student eligible as a student with a specific learning disability, the CCC must review and consider data that, in addition to the documentation of appropriate instruction in reading and math, verifies the student:

- Does not achieve adequately for the student's age or grade level standards when provided with learning experiences and instruction appropriate for the student's age or state grade level standards;
- Does not make sufficient progress to meet age or grade level standards based on the student's response to scientific, research-based intervention; or
- Exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to age, grade level standards, and intellectual development.

## REEVALUATION

The school must consider the potential need for reevaluation for each student receiving special services at least once every **three (3) years**. Because the CCC is responsible for ensuring that the student's individualized education program (IEP) addresses his/her educational needs, the CCC should routinely review existing information and determine if additional information is required in order to continue to develop an appropriate IEP. In addition, a reevaluation may be requested to determine if the student is eligible for special education under a different or additional eligibility category or to inform the CCC of the student's developing needs, like the need for assistive technology or a related service.

The CCC may decide that a reevaluation is needed or the parent(s) or teacher may request a reevaluation. If the parent(s) 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(s) fails to respond to the school's request for and efforts to obtain 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(s). If the parent(s) refuses to consent to a reevaluation, the school has the option, but is not required, to pursue Mediation or a Due Process Hearing.

## WHAT HAPPENS AFTER A REQUEST FOR REEVALUATION IS MADE?

After the student's parent(s) make a request for reevaluation, the school must provide them with a written notice indicating whether the school agrees or refuses to conduct the reevaluation. The notice must also describe the information the school used to make its decision, advise the parent(s) of procedural safeguard protections, how to obtain a copy of the *Notice of Procedural Safeguards*, and provide a list of sources the parent(s) may contact for help in understanding these *Special Education Rules*. If the school agrees to conduct the reevaluation, the notice must describe the reevaluation process and the timeline for conducting the reevaluation and convening the CCC. If the school refuses to conduct the reevaluation, the notice must inform the parent(s) of the action(s) they can take if they want to challenge the school's decision.

## HOW LONG DOES THE SCHOOL HAVE TO CONDUCT THE REEVALUATION?

The timeline for conducting the reevaluation depends on the **purpose** of the reevaluation. If 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 reevaluation is to determine if the student is eligible under a different or additional 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(s) provides written consent to licensed personnel.

## INDEPENDENT EDUCATIONAL EVALUATION

**DEFINITION: Independent Educational Evaluation (IEE)** – an evaluation conducted by a qualified professional who is not an employee of the school. If the parent(s) disagrees with the results of the school's educational evaluation, the parent(s) may request an IEE at public expense. In this case, the school pays for the IEE or otherwise assures that it is at no cost to the parent(s). If the IEE is at public expense, the parent(s) is allowed only one IEE each time the school conducts an evaluation.

Should the parent(s) requests that the school pay for an IEE, the school must provide information about where the parent(s) can get an IEE for the student, as well as the school's criteria for an IEE. The parent(s) may choose a different independent evaluator so long as the evaluator is qualified and meets the school's criteria. The school may ask the parent(s) why an IEE is necessary, but the school may not delay its response to the parent(s) request if

the parent(s) chooses not to answer the school's questions. Within 10 business days of the parent(s) request, the school must either:

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

If an IEE is paid for by the school, a copy must be received by the school and the results of the IEE must be considered by the student's CCC. If the parent(s) obtains an IEE at their own expense, the parent(s) chooses whether to share the results with the CCC. If the parent(s) shares the information from the IEE obtained at their own expense with the CCC, the CCC must consider the information in making decisions about the student's educational needs.

## EARLY INTERVENING SERVICES AND RESPONSE TO INTERVENTION

Article 7 permits schools to implement a process known as **comprehensive and coordinated early intervening services (CCEIS)**. 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 referred to as **response to intervention (RtI)**. The **RtI** process utilizes screening and periodic monitoring of progress 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. Students who do not make adequate educational gains with the supports are provided more structured and intensive supports with progress monitoring. If students are still in need of support, a referral for special education evaluation may be the next step.

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

**NOTE:** The **written notice** for RtI services provided to each student's parent(s) must describe:

- The amount and type of data that will be collected regarding the student's progress and the general education services to be provided;
- The timeframe for which the data will be collected and reported to the parent(s);
- The evidence-based strategies that will be used to increase the student's rate of learning to grade level;
- The parental right to request an educational evaluation to determine eligibility for special education; and
- An explanation that:
  - In the event the student *fails* to make **adequate progress after an appropriate period of time**, as determined by the school and the parent(s), the school will request an educational evaluation.
  - In this case, the school will provide the parent(s) with written notice and request written parental consent before an educational evaluation will be conducted.
  - If the parent(s) give consent for an educational evaluation, the school has **20 school days** from the date it receives written parental consent to conduct the evaluation and convene the CCC meeting (rather than the 50 school days for other initial educational evaluations).

A referral for an educational evaluation can be made by the parent(s) or school personnel at any time during the RtI process. The use of an RtI process cannot delay the appropriate educational evaluation of a student suspected of having a disability.

#### **USE OF RTI EVALUATION DATA**

When an individual RtI intervention is determined necessary for a student, the school and the parent(s) decide, based on the intervention(s) to be provided, what progress and results they hope the student will make and in what time period. This collaboration can be another opportunity to build a positive partnership between school and parent(s).

The RTI process can provide essential information and documentation about the provision of appropriate instruction and opportunities for the student to learn. It is also a means for analyzing the student's educational difficulties and determining instructional strategies to address them.

Classroom teachers can use RTI data to adjust instruction based on their students' progress in the curriculum. Data from the RtI process shows what concepts and skills students have mastered and what skills need additional instruction.

Information from the RtI process can also be used in an educational evaluation. It can provide the documentation of appropriate instruction in reading and math as well as provide needed evidence of a student's progress in the general education curriculum.



## SECTION III

### CASE CONFERENCE COMMITTEE 511 IAC 7-42-1 THROUGH 7-42-5

**DEFINITION: Case Conference Committee (CCC)** – The case conference committee (CCC) is the group of people including the parent(s) and school personnel, who share the responsibility of making educational decisions for a student with a suspected or identified disability. In the CCC meeting the parent(s) is an equal partner with the representative of the school. In the case where the student with a disability has attained adult legal status, the student will act on his/her own behalf thus assuming all of the functions and rights given to the parent(s).

#### PARTICIPATION IN THE CCC

The CCC must include:

- A representative of the school (sometimes referred to as the public agency representative or 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. The 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 in terms of how to best instruct the student and the instructional implications of the evaluation information. This individual is typically referred to as an instructional strategist; and

- The parent(s) of a student less than 18 years of age or the student of legal age. In some cases this may include a guardian or educational representative for the student.

School personnel may fulfill more than one role in the CCC meeting. For example, the student's TOR may also serve as the school representative with the authority of committing resources.

At the discretion of the parent(s), the student may participate in any CCC meeting in addition to those CCC meetings to which the student must be invited.

Depending on the purpose of the meeting, the CCC must include other individuals. For example, if the CCC is determining the student's initial eligibility for special education, a member of the multidisciplinary team (M-Team) is required to attend. If the parent(s) has enrolled the student in a private school, a representative of the private school must either attend or participate by alternate means in the CCC meeting. For more information, see 511 IAC 7-42-3(c) and (d) and the *Appendix* for a chart on who must or may be invited to attend.

Both the parent(s) and school personnel may invite "other individuals who have knowledge or special expertise" about the student. Determining if the individual has knowledge or special expertise is up to the person who invites the individual to participate.

## CCC MEETINGS

The CCC must meet:

- Within the stated timeline for an initial evaluation or reevaluation;
- At least annually;
- When requested by the parent(s) 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 that is a "mutually agreed upon time and place" by the parent(s) and school personnel. Some schools set up the conference at the time parental consent (permission) for the evaluation is received. This is not required, but it does permit for increased flexibility in choosing convenient dates and times for all involved.

## NOTIFICATION OF CCC MEETING

Once the CCC meeting is arranged, the school will send the parent(s) a written notice of the CCC meeting that includes the date, time, location, purpose, and the names and titles of participants expected to be in attendance that are believed to have special knowledge or expertise about the student. The notice must also advise the parent(s) of their right to invite anyone the parent(s) determines to have special knowledge or expertise about the student. If you, as the parent(s) are going to invite someone it is helpful to inform school personnel to ensure adequate seating and space for all who attend.

If the parent(s) cannot attend in person, the school should ensure parental participation through other methods such as telephone or video conference. Article 7 [at 511 IAC 7-42-2(b)] states that a CCC meeting may be conducted without a parent in attendance if the parent chooses not to participate in person or by other means. The school must document all attempts to arrange for a meeting to take place and any response received from the parent(s).

If the parent(s) chooses not to participate, either in person or by other means, the school may conduct the CCC meeting without the parent(s). However, before the school can do this, it must make reasonable efforts to convince the parent(s) to participate, and it must document its efforts (such as telephone calls, emails, letters, home visits, etc.). See Article 7 [at 511 IAC 7-42-2(b)].

## CAN PARTICIPANTS BE EXCUSED FROM PARTICIPATING IN ALL OR PART OF A CCC MEETING?

In some circumstances, a required member (i.e., the school representative, special education teacher, general education teacher, or the person explaining how the evaluation results impact instruction) may be excused from the meeting if the school and the parent(s) agree in writing that the member's attendance is not necessary for all or part of the meeting. 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, s/he must provide input in writing to the parent(s) and the other CCC members prior to the meeting and the parent(s) must provide written consent for the excusal. The school must obtain parental consent to excuse the required participant before the CCC meeting. If the parent(s) does not agree to an excusal of 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 plan (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)**.

## HOW ARE DECISIONS MADE IN THE CCC?

Information about the student is shared with and by all CCC members. Everyone 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, what disability category (if more than one was initially suspected)?
- If eligible, what are the student's educational needs, and what special education and related services are appropriate to meet the student's needs?

The actual decisions are between the parent(s) and the school representative authorized to commit the school's resources. Decisions are *not* made by a vote or consensus of the CCC members. A CCC meeting is not a meeting controlled by a vote of 'majority rule'. The only two individuals who have a final say in the final decision of the CCC meeting are the parent(s) and the public agency representative for the school.

## WHAT HAPPENS IF THE PARENT(S) AND SCHOOL REPRESENTATIVE DISAGREE?

For an initial placement (the first time a student is found eligible for special education and related services) the school must obtain written and informed parental consent for services to begin. After any CCC meeting, the school must provide the parent(s) 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. The school must provide this notice regardless of whether there was agreement between the parent(s) and the school representative.

After receiving this notice, the parent(s) may contest the school's decision by asking for and participating in a meeting with a school official, participating in mediation, or requesting a due process hearing. For more information on the written notice, mediation, and due process see the sections on *IEPs* and *Resolving Disagreements*.

There are other options the parent(s) have in certain situations. For example, if the disagreement is over eligibility or evaluation results, the parent(s) may request an independent educational evaluation at the school's expense. The parent(s) may also ask to reconvene the CCC for further discussion and consideration. For more information see the section on Identification, *Referral, and Evaluation*.

Being a member of a CCC may seem intimidating or overwhelming to some parents. The following are some tips that have been offered to help the student's parent(s) 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; or
- Take this booklet with you to the CCC meeting.

For more information on CCC meetings, see 511 IAC 7-42-2 through 42-5.

## 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 services, the next step is for the CCC to develop an individualized education program (IEP).

**DEFINITION: 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. Once the IEP is developed, the CCC must review the IEP at least one time each year and make changes to the IEP as needed.

#### IEP DEVELOPMENT

The CCC develops the IEP after considering all of the information about the student. The CCC must consider various general factors when developing an IEP, such as:

- The student's strengths,
- The concerns of the parent(s) for improving the student's education,
- The results of any recent educational evaluations or assessments, and
- The student's academic, developmental, communication 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 his/her 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, and
- Instructional and communication needs for a student whose vision and/or hearing is impaired.

As the CCC reviews and considers all of the information, it identifies the student's present levels of performance, writes annual goals to meet the student's needs, identifies the special education and related services to meet those needs, and determines the most appropriate placement for the student. The end result of this and the other items described in the following section is a complete IEP for the student.

## CONTENTS OF THE IEP

An IEP must include:

- ***The student's present levels of academic achievement and functional performance*** - This means looking at the student's current skills, both academically (such as reading, math, writing, and language) and functionally (such as fine and gross motor skills, personal care, behavioral, social, and emotional skills, and independent living skills). It also includes how the student's disability affects his/her involvement and progress in the general education curriculum.
- ***Measurable goal(s) that the CCC expects the student to achieve over the next 12 months*** - This includes goals designed to meet the student's academic and/or functional needs that result from the student's disability. Well-written goals will help the student be involved and make progress in the general education curriculum to the fullest extent appropriate. Although previously required that the IEP include benchmarks or short-term objectives for every goal, they are now *only* required if the student participates in ISTAR instead of ISTEP (see section below on *Participation in Statewide Assessment*).
- ***Information on how the student's progress toward achieving the IEP goals will be measured*** - Although objectives and benchmarks may not be required, it is still an expectation that all IEP goals will be written so that period reports can be given to the parent(s) on how the student is progressing in achieving each IEP goal. Depending on how the goal is designed, the teacher may be monitoring such things as scores on assessments, incidents of behavior, or other examples of skill attainment observed by the teacher. The data collected must be specific to the student's goal(s) and should provide the parent(s) with information that is easily understood. The amount and type of data to be collected by the teacher should be discussed by the CCC.

**NOTE:** Students who are being assessed on the ISTAR assessment are required to have benchmarks or short term objectives; it is optional for all other students.

- ***Information on the student's progress will be reported to the parent(s)*** – The school must provide the parent(s) with a periodic report on the student's progress that is easy to understand. The report must be given to the student's parent(s) at least as often as when progress reports (report cards, mid-term reports, etc.) are provided to the parent(s) of students who have not been identified as having a disability. Although a more frequent report of progress may be provided if determined appropriate by the CCC.
- ***A description of the special education services and supports that will be provided to the student or to staff working with the student*** – The type of services and supports to be provided to a student and staff will be based on the student's educational needs. The supports are designed to help the student achieve his/her annual goals and participate in the general education curriculum, extracurricular activities, and other nonacademic activities with non-disabled students as much as possible. In addition to specially designed instruction, the student may need related services, accommodations, or modifications in order to benefit from his/her special education. If staff members who are in contact with the student need supports or training to better understand the student's strengths and needs or to implement the student's IEP, those may be listed as well (see the section below on *Related Services, Accommodations, and Modifications*).
- ***The projected date the services will begin and end, and the length, frequency, and location of the services*** – The IEP must include 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.

For example, the IEP may state that the student will receive:

- 30 minutes of speech therapy one time a week in the general education classroom beginning on or about September 1, 2009 and ending on or about June 1, 2010.
- 60 minutes of reading instruction two times per week in the resource room beginning on September 1, 2009 and ending on December 31, 2009.

Although some schools build time into service providers' schedules at the beginning and end of each school year to allow for screening of new students or convening annual case reviews for current students, the provision of services cannot be reduced unless the CCC agrees to these exceptions. To adjust for schedules an IEP may state that the student will receive 60 minutes of reading instruction two times per week for the first and last month of the school year; and 30 minutes of reading instruction two times per week for all other months during the school year. However, unless the CCC discusses and agrees otherwise, the



decision to modify the IEP at certain times during the school year due to staff requirements such as screening or annual case review is prohibited.

- **Information about how the student will participate in local and statewide assessments** – Schools test students at various times during the school year. ISTEP (the Indiana Statewide Testing of Educational Performance) is the **statewide** test that schools give to students. Most students will participate in the ISTEP+ either with or without accommodations. In 2010, a modified version of ISTEP+ is expected to be available for students with disabilities who meet the criteria to participate in a modified assessment. For students with more significant cognitive disabilities the state has an assessment called ISTAR (the Indiana Standards Tool for Alternate Reporting). The ISTAR assessment has two achievement levels that the CCC must consider for a student to be eligible to participate. It is up to each student's CCC to decide whether the student should participate in:
  - the ISTAR assessment aligned to academic competence, or
  - the ISTAR assessment aligned to independent functioning.

All assessment decisions for the student are based on his/her expected educational outcomes using existing performance data available to the CCC. Students in high school who intend to graduate with a high school diploma must participate in the end of course assessment (EoCA) for Algebra and Language Arts 10. An EoCA in Biology is expected to be added in the upcoming year. Students who have a significant cognitive disability will be assessed minimally at grade 10 and optionally at higher grades (see the Appendix for criteria expectations and decision-making charts).

The CCC must discuss the testing options available for the student, including local and national tests not regulated by the state. In making testing decisions the CCC must discuss any potential consequences (e.g., earning a high school diploma) and record the reason the CCC chose the assessment option(s) for the student. Accommodations used routinely by the student in his/her educational program may be offered in the assessment situation if so determined by the CCC. However, any accommodation offered on the state-mandated assessment must meet the guidance criteria provided by the Indiana Department of Education (IDOE). The assessment guidance is updated routinely and is available on the IDOE website at: <http://www.doe.in.gov/istep/>. Look for the link for the *ISTEP+ Program Manual*.

- **The student's participation with non-disabled students** – If the IEP does not limit a student's participation in any way, the student should be able to participate with non-disabled students in academic classes and other educational programs such as vocational education, art, music, industrial arts, consumer and homemaking 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 non-disabled 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 non-disabled students, the CCC must identify those situations in the IEP. This covers all educational, extracurricular, and other nonacademic activities.

- ***The student's need for extended school year (ESY) services*** – ESY services means special education and related services that are provided to a student at times when other students are not in school (like during the summer or after school). 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/how they will occur.
- ***The student's placement in the least restrictive environment (LRE)*** – The CCC decides where the student should be placed. For example, will the student be placed in the general education classroom and receive some or all of the special services and supports in that classroom, or will the student spend only part of the day in the general education classroom and receive services and supports in another location? There are a variety of placement options ranging from full time placement in a general education classroom to placement in a private residential setting.

**DEFINITION: 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.

Unless the CCC decides something else, a student with a disability should attend the school s/he would attend if not disabled and be in classes and school buildings with non-disabled students of the same chronological age. Generally, the CCC begins by looking at whether the student's needs may be met in a general education classroom in the student's home school. If not, the CCC would look at other options to meet the student's needs in the **least restrictive environment (LRE)**. Special

classes, separate schools, or other removal of students from the general education environment should occur only if the nature and severity of the disability is such that education in general education classes using supplementary aids and services cannot be satisfactorily achieved.

- ***Written notes to document the CCC meeting*** – The IEP and the documentation of the CCC may include a section called written notes. This document may blend the required components of the IEP and other necessary details such as the date and the purpose of the meeting, the names and titles of everyone who participated in the meeting, the issues discussed, the rationale for various decisions made by the CCC, and other educationally relevant notes considered by the CCC.

**NOTE:** It is not advisable to list services the student will receive in the notes as they will often be overlooked by the providers.

- ***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(s) 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(s) 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*).

**DEFINITION: Transition IEP** - The IEP developed for a student who will be turning 14 or entering the 9<sup>th</sup> grade. A Transition IEP includes all of the components described above, but is driven by an understanding of the student's needs once s/he leaves high school. A student has a Transition IEP until the completion of high school. See the section on *Preparing for Transition from School to Adult Life* for more information on the Transition IEP.

## RELATED SERVICES

A **related service** is a developmental, corrective, or other supportive service that is provided to help a student benefit from his/her 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 him/her learn to get around the school more independently. The most common related service is transportation. For a list of common related services and what each service includes, see 511 IAC 7-43-1.

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(s) 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 is given extra time to complete the test.

Accommodations must be used routinely in classroom situations in order for the CCC to apply the accommodation(s) to assessments. The student needs the opportunity to practice and become familiar with the accommodation. Routine practice in comfortable situations allow the student to become accustomed to the accommodation. It is not permissible to use an accommodation during high stakes testing situations if it is not used routinely in classroom assessment because the student needs to be familiar with the process.

On some standardized tests, such as ISTEP, some accommodations are not allowed because they have been determined to 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 ISTEP+ -** Certain accommodations are allowed for students with an identified disability during the ISTEP+ assessment. However, there are some accommodations that are not permitted, even if the accommodation is listed in the student's IEP. For more information on ISTEP+ accommodations, see Appendix C in the *ISTEP+ Program Manual* available at: <http://www.doe.in.gov/istep/>

#### WHAT IS THE DIFFERENCE BETWEEN AN "ACCOMMODATION" AND A "MODIFICATION?"

A modification actually changes what is being taught or tested, and an accommodation does not. For example, a student has a disability marked by significant issues with fine motor skills and finger dexterity. The class may be learning about spelling patterns using words that end in silent "e" by writing out those patterns. For the student with fine motor issues, an accommodation may be that s/he is allowed to type the answers whereas a modification would be to permit the student to produce a smaller number of correctly spelled words written by hand.

#### POSITIVE BEHAVIORAL INTERVENTIONS, STRATEGIES, AND SUPPORTS

One thing the CCC must consider is whether the student has any behaviors that interfere with the student's learning or the learning of other students. If the student has these behaviors, the CCC is required to consider ways to address those behaviors, using positive behavioral interventions, strategies, and supports, planned interventions designed to prevent identified behaviors from occurring.

Regardless of the student's disability, if s/he has problems learning because of continuing behavioral problems or if the student's behavior is disruptive to other students, the CCC must consider whether specific interventions are needed to help the student learn new behaviors or skills. Any needed interventions must be included in the student's IEP and should be consistently implemented wherever and whenever the behaviors occur.

**DEFINITION: Functional Behavioral Assessment (FBA)** – 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. An FBA may be assembled based on existing data for the student or may involve getting written parental consent to collect new assessment data.

After collecting data on behaviors and identifying the likely reason they are occurring, the CCC develops strategies and supports to address the behaviors. For some students, a simple intervention of moving the student's desk to the front of the classroom may make a difference. For other students, the interventions may be more involved. The CCC should also consider whether any personnel working with the student will require training in order to implement the strategies and supports suggested.

The CCC may develop a **behavioral intervention plan (BIP)** to address behavior 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,
- Why the behavior occurs,
- 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 may be necessary to ensure the plan is supported and implemented, and
- The skills that will be taught and 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 him/her. The TOR must be appropriately licensed in the area of the student's disability. For disabilities such as autism spectrum disorder, other health impaired, deaf-blind, and traumatic brain injury for which no state licensure is available, the teacher of record must be appropriately trained. The TOR has many wide responsibilities, including:

- Providing direct or indirect 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 implementation of the IEP and providing progress reports to the parent(s) on the IEP.
- 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 CCC is notified of any changes to the student's IEP when the parent(s) and the school make changes without holding a CCC meeting.

#### WHAT IS THE DIFFERENCE BETWEEN "TEACHER OF SERVICE" AND "TEACHER OF RECORD?"

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 the student's teacher of service. For example, a student with a specific learning disability (SLD) may receive all instruction and special education services in the general education classroom. The classroom teacher would be the teacher of service, but the student would also have a teacher of record licensed to teach students with SLD. The teacher of record does not always provide direct instruction to the student, but is responsible for making sure that the teacher of service implements the student's IEP and for consulting with the teacher of service as needed.

#### AFTER THE IEP IS DEVELOPED

Once an IEP has been developed, the school must provide a copy of the IEP at no cost to the parent(s) within 10 business days of the date of the CCC meeting. The school may also give the IEP to the parent(s) at the end of the meeting, or it may mail the IEP to the parent(s) at a later date as long as the parent(s) receives the IEP no later than 10 business days after the CCC meeting.

Parental consent (written permission) must be obtained for the school to provide special education services for the first time. Once the parent(s) has given consent for the school to provide special education services, the school must continue to provide special education services included in the current IEP unless the parent(s) revokes (withdraws) their consent for services.

Once parental consent to begin services is given the student's parent(s) should always be included in decisions by the CCC. However, written consent from the parent(s) is not required to revise the IEP. After communicating with the parent(s) about the IEP changes being made, the school has to provide the parent(s) with written notice before it can

implement any of the proposed changes. This written notice must also inform the parent(s) of what steps they may take, should the parent(s) disagree with the proposed changes.

## WRITTEN NOTICE

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

- Describes what the school is proposing or refusing to offer. For example, if the parent(s) asked for 30 minutes of speech therapy two times a week, but the school wants to provide 30 minutes one time per week, the written notice would say that the school is proposing speech therapy for 30 minutes each week and is refusing the request for 60 minutes of speech therapy each week;
- Describes all of the information the school used in decision-making;
- Explains why the school made its decision(s);
- 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(s) has protection under the procedural safeguards and how to obtain a copy of the safeguards;
- Explains what action the parent(s) can take if they disagree with what the school wants to do [applies only to IEPs written after the parent(s) consented to the initial IEP];
- Explains that if the parent(s) takes any actions to disagree with the 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(s) to contact if they want 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.

## REVIEW OF THE IEP

The CCC must meet to review the IEP at least once a year to see if the student is achieving his/her 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(s) or school staff;
- At least every 60 school days for a student who receives special education services at home or in an alternate setting; 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(s) with written notice before it can implement the changes. This written notice must also inform the parent(s) of what steps they may take should the parent(s) disagree with the proposed changes.

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

If the CCC has completed its annual review and/or revision of the IEP and the parent(s) and school agree to change the IEP without having the whole CCC getting together, the parent(s) and school personnel can change the IEP without getting together for an actual meeting. The school may ask that the agreement to change the IEP without the CCC meeting be put in writing or signed off on by the parent(s). Any changes to the IEP that the parent(s) and school agree to must also be put in writing (written into the student's IEP).

## DISAGREEMENT OVER CHANGING AN IEP

If the student's parent(s) disagrees with the IEP changes described in the written notice, they must take action within **10 school days** of receiving the written notice. If they do not take any action within 10 school days of receiving the written notice, the school is required to implement the revised IEP.

If the parent(s) takes one of the following actions within 10 school days of receiving the written notice, the school must continue to implement the current IEP until the disagreement about the proposed IEP is resolved. The parent(s) may:

- Request **and participate** in a meeting with someone from the school who can resolve the problem,
- Initiate mediation (for more information on mediation, see the section on *Resolving Disagreements*), or

- Request a due process hearing (for more information on a due process hearing, see the section on *Resolving Disagreements*).

If the parent(s) requests a meeting within 10 instructional days of receiving written notice, school personnel must meet with the parent(s) and try to resolve the disagreement. Merely requesting the meeting is not enough to stop the implementation of the proposed IEP, the student's parent(s) must participate in the meeting with school personnel. If the disagreement is not resolved in the meeting, the school must continue to implement the current IEP. This is sometimes called the "Stay Put" provision.

If the parent(s) initiates mediation or requests a due process hearing within 10 instructional days of receiving written notice the same applies. If the parent(s) and the school participate in mediation, but are not able to resolve the disagreement, the school must continue to implement the current IEP. If the parent(s) requests a due process hearing, the school must continue to implement the current IEP until the hearing officer makes a decision resolving the dispute or the parent(s) and the school reach an agreement.

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

## IMPLEMENTATION OF 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 eleventh school day after the parent(s) receives the written notice of proposed changes to the IEP *unless* the parent(s):
  - Has given the school written permission to implement the changes earlier, or
  - Has taken one of the three actions when they disagree with the proposed changes, or
- By the student's 3<sup>rd</sup> birthday if the student is moving from early intervention services (First Steps) to early childhood education (see the section on *Early Childhood Special Education*).
- The effective or start date indicated in the IEP.

## REVOCAION OF CONSENT FOR SERVICES

Any time after the parent(s) has given the school permission to provide special education services, they may revoke or withdraw their consent. To revoke consent, the request must be made in writing and given to school personnel. Before the school stops providing special education services, the school must provide the parent(s) with written notice explaining the consequences of the request for revocation of services.

After the parent(s) receives the written notice from the school, all special education instruction, related services, accommodations, and any other services and supports provided to the student will stop. The student will be placed in a general education classroom and will receive education as a non-disabled student. After consent is revoked, neither the parent(s) nor the student will be entitled to the protections or the safeguards under Article 7 or the Individuals with Disabilities Education Improvement Act (IDEA '04). If the parent(s) revokes consent for services and later decide they want the student to receive special education services again, they must request an initial evaluation and go through the CCC process to decide if the student is still eligible for services (see the section on *Evaluation*).

## RELOCATION OF STUDENTS WITH IEP'S

**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 new school must *immediately* provide the student with a **free appropriate public education (FAPE)**. The new school must provide services similar to those described in the student's IEP from the old school, until the CCC meets. The CCC must meet within **10 school days** of the date the student enrolls in the new school and either adopt the student's IEP from the old school or develop a new IEP.

**For a student moving into an Indiana school district from another state:** The new school must *immediately* provide the student with a **free appropriate public education (FAPE)**, including services that are similar to those described in the student's IEP. If the school thinks a new evaluation is necessary, it may request written consent to conduct a reevaluation of the student from the parent(s). Nonetheless, the school must continue to provide the services listed in the IEP from the receiving school until an evaluation is conducted and the CCC reviews, revises or develops an IEP for the student.

## SECTION V

### EARLY CHILDHOOD SPECIAL EDUCATION

511 IAC 7-36-5

511 IAC 7-43-2

Children who are three years of age and have a disability are 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: as a transition from services received from First Steps or through a referral by a family member or health care worker who is working with the family and child.

#### **TRANSITION INTO EARLY CHILDHOOD SPECIAL EDUCATION FOR STUDENTS PARTICIPATING IN FIRST STEPS**

Some children may have participated in an early intervention program for infants and toddlers. At 3 years of age, if eligible, these children will transition to early childhood special education provided by the school. First Steps is Indiana's program for providing services for eligible infants, toddlers, and their families. Participating in First Steps is not a requirement for receiving early childhood special education services when the student turns 3 years old. Early childhood special education is available for students with disabilities from the student's 3<sup>rd</sup> birthday until the student is eligible for kindergarten.

If the student participated in First Steps, a transition planning conference must be convened by the First Steps (Part C) service coordinator before the student's 3<sup>rd</sup> birthday. The First Steps provider must obtain parental consent prior to submitting student-specific documentation to the school corporation of legal settlement, typically the public school where the family lives.

If parent consent is received; at least six (6) months prior to the student turning 3 years of age 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 where the family lives.

If parental consent is not received, at least six (6) months prior to the student turning 3 years of age the First Steps provider must inform the public school where the family lives that it will be invited to a transition planning conference for a child who will be transitioning who may be eligible for special education services. Without parental consent, no student-specific information may be shared.

Although the public school where the family lives is required to be invited to participate in this conference [as long as the parent(s) agrees to the participation], the school may not

be required to attend if not provided sufficient notice of the meeting. If a school representative is unable to attend a transition planning conference convened by the First Steps provider, the school must make arrangements to convene a case conference committee (CCC) meeting with the parent(s) to determine whether the student is eligible for special education services. This CCC meeting must ensure that by the time of an eligible student's 3<sup>rd</sup> birthday, the school has an individualized education program (IEP) developed and available for implementation.

By the time of the student's 3<sup>rd</sup> birthday, the public school responsible for the education of students who live in the area where the student and family claim residency must have:

- Completed its evaluation of the student,
- Convened the CCC to decide if the student is eligible for special education services,
- Developed an individualized education program (IEP) if the student qualifies for services, and
- Begun implementing the IEP, unless the CCC has determined that services will not be implemented until the beginning of the school year.

If the student's third birthday occurs during the summer, services must be provided during the summer 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.

For additional information see "Transition to Early Childhood Education: A Guide for Parents of Children with Disabilities" at

[http://www.doe.in.gov/exceptional/speced/pub\\_trans\\_guidelines.html](http://www.doe.in.gov/exceptional/speced/pub_trans_guidelines.html)

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

A child who is not yet old enough for kindergarten and who did not participate in a First Steps program may be evaluated for and, if found eligible, receive special education and related services provided by the public school's early childhood program. If the parent(s) suspects the child has a disability, s/he may contact the school responsible for providing educational services to students and request an initial evaluation (see the section on *Identification, Referral and Evaluation*). The parent(s) will need to provide the school with written permission (referred to as written consent) for the educational evaluation to begin. 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 EDUCATIONAL 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 there are related services needed by the student. The parent(s) is an equal partner in the CCC meeting. Services are to be tailored to the unique developmental and educational needs of the individual student. The school cannot decide on its own (unilaterally decide) to limit the instructional time or services based on disability categories, students' ages, 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 of an age where s/he is 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 in a combination of these settings as determined appropriate by the CCC.

**DEFINITION: Development Delay (DD) – A** delay in the student's development of gross motor, cognitive, receptive or expressive language, social or emotional, self-help, or other adaptive skills. The severity of the delay and the number of areas in which the delay occurs causes a student to be eligible as a student with a developmental delay. This disability category is limited to students who are 3 years old, 4 years old, or 5 years old who are not yet eligible for kindergarten.

## 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 INDIVIDUALIZED EDUCATION PROGRAM

For students who will be turning 14 or entering into the 9<sup>th</sup> grade (or earlier if determined necessary by the CCC), the case conference committee (CCC) develops a **Transition IEP** to help the student begin working on the skills the student needs to meet his/her goals for after high school.

Transition goals may include:

- Going to school at a university, community college, or vocational/technical school,
- Participating in on-the-job training,
- Getting a specific job or exploring specific career options,
- Applying for adult services from a state or community agency, and/or
- Living independently.

When the CCC is going to make decisions about the student's goals for what s/he will do after high school or about what the student needs in order to meet those goals, the student must be invited to the CCC meeting. The parent(s) decides if the student will attend the CCC meeting until the student legally becomes an adult (turns 18 years of age). If the student does not attend the meeting, someone from the school must talk to the student to gather information on the student's likes and what he/she would like to do after high school.

In order to develop an appropriate Transition IEP for the student, the school must collect data and information on the student that can be used to help plan for his/her life after high school. The collection of data on the student's postsecondary expectations is referred to as **age appropriate transition assessments**. Age appropriate transition assessments are used to: identify the student's strengths, preferences, and needs; assist in identifying appropriate postsecondary goals related to training, education, employment, and (if appropriate) independent living skills. They also help identify transition services needed to assist the student in reaching his/her postsecondary goals. Age appropriate transition assessments can be an informal assessment, such as an interview with the student, or a formal assessment, such as a

verbal or written test on career readiness. 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 very similar to the IEP for younger students, but the main focus is to prepare the student for accomplishing his/her personal goals for when s/he leaves high school. In addition to the things that must be included in any IEP (see the section on *Individualized Education Programs*), a Transition IEP includes:

- Information from age appropriate transition assessments on the student's strengths, preferences, and interests;
- Measurable postsecondary goals (goals for "after high school") related to training, education, employment, and (if appropriate) independent living skills;
- Annual goals which are reasonably designed to enable the student to meet their postsecondary goals;
- Courses of study (e.g., classes) that the student needs to take while in high school to reach his/her postsecondary goals;
- Documentation of whether the student will work on a high school diploma or a certificate of completion;
- The transition services needed to help him/her reach the postsecondary goals;
- The names of the individuals or agencies who will provide the transition services; and
- Documentation that the CCC reviewed information and provided information to the parent(s) on the kinds of adult services available through the state or local community, if appropriate.

### **PARTICIPATION OF TRANSITION SERVICE PROVIDERS IN THE TRANSITION IEP**

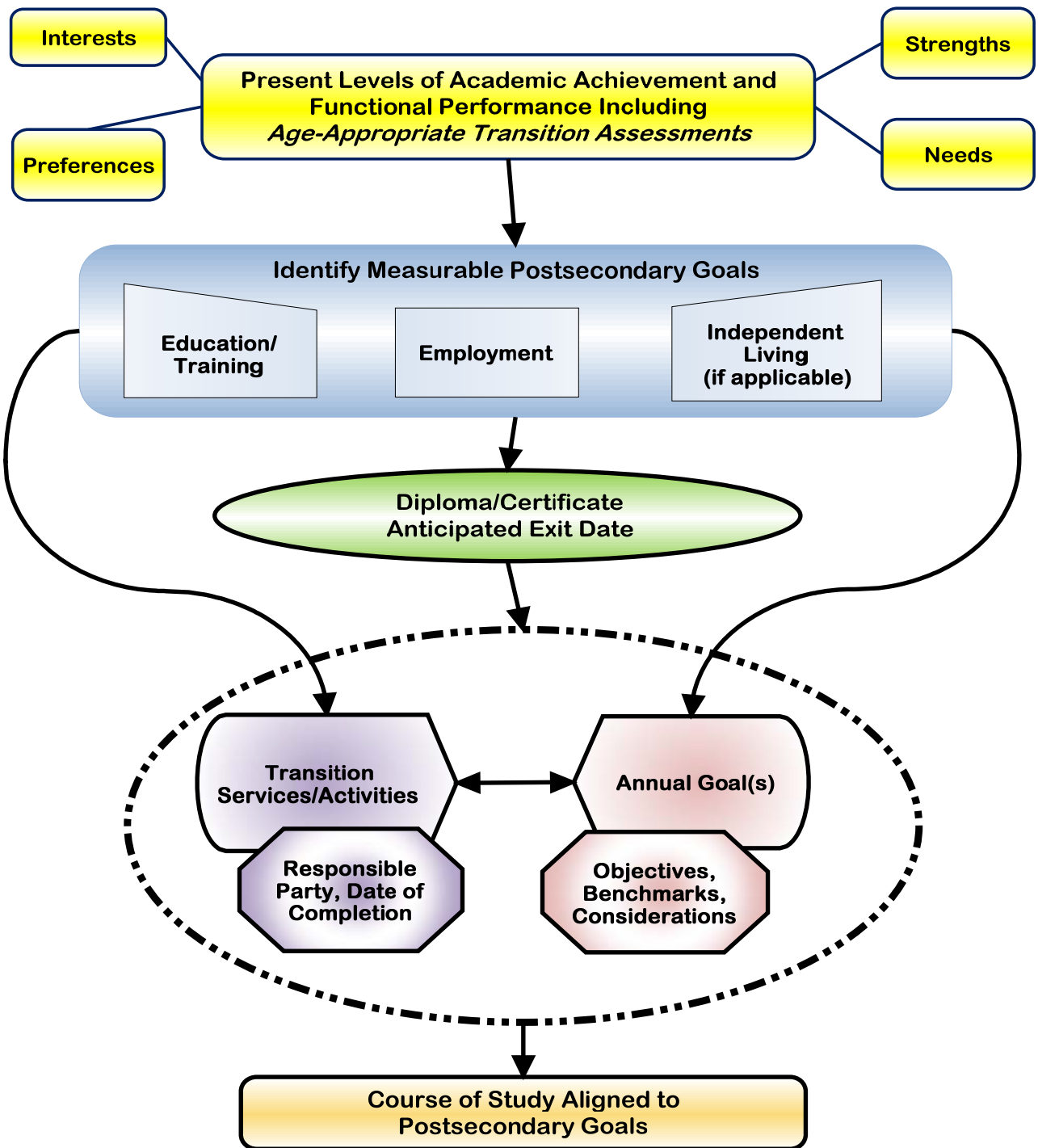
If a state or local agency may be paying for or providing "transition" services to the student, the school must get written consent from the parent(s) or adult student to invite a person from that agency to attend the CCC meeting. If written consent is provided, the school must invite a person from the agency to attend the meeting.

For example, when a student is eligible for a Transition IEP, the school may ask for written consent so that school personnel may talk with a Vocational Rehabilitation (VR) counselor about the student and determine if the student may be eligible for VR services. If they believe the student might be eligible for VR services, the school must obtain written consent to invite a VR counselor to the CCC meeting and must give the parent(s) information (both verbally and in writing) about available VR services and how to get the services for the student.



The following is a visual picture of how the Transition IEP process should work; as provided by the Indiana Department of Education (IDOE).

## TRANSITION IEP



Indiana DOE  
2007

NOTE: Discuss all other applicable IEP components

## TRANSFER OF RIGHTS

When a student turns 18 years of age, all the student's special education rights given to the parent(s) under federal and state special education laws transfer to the student unless a court of law has appointed a guardian for the student or the school has appointed an educational representative. If neither a guardian or educational representative has been appointed, the rights are transferred and the student is entitled to make the decisions about his/her education such as consenting to evaluations, requesting and attending CCC meetings, inviting others to attend a CCC meeting, taking action if he/she disagrees with the school's 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(s) 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(s) 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(s), but the student of legal age has the right to make educational decisions and take the same actions the parent(s) could take before the student turned 18 years of age.

## GUARDIANS AND EDUCATIONAL REPRESENTATIVES

There are two ways that the parent(s) can continue to make the educational decisions for a student who is 18 years of age or older:

- By having a court of law appoint the parent(s) as the **guardian** of the student, or
- Asking the school to appoint an **educational representative**.

A guardian is a person appointed by a court of law to make decisions for and/or manage the affairs of an individual who cannot make decisions or take care of his/her affairs because of a disability or other reasons. A guardian may be able to make more than just educational decisions for the student, depending on the type of guardianship the court orders. For more information, see *Questions and Answers about Guardianship* in the Resource section.

If a guardian has not been appointed, the school may appoint an educational representative if:

- The student makes a written request for a representative to be appointed, or
- Two qualified individuals (see list below) examine or interview the student and decide that the student is not able to give informed consent on his/her own behalf.

If the student requests an educational representative, 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.

## APPOINTING AN EDUCATIONAL REPRESENTATIVE

The school must appoint the student's parent(s) to serve as the educational representative. If the student's parent(s) is not available, the school must appoint a trained educational surrogate parent.

When someone other than the student requests an educational representative, the student must be examined or interviewed by two individuals who must decide if the student is able to give **informed consent**. This means they will decide if the student is able 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/her understanding of the decision in a meaningful way.

If they decide the student is not able to do these things, each person must state in writing that the student is incapable of providing informed consent. The school is not responsible for the costs of the examination.

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 18<sup>th</sup> birthday or anytime after that if appropriate.

## WHO DECIDES IF THE STUDENT IS NOT ABLE TO PROVIDE INFORMED CONSENT?

When determining whether an educational representative needs to be appointed, the two individuals who examine or interview the student 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 two individuals cannot be related to the student, and only one of the two can be employed by the school.

## AGE APPROPRIATE TRANSITION ASSESSMENTS

When the CCC is going to make decisions about the student's goals for after high school or about what the student needs in order to meet those goals, the CCC bases those decisions on the data from an age appropriate transition assessment. Basically this is a collection of existing data on the student, interview information from the student and those familiar with his/her strengths and desires, observation data reviewing the student in various settings, and any necessary formalized assessments. The collection of data is relevant to the student's current age and should provide the student and those working with him or her specific information about the student's strengths and desires for his/her future. The CCC must use all of the information from the age appropriate assessment when developing the student's Transition IEP and addressing the postsecondary goals for the student.

## SUMMARY OF PERFORMANCE (SOP)

When a student graduates with a high school diploma, leaves high school with a certificate of completion, or completes school by turning 22 years of age 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 his/her goals for life after high school.

A SoP should include the following basic items, but it may include more than this:

- 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 the student may need to reach his/her goals for after high school, such as accommodations, modifications, or assistive technology that the student uses or would be helpful to the student to meet his/her goals.

For more information on Indiana's Academic Standards, see:

<http://dc.doe.in.gov/Standards/AcademicStandards/StandardSearch.aspx>

## RESOURCES

For more information on issues related to transition, see the following websites:

- Indiana Institute on Disability and Community - <http://www.iidc.indiana.edu/cclc/?pageld=38>
- Iowa Transition Assessment - <http://transitionassessment.northcentralrrc.org/>
- Secondary Transition / Indiana Department of Education - <http://www.doe.in.gov/exceptional/speced/independence/welcome.html>
- Vocational Rehabilitation - <http://www.in.gov/fssa/ddrs/2636.htm>
- National Secondary Transition Technical Assistance Center - <http://www.nsttac.org/>
- U.S. Department of Education (See Secondary Transition) - <http://idea.ed.gov/explore/home>.

## SECTION VII

### SERVICES TO STUDENTS IN NONPUBLIC SCHOOLS SPECIAL EDUCATION AND RELATED SERVICES FOR PARENTALLY-PLACED STUDENTS IN NONPUBLIC SCHOOLS 511 IAC 7-34

When the parent(s) decide to enroll their school-aged student in a nonpublic (private or religious) school or facility, including home schools, s/he can expect three actions from the school corporation where the nonpublic school or facility is located. Those actions are:

- Locating, identifying, and evaluating all students with disabilities,
- Consulting with nonpublic school representatives and representatives of the parent(s) of nonpublic school students with disabilities, and
- Making 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 (please see the *Identification, Referral, and Evaluation* section), 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 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,
- Information on whether the student will participate in statewide or districtwide testing (e.g., ISTEP) and any accommodations the student will use during the test(s) if it is applicable,
- 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/when the school will inform the parent(s) of the progress.

Students generally receive a different level of service under a **service plan** than a student receives under an individualized education program (IEP). The full array of services available that are part of a **free appropriate public education (FAPE)** under an IEP are not required to be made available as part of a service plan. For example, the length and frequency of the services may be less than the student would receive through an IEP or 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(s) of a student who is enrolled in a nonpublic school may request mediation and/or a due process hearing if s/he disagrees with the school's child find activities, the appropriateness of an evaluation, or the determination regarding a student's eligibility. However, these 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(s) believes the public school has not complied with the requirements of IDEA '04 or Article 7, s/he may file a complaint with the Indiana Department of Education (IDOE). For more information, see the section on *Resolving Disagreements*.

#### IF A STUDENT ATTENDS A NONPUBLIC SCHOOL IN A SCHOOL CORPORATION OTHER THAN THE SCHOOL CORPORATION WHERE THE STUDENT LIVES (HAS LEGAL SETTLEMENT), WHO CONDUCTS THE INITIAL EVALUATION?

The parent(s) may request that an initial evaluation be conducted by either the 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(s) requests the evaluation from the **school corporation where the nonpublic school is located**, the school must:

- Explain to the parent(s) the concept of a FAPE,
- Advise the parent(s) that he/she 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(s) if he/she wants the evaluation conducted by the school corporation where the nonpublic school is located or the student's school corporation of legal settlement.

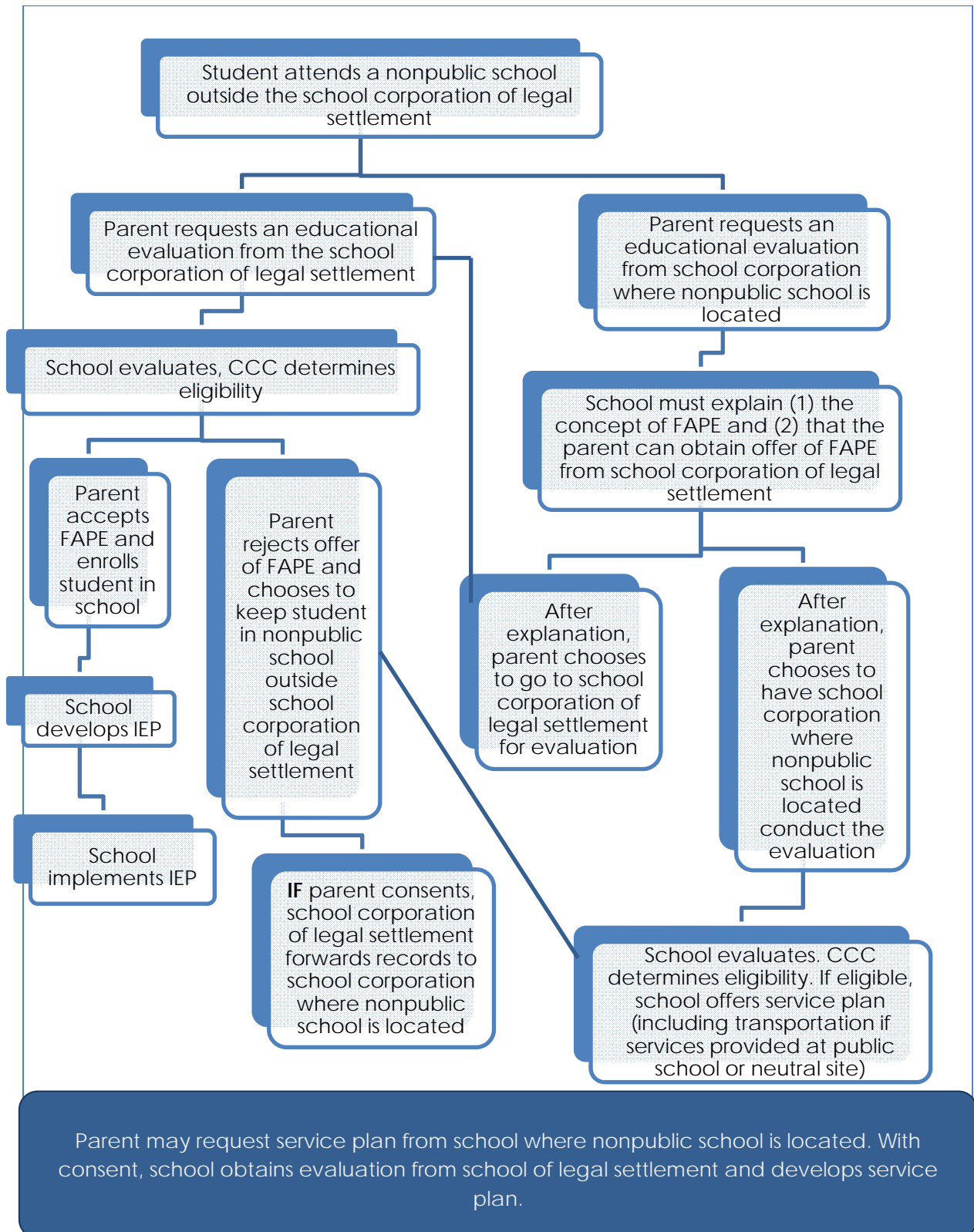
If the parent(s) chooses the school corporation where the nonpublic school is located, the school must follow the procedures for conducting an initial evaluation, including providing the parent(s) with written notices, conducting the evaluation, and convening the CCC within the appropriate timeline.

If the parent(s) chooses the **school corporation of legal settlement** to conduct the evaluation, the parent(s) must contact the school corporation and request an initial evaluation as described. The school corporation of legal settlement must then provide the written notices, conduct the evaluation, and convene the CCC meeting as required.

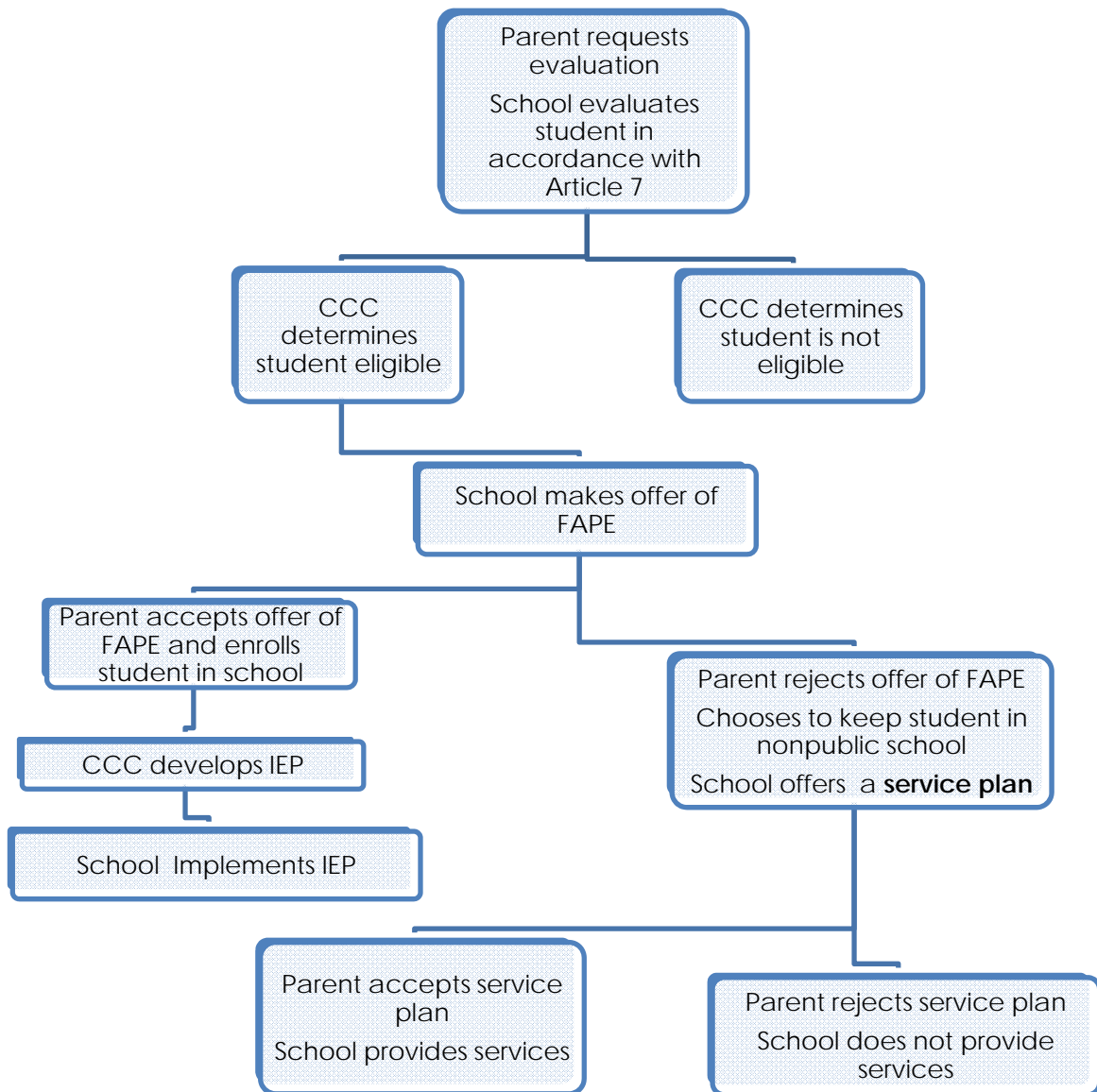
**NOTE:** When a student with a disability attends a nonpublic school outside the school corporation where the student lives, parental consent must be obtained before personally identifiable information about the student is released between the school corporation where the student lives and the school corporation where the nonpublic school is located.



The following flow chart outlines the process for accessing special education services when a student is enrolled in a nonpublic school outside the student's school corporation of legal settlement.



The following flow chart outlines the process for a student enrolled in a nonpublic school within the student's school corporation of legal settlement:



## SECTION VIII

### CONFIDENTIALITY OF INFORMATION

#### 511 IAC 7-38

The Family Educational Rights and Privacy Act (FERPA), the Individuals with Disabilities Education Improvement Act (IDEA '04), 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 also a number of situations in which the school may release certain information about a student without obtaining written parental consent.

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 and his/her 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.

#### RIGHTS TO INSPECT EDUCATIONAL RECORDS

The parent(s) and students of legal age have the right to **inspect and** review the educational record. When the parent(s)/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.

In addition to looking at the student's record, the parent(s)/student of legal age also has the right to:

- Have information interpreted or explained by school personnel,
- Have alternative arrangements or a copy of the record made if the location of the originals would prevent the parent(s) from being able to inspect and review the record,

- Have a representative inspect and review the record on behalf of the parent(s) 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(s) a fee for the making the copies of anything except IEPs and educational evaluation reports. For more information regarding fees, see 511 IAC 7-38-1(h).

#### IF A STUDENT'S PARENTS ARE DIVORCED, DOES THE NON-CUSTODIAL PARENT HAVE THE RIGHT TO ACCESS THE STUDENT'S EDUCATIONAL RECORD?

If the school has not received a court order terminating or restricting a parent's authority to access a student's educational record, the school must allow custodial and non-custodial parents to inspect and review the record.

#### REQUIRED PARENTAL CONSENT

Generally, the school must obtain consent from the parent(s)/student of legal age before disclosing personally identifiable information about a student. However, there are exceptions to this rule. In situations where the school may disclose information without consent, the school personnel must make a reasonable attempt to notify the parent(s)/student of legal age of the disclosure and, upon request, provide the parent(s)/student of legal age with a copy of the information that was disclosed. For more information, see 511 IAC 7-38-1(q) and (r).

#### AMENDING THE EDUCATIONAL RECORD

If there is information in the student's educational record that the parent(s)/student of legal age believes is inaccurate, misleading, or otherwise violates the student's rights, the parent(s)/student of legal age may submit a written request to the school specifying the information he/she would like changed or deleted. The school must respond in writing to the request within 10 business days, letting the parent(s)/student of legal age know 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 tell the parent(s)/student of legal age that he/she may request a hearing to have a hearing officer decide if the educational record should be amended, how to request such a hearing, and the procedures for the hearing. A hearing to amend an educational record

is different than a special education due process hearing. For more information, see 511 IAC 7-38-2.

#### HOW LONG MUST THE SCHOOL KEEP A COPY OF THE STUDENT'S EDUCATIONAL RECORD?

The school must maintain a student's educational record for at least three 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. For more information, see 511 IAC 7-38-3.

## SECTION IX

### PROCEDURAL SAFEGUARDS

#### 511 IAC 7-37

Article 7 provides several **procedural safeguards** for the parent(s) 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 parent(s) and schools.

The **procedural safeguards** affirm the right of the student’s parent(s) ...

- 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 the student’s parent(s) understand the procedural safeguards, the school must provide the parent(s) with a copy of the *Notice of Procedural Safeguards (NOPS)*, sometimes called the Notice of Parent Rights.

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

#### THE NOTICE OF PROCEDURAL SAFEGUARDS

The *Notice of Procedural Safeguards* 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 ;
- The parent’s right to request an evaluation;
- The parent’s right to a copy of the initial educational evaluation report prior to the case conference committee (CCC);

- The parent's right to a meeting with school personnel to discuss the initial educational evaluation report prior to the CCC;
- The parent's right to participate as a member of the CCC;
- The parent's rights regarding the student's educational record;
- The transfer of rights to the student at 18 years of age;
- The parent's right to access complaints, mediation, and due process hearings;
- 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. This includes protections for those students who are being evaluated but 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 the parent(s) in understanding Article 7.

The school must provide the parent(s) a copy of the *Notice of Procedural Safeguards* at least once a year and whenever:

- A student is referred for an initial evaluation,
- A parent requests an evaluation,
- A parent files a complaint (only the first complaint in the school year is required),
- A parent requests a due process hearing (only with the first hearing request in the school year),
- A disciplinary change of placement is made or recommended, and
- A parent requests a copy of the *Notice*.

To see a sample of the *Notice of Procedural Safeguards*, go to <http://www.doe.in.gov/exceptional/speced/docs/2008-10-14-ProceduralSafeguards.pdf>

# SECTION X

## STUDENT DISCIPLINE

### 511 IAC 7-44

Part of a parent(s) role in partnership with the school is to gain an understanding for the school rules their student must follow. When a student with a disability breaks one of the school rules, s/he 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 2004 and Article 7 use the term **removal** to refer to any situation in which a student is removed from his/her placement for any period of time. Schools often describe removals as detention, in-school suspension, out-of-school suspension, expulsion, etc.

The school may remove a student with a disability for up to **ten (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. The school may remove the student up to the **ten (10) consecutive school days** each time the student breaks such rules. If the student is ever removed for only part of a day, it counts as a whole day of removal.

After a student has been removed for more than **ten (10) cumulative school days** in the school year:

- The school principal or his/her designee must decide if this removal is a **change of placement** (see below), and
- The school must provide special education services to the student during this and any future days of removal.

The school does not have to provide any services to the student during the first **ten (10) school days** the student is removed.

IF THE STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM (IEP) OR BEHAVIORAL INTERVENTION PLAN (BIP) STATES THE STUDENT CAN BE REMOVED FOR SHORT PERIODS OF TIME, DOES THIS COUNT TOWARD THE "DAYS OF REMOVAL?"

No. If the case conference committee (CCC) agrees that short-term removals are an appropriate intervention for certain behaviors and includes this in the student's IEP or **BIP**, the removals do not count.



## IF THE SCHOOL ASKS THE PARENT(S) TO PICK UP THE STUDENT DUE TO THE STUDENT'S BEHAVIOR, DOES THIS COUNT AS A REMOVAL?

Yes, unless the IEP or **BIP** says that the school may have the parent(s) pick the student up from school when this behavior occurs.

## DOES AN "IN-SCHOOL SUSPENSION" COUNT AS A REMOVAL?

If the student:

- can continue to progress in the general curriculum,
- receives the services described in the student's IEP, and
- participates with non-disabled students to the same extent as in the student's placement,

then the in-school suspension does not count as a removal. If these three provisions do not qualify, then it would be considered a change of placement unless the student's CCC makes a different determination.

## IF THE STUDENT IS SUSPENDED FROM TRANSPORTATION, DOES THIS COUNT AS A REMOVAL?

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 alternative transportation. If transportation is not a related service in the student's IEP, the suspension from the bus does not count as a removal.

## DISCIPLINARY CHANGE OF PLACEMENT

A change of placement occurs when any of the following occurs:

- The student is removed for more than **ten (10) consecutive school days** in a row.
- The student is moved to an interim alternative educational setting (IAES) for **45 school days** for misconduct involving weapons, drugs, or serious bodily injury.
- The principal determines that a **series of removals constitutes a pattern** (see below).

## WHAT IS A "SERIES OF REMOVALS," AND HOW DOES THE PRINCIPAL DECIDE IF IT "CONSTITUTES A PATTERN?"

A **series of removals** means the student has been removed more than once. When the principal examines a "series of removals," s/he is looking at all of the times a student has been removed during a school year.

When a student has been removed for more than **ten (10) cumulative school days** in a school year, the principal (or someone appointed by the principal) decides if the series of removals **constitutes a pattern**. This means that the principal or designee must look at all of the removals and decide if there is a pattern or connection between them that, in effect, amounts to a change of placement for the student.

The principal or designee must consider the following questions:

- Has the student been removed more than once during the school year for more than a total of **ten (10) school days**?
- Is the student's behavior for this removal substantially similar to the behavior that caused the student to be removed earlier in the school year?
- Do the length of each removal, the total number of days the student has been removed, and the proximity of the removals support a finding of a "pattern" of removals?

The principal may also consider the student's disciplinary history, the student's ability to understand consequences, the supports provided to the student prior to the misconduct, and any other relevant factors.

What follows are two examples of how the process might work in a typical school setting.

### EXAMPLE 1

Student is a student with a disability and is removed from school:

- For 3 days in September for smoking,
- For 3 days in December for vandalism, and
- For 10 days in April for fighting.

The student has no other disciplinary actions, is able to understand the school rules and the consequences for breaking the rules, and has received all of the supports identified in the student's IEP.

What the principal will consider:

- On the 5<sup>th</sup> day of the April removal, the student will have been removed for more than ten days total for the school year. The April removal will be the third for the school year.
- The behaviors for each removal are not similar and they are not close in time.
- The student has no other disciplinary history, understands the consequences, and has been provided with the supports and services included in the IEP.

Based on this information, the principal would likely decide that the three removals **DO NOT** constitute a pattern and, therefore, the April removal is not a change of placement.

## EXAMPLE 2

Student is a student with a disability and is removed from school:

- For 3 days in early September for bullying another student,
- For 3 days in mid-September for being disrespectful to a teacher, and
- For 10 days in early October for fighting.

The student has no other disciplinary actions, understands the school rules and consequences, and has received all of the supports identified in the IEP.

What the principal will consider:

- On the 5<sup>th</sup> day of the October removal, the student will have been removed for more than ten days total for the school year. The October removal will be the 3<sup>rd</sup> for the school year.
- The behaviors for each removal would likely be considered to be “substantially similar” as they all involve inappropriate verbal or physical interaction with others.
- The removals are close in time to each other.

Based on this information, the principal would likely decide that the three removals **DO** constitute a pattern and, therefore, the October removal would be a change of placement.

## 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. School staff must talk with at least one of the student's teachers to decide what services the student needs in order to continue to participate in the general curriculum (although in a different setting due to the removal) and make progress on the goals in his/her IEP. These services must be provided beginning on the **11<sup>th</sup> day** of suspension in a 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(s) of the change of placement and provide the parent with a copy of the Notice of Procedural Safeguards.

Within **ten (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/misconduct is a manifestation of (caused by) the student's disability. Article 7 calls this a **manifestation determination**. If the CCC determines that the student's behavior/misconduct 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 decide if the student's behavior/misconduct was caused by the student's disability, had a "direct and substantial relationship" to the student's disability, or was caused by the school's failure to implement the student's IEP or **behavioral intervention plan (BIP)**.

The CCC reviews all of the relevant information about the student, including the IEP, teacher observations, and information provided by the parent(s), and answers the following questions:

- Was the student's behavior/misconduct caused by or does it have a "direct and substantial relationship" to the student's disability?
- Was the student's behavior/misconduct caused by the school's failure to implement the student's IEP?

If the answer to either question is "yes," the student's behavior/misconduct is considered to be a manifestation of the student's disability.

## MISCONDUCT AS A MANIFESTATION OF THE STUDENT'S DISABILITY

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

- Conduct a **functional behavioral assessment (FBA)** (if it has not already been conducted) and implement a **BIP** (for more information on FBAs and **BIPs**, see the section on IEPs).
- Review the **BIP** (if a **BIP** has already been developed), and make any changes needed to address the student's behavior/misconduct.

The student cannot be removed or otherwise disciplined for the behavior/misconduct, and the student must go back to his/her regular placement (unless the parent(s) and the school decide to change the student's placement).

There is **one exception** to this rule – if the student has been removed to an interim alternative educational setting (IAES) due to misconduct involving weapons, drugs or serious bodily injury, the school may keep the student in the interim setting for up to **45 school days**, even if the CCC decides that the conduct was caused by the student's disability (see section below on *IAES*).

In addition, if the CCC decides that the student's behavior/misconduct was caused by the school's failure to implement the IEP, the school must take immediate steps to fix the problem.

### MISCONDUCT NOT AS 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 services described in an FBA and/or **BIP** (if appropriate) to address the student's misconduct.

### DISAGREEMENT OVER MANIFESTATION DETERMINATION

The parent(s) may challenge the school's decision by requesting mediation and/or a due process hearing if not in agreement with the manifestation determination. If the parent(s) requests a due process hearing, the hearing must be conducted more quickly than a due process hearing on other issues. For more information, see the section on *Complaints, Mediation, and Due Process*.

## INTERIM ALTERNATIVE EDUCATIONAL SETTING (IAES)

An **interim alternative educational setting (IAES)**, is where the student is placed when the school removes the student from his/her placement for disciplinary reasons. For example:

- The student has been removed for more than 10 days in the school year, but the removals are not determined by the principal or designee to be a change of placement (see section on *Removals*). During placement in the IAES, the school decides what services will be provided to the student.
- The student's removal is considered a change of placement, but the CCC determines that the student's conduct was not a manifestation of the student's disability (see section on *Manifestation Determination*). The CCC decides what services the student will receive during placement in the IAES.
- The student is removed for up to **45 school days** for misconduct involving:
  - Bringing a weapon to school, or
  - While at school, on school property or at a school function, the student:
    - has a weapon,
    - knowingly has or uses illegal drugs,
    - sells or tries to buy a controlled substance, or
    - causes serious bodily injury to someone.

The CCC decides what services the student will receive during placement in the IAES. See 511 IAC 7-32 for the definition of weapon, illegal drugs, controlled substance, and serious bodily injury.

- A hearing officer orders the student placed in an IAES for up to **45 school days** after he/she decides that the student is substantially likely to hurt himself/herself or others if the student remains in his/her current placement.

## WHAT IS THE DEFINITION OF "SERIOUS 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.

## WHAT CAN THE PARENT(S) DO IF THEY DISAGREE WITH THE IAES?

If the parent(s) disagrees with what the school proposes for the IAES placement (e.g., homebound placement, placement in an alternative school, placement in a separate

classroom, etc.), the parent(s) may request mediation and/or a due process hearing. For more information see the section on *Complaints, Mediation and Due Process*.

## PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE

There are times when a general education student (a student who has not been determined eligible by the case conference committee) may still be protected by the provisions of Article 7 if a suspected disability is present.

If any of the following occurred before the student violated the school rules, the school is considered to have **knowledge** that the student may be a student with a disability, and the student is entitled to the protections of Article 7:

- The parent(s) sent something in writing (email, letter, note, etc.) to licensed school staff that s/he believed the student might need special education services;
- The parent(s) requested an initial evaluation of the student; or
- The student's teacher or other school staff told a supervisor that s/he had concerns about the student's pattern of behavior.

However, the student is not entitled to Article 7 protections if, at the times any of the following occurred:

- An evaluation had been requested but the parent(s) did not allow the evaluation to occur,
- An evaluation had been requested but the school provided the parent(s) with written notice that no evaluation would take place and the parent(s) did not take any action for due process.
- The student had been evaluated and determined eligible, but the parent(s) did not consent to services, or
- The student had been evaluated, determined not eligible, and the school provided the parent(s) with the appropriate notice that the student was not eligible.

## WHAT HAPPENS IF THE PARENT(S) REQUESTS AN EVALUATION DURING THE TIME A STUDENT IS SUSPENDED, EXPELLED, OR PLACED IN AN INTERIM ALTERNATIVE EDUCATIONAL SETTING?

The school must conduct the initial evaluation, but the evaluation must be completed in **20 school days** rather than 50 school days. This means the school must evaluate the student and hold the CCC meeting by the 20<sup>th</sup> school day after the school receives written parental consent for the evaluation. Until the CCC meets to determine the student's eligibility, the school decides where the student will be placed and can continue the student's suspension or expulsion.



IF THE PARENT(S) REVOKED CONSENT FOR SERVICES AND THE STUDENT WAS NO LONGER RECEIVING SPECIAL EDUCATION SERVICES WHEN THE INCIDENT OCCURRED (THE STUDENT VIOLATED SCHOOL RULES), IS THE STUDENT STILL PROTECTED AS A STUDENT WITH A DISABILITY?

If special education services are discontinued at parental request, and the student is later subjected to disciplinary action, the student is treated as a general education student, unless the parent(s) asked the school to “re-start” special education services prior to the time of the incident. If the parent(s) made this request before the student violated school rules, the student is entitled to the protections of Article 7. If the parent(s) does not make this request until after the student violates the rules, the student is considered a general education student, remains where the school places the student, and the evaluation is an expedited educational evaluation.

For more information on *Discipline Procedures*, see 511 IAC 7-44.

# SECTION XI

## RESOLVING DISAGREEMENTS

### COMPLAINTS, MEDIATION, AND DUE PROCESS HEARINGS

#### 511 IAC 7-45

There may be times when the parent(s) and school personnel do not agree about the provision of special education or related services. In many cases it will be a small disagreement that can be resolved by a meeting between the parent(s) and a school representative or by having another case conference committee (CCC) meeting. By working together to reach an agreement, the parent(s) and school personnel are able to continue a positive relationship and often find a solution to the disagreement in less time than if they have to use a more formal process such as a due process hearing.

Tips for parents when a disagreement arises –

- Be sure to identify the specific problem or concern.
- Prepare to communicate your problem or concern clearly.
- If you need more information or assistance in understanding the law, contact one of the parent information centers or a consultant at the Indiana Department of Education (IDOE.) **NOTE:** contact information for both are included in the Appendix of this document.
- Find out who is most directly involved that can help you solve the problem and schedule time to talk to this person either in person or by phone.
- If necessary, ask to hold a CCC meeting.

Sometimes however, the parent(s) and school personnel are not able to resolve their disagreement by talking or having another CCC meeting and must use the procedural safeguards. Those three options are:

- Filing a **complaint**,
- Requesting and participating in **mediation**, and/or
- Requesting a **due process hearing**.

For more information on other procedural safeguards, see the section on *Procedural Safeguards*.

## COMPLAINTS

A complaint is a claim that the school has violated federal or state special education rules or has failed to comply with an order issued by an independent hearing officer (IHO) or the Board of Special Education Appeals (BSEA). For example, the person filing the complaint might claim that the school failed to do something it is required to do – such as not providing all of the services listed in the student’s individualized education program (IEP). Or, it may say that the school is doing something that the rules say it cannot do – such as changing the student’s placement without giving the parent(s) prior written notice.

The violation alleged in the complaint must have occurred within one year of the date the complaint is filed. A complaint is not used to resolve a disagreement with the school about the student’s eligibility, evaluation, services, placement or the provision of a **free appropriate public education (FAPE)**. A complaint must be signed; the IDOE cannot investigate an anonymous complaint.

The IDOE provides a sample form that may be used to file a complaint. See <http://www.doe.in.gov/exceptional/speced/docs/2008-08-15-FilingComplaint-ElectronicVer.pdf.pdf>

<http://www.doe.in.gov/exceptional/speced/docs/2008-08-15-FilingComplaint-PaperVer.pdf>

## FILING A COMPLAINT

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

All complaints must:

- Be in writing;
- Include a statement that the school is not following one or more requirements of Article 7 or IDEA 2004;
- Include any facts about the situation;
- Include contact information for the person filing the complaint;
- Be signed by the person filing the complaint; and
- Be faxed, mailed, or hand delivered to the IDOE and the school.

If the complaint claims the school is not following the law regarding a **specific student**

(such as “the school did not complete Johnny’s initial educational evaluation within 50 school days”), the complaint must also include:

- The student’s name and address;
- The name of the school the student attends;
- A description of the what rules weren’t followed, including facts related to the situation; and
- A recommendation for how the situation should be resolved (if the person filing the complaint has a recommendation).

The written complaint must be sent to the IDOE and the school. It is recommended that, when sending the complaint to the school, it should be addressed to the school Superintendent or the local special education director.

## AFTER THE COMPLAINT IS FILED

The IDOE assigns a **complaint investigator** who will contact the school and the person filing the complaint.

The school has **ten (10) days** from the date the IDOE receives the complaint to:

- Provide a written response to the IDOE;
- Resolve the disagreement with the individual filing the complaint, including:
  - Putting the agreement in writing,
  - Having the person filing the complaint and school representative sign the agreement,
  - Sending the written agreement to the IDOE, and
  - Notifying the IDOE if any issues still need to be investigated;
- Agree with the person filing the complaint to engage in mediation (the mediation must be completed within 20 days from the date the parties agree to mediation)
- 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(s) are not able to reach an agreement on an issue.

The complaint investigator issues a written report within **40 days** from the date the IDOE receives the complaint. S/he will send a copy of the report to both the person who filed the complaint and the school.

If the investigator determines that the school did not follow the law, the report will tell the school what action it must take to correct the situation. The report will also include the timeline for the school to take the action, and s/he will monitor the school's progress in correcting the situation. In some instances a IDOE monitoring specialist will assist in monitoring the school's compliance with ordered corrective action.

#### WHAT IF THE PERSON FILING THE COMPLAINT OR THE SCHOOL DOES NOT AGREE WITH THE COMPLAINT INVESTIGATOR'S REPORT?

If the person filing the complaint or school disagrees with the complaint investigation report, either may request a **reconsideration** (which is another name for a **review**) by the Director of Special Education for the IDOE. Whoever asks for a reconsideration must send a written request to the IDOE within **seven (7) days** of the date s/he receives the complaint investigation report.

If anyone requests reconsideration, the IDOE reviews the file, any new information available, and decides if any changes should be made to the original report. If there are changes 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 days** of the date the IDOE received the complaint.

#### MEDIATION

Mediation is a voluntary and confidential process that allows a trained and impartial mediator help the parent(s) and school discuss and resolve a disagreement. The mediator helps the parties to express their views and positions and to understand the views and positions of the other party. The mediator's role is to help the parties communicate and, if possible, reach an agreement. The mediator does not recommend solutions or take sides.

Mediation may be used to resolve:

- A complaint (see previous section);
- A disagreement from the CCC meeting regarding:
  - The identification of or student's eligibility as a student with a disability,
  - The appropriateness of the evaluation, level of services, or placement,

- Anything else affecting the provision of a **free appropriate public education**;  
or
- A disagreement about the school reimbursing the parent(s) for services obtained by the parent(s) (e.g., private therapy, evaluation, etc.).

## REQUESTING MEDIATION

A *Request for Mediation* form may be obtained from your local special education office, the IDOE (see contact information in the *Resource* section), completed electronically on the IDOE website at: <http://www.doe.in.gov/exceptional/speced/docs/2008-08-15-ReqfMedForm-ElectronicVer.pdf>

or downloaded at: <http://www.doe.in.gov/exceptional/speced/docs/2008-08-15-ReqfMedForm-PaperVer.pdf>

The form must be completed and signed by both the parent(s) and the school representative and mailed, faxed, or hand delivered to the IDOE.

## THE ROLE OF THE MEDIATOR

Mediators have different educational and professional backgrounds, but have been trained in effective mediation techniques and have been determined by the IDOE to be impartial, knowledgeable about the laws and regulations relating to special education, and otherwise qualified to serve as a mediator. An individual serving as a mediator cannot be an employee of the IDOE or the school or other public agency involved in the education or care of the student.

The IDOE assigns mediators on a general rotation basis. This means that when mediation is requested, the IDOE contacts the mediator at the top of the rotation list to see if s/he is available. If that person is not available, the IDOE will contact the next person on the list.

The mediator:

- Works with the parent(s) and school to schedule a convenient date, time, and location for the mediation;
- Helps the parent(s) and the school identify and talk about the issues causing the disagreement;
- Gives everyone the opportunity to present his or her point of view; and
- Helps the parent(s) and school personnel look at whether there is any common ground and/or any issues on which they might be able to agree.

### Key Points about Mediation

- Mediation:
  - May be requested by the parent or the school,
  - Is voluntary, and
  - Must be agreed to by both the parent and the school in order for the mediation to occur.
- There is no cost to the parents 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 requested before or at the same time as a request for a due process hearing.
- If the disagreement is resolved through mediation, the parties must put their 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 are confidential and will 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 HEARINGS

A due process hearing is an administrative law proceeding before an impartial independent hearing officer (IHO). The parent(s) and the school have the opportunity to present witnesses and other evidence. At the conclusion of the hearing, the IHO considers all of the information and issues a written decision. A copy of the form to request a due process hearing can be downloaded from the IDOE website at:

<http://www.doe.in.gov/exceptional/speced/docs/RequestDueProcessHearing-ElectronicVer.pdf>.

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;
- Anything else related to the provision of a **free appropriate public education (FAPE)**; or
- Reimbursement for services obtained by the parent(s).

## REQUESTING A DUE PROCESS HEARING

A student's parent(s), the school or the IDOE may request a due process hearing.

In general, a due process hearing must be requested within two years of the date that the parent(s) or school knew or should have known about the issue or action that caused the disagreement. However, there are two exceptions to this timeline. See 511 IAC 7-45-3(c) in Article 7 for more information on the exceptions.

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

- The parent's name, address, and phone number;
- The student's name and address;
- The name of the school corporation and the school the child attends;
- The reason(s) the parent(s) is requesting the hearing that includes a description of the problem and any facts related to the problem; and
- How the parent(s) would like the problem solved (if the parent(s) knows).

A request for a due process hearing **must** be sent, at the same time, to the Superintendent of Public Instruction at the IDOE and the school (the school superintendent or the director of special education).

A form for requesting a due process hearing may be completed electronically on the IDOE website at:

<http://www.doe.in.gov/exceptional/speced/docs/RequestDueProcessHearing-ElectronicVer.pdf>

or downloaded at:

<http://www.doe.in.gov/exceptional/speced/docs/RequestDueProcessHearing-PaperVer.pdf>

**NOTE:** The due process hearing options is a time consuming process and may involve hiring an attorney or an advocate. This option is generally used as a last resort when other attempts to resolve the disagreement(s) have failed.



After a parent(s) requests a due process hearing:

- The Superintendent of Public Instruction appoints the IHO and sends a written notice about the IHO to the parent(s) and the school.
- The school must provide the parent(s) with information on free or low-cost legal or other relevant services that might be available.
- The school must send the parent(s) a written response to all of the issues raised in the due process request.
- If the school hasn't already sent the parent(s) the written notice required by 511 IAC 7-40-4(e) or 511 IAC 7-42-7, the school must also send the parent(s) a written notice of the action it is proposing or refusing.
- If the school believes the request for a due process hearing does not contain all of the required information, it may ask the IHO to make a decision on whether the parent(s) has to rewrite the request for a hearing.
- The parent(s) and the school must participate in a resolution meeting, unless they both agree not to have the meeting or to use mediation instead of a resolution meeting.
- If the disagreement is not resolved by the resolution meeting (or mediation), a hearing is conducted by the IHO.
- After the hearing, the IHO puts his/her decision in writing and gives a copy to the parent(s) and the school.

### WRITTEN RESPONSE TO A REQUEST FOR DUE PROCESS HEARING

Within **10 days** of receiving the parent's request for a due process hearing, the school must send the parent(s) a written response about the issues in the due process hearing request. If the school has not already sent the parent(s) a written notice about the action it wants to take or refuses to take, it must also provide the parent(s) with this written notice. For more information on what this written notice must include, see the section on *Individualized Education Programs*.

The school may decide the parent's request for a due process hearing does not contain all of the required information. If so, the school must notify the parent(s) and the IHO in writing within **15 days** of the date the school received the request for a due process hearing. The IHO has **5 days** to decide if the parent's request for a due process hearing meets all of the requirements. The IHO must immediately notify the school and the parent(s) of his/her decision in writing.

If the IHO agrees with the school, the parent(s) must rewrite the request for a due process hearing so that it meets all of the requirements. If the request has to be rewritten, the process starts over when the school receives the revised request for a due process hearing.

## RESOLUTION MEETINGS

A resolution meeting is an opportunity for the parent(s) 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 school must schedule the meeting within **15 days** of the date it received the parent's request for a due process hearing. The resolution meeting includes the parent(s), 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.

In order to have a due process hearing, the parent(s) **must participate** in a resolution meeting. However, the parent(s) and the school have two other options:

1. If the parent(s) and school agree, they can use mediation in place of the resolution meeting.
2. The parent(s) and school may also decide that neither wants to participate in a resolution meeting. If the parent(s) and school agree that they will not have a resolution meeting, they have to put their agreement in writing.

If the parent(s) and the school do not agree to the alternatives to a resolution meeting, the school must make reasonable efforts to get parent participation in the resolution meeting. If the parent(s) does not participate in the resolution meeting, the school may ask the IHO to dismiss the parent's due process hearing request.

## CAN THE STUDENT'S PARENT(S) BRING AN ATTORNEY OR AN ADVOCATE TO THE RESOLUTION MEETING?

The student's parent(s) may bring an attorney or an advocate to the resolution meeting. If the parent(s) brings an attorney, the school may also bring an attorney. The school's attorney may not attend the resolution meeting if the parent's attorney does not attend.

## RESULTS OF THE RESOLUTION MEETING

If an agreement is reached during the resolution meeting the agreement must be put in writing and signed by the parent(s) and the school's representative. Once the agreement is signed, the parent(s) 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 the court.

If a resolution meeting is held, but no agreement is reached, the school has **30 days** from the date that the request for due process hearing was received to continue to try to resolve the matter. This means that, if the resolution meeting was scheduled within 15 days of the date the school received the due process hearing request, it has at least another 15 days to continue to try to reach an agreement with the parent(s).

At the end of that 30 days, or if the parent(s) and the school have agreed not to hold a resolution meeting, the timeline for conducting the due process hearing begins. The hearing must be held and the IHO must give the parent(s) and the school a written decision within **45 days**, unless the IHO agrees with a request for additional time from the parent(s) or the school.

## CONDUCTING THE DUE PROCESS HEARING

Before the actual due process hearing, the IHO will hold a **prehearing conference** 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(s) and the school. During the due process hearing, the parent(s) 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.

A student’s parent(s) (or the parent’s attorney or advocate) has the right to:

- Decide if the student will attend the hearing;
- Decide if the hearing will be open or closed to the public;
- Inspect, review, and obtain a copy of the student’s educational record;
- Obtain one free copy of the written or electronic version of the transcript of the due process hearing;
- Obtain one free copy of the IHO’s decision in either written or electronic format; and
- Have their attorney’s fees paid by the school **if** a court decides that the parent(s) prevailed in the due process hearing or in court.

For more information on what happens in a due process hearing, see 511 IAC 7-45-7.

## DUE PROCESS HEARING APPEALS

If either the parent(s) or the school think the IHO's decision is incorrect (for example, the IHO's conclusions are not based on the facts presented at the hearing or Article 7), either may ask a court of jurisdiction to review the IHO's decision. If anyone asks a court to review the decision, they must make a request for review within **30 days** of the date they receive the IHO's decision.

## EXPEDITED DUE PROCESS HEARINGS

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. There are three (3) situations when an expedited hearing occurs:

- If a student's parent(s) requests a due process hearing because s/he disagrees with the school's decision about changing the student's placement due to disciplinary action;
- If a student's parent(s) requests a due process hearing because s/he disagrees with the school's decision about whether a student's behavior is a manifestation of the student's disability. See the section on *Discipline* for more information on manifestation determination; or
- If the school believes that putting a student back in his/her current placement would be dangerous for the student.

Activity	Expedited Timeline
School's Written Response To Parent(s)	Within <b>7 calendar days</b> of the date the school received the due process request.
Resolution Meeting	Within <b>7 calendar days</b> of the date the school received the due process request.
Time For The School To Resolve The Matter	Within <b>15 calendar days</b> of the date the school received the due process request.
Hearing Must Be Conducted	Within <b>20 school days</b> of the end of the time for the school to resolve the matter or from the time the school and the parent(s) agree not to have a resolution meeting.
Hearing Officer's Written Decision To The Parent(s) And The School	Within <b>10 school days</b> of the last day of the due process hearing.

For more information, see 511 IAC 7-45-10.

## RESOURCES

For more information about complaints, see the IDOE website at:

[http://www.doe.in.gov/exceptional/speced/complaint\\_investigations/welcome.html](http://www.doe.in.gov/exceptional/speced/complaint_investigations/welcome.html)

For more information about mediation, see the IDOE website at:

<http://www.doe.in.gov/exceptional/speced/dp-mediation.html>

For more information on due process hearings, see the IDOE website at:

<http://www.doe.in.gov/exceptional/speced/dp-dueprocess.html>

# 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)

Indiana Department of Education, 1-877-851-4106 [www.doe.in.gov](http://www.doe.in.gov)

Indiana Protection and Advocacy Services Commission, 1-800-622-4845, TTY – 1-800-838-1131  
[www.in.gov/ipas/](http://www.in.gov/ipas/)

## COMMUNICATION STRATEGIES

The Access for Special Kids out of Des Moines, Iowa offers a couple of brochures for parents and educators on effective communication strategies. They are available at:

[http://www.askresource.org/Publications/Communication\\_Matters.pdf](http://www.askresource.org/Publications/Communication_Matters.pdf) and  
<http://www.askresource.org/Publications/Improving%20Communication.pdf>

Creative problem solving (or CPS as it is sometimes called) is used by many schools to help facilitate effective decision-making within planning meetings. It is a process also used in dispute resolution. For additional information see:

<http://www.advocacyinstitute.org/resources/ADRMini-Guide.pdf>

The Pacer Center in Minneapolis, Minnesota (<http://www.pacer.org/>) offers several strategies for ensuring positive interactions with school personnel. One of their first suggestions is to assume honorable intentions. It is rare that education personnel are intentionally acting in a disrespectful manner. Oftentimes it is due to lack of knowledge regarding the situation. Take the opportunity as one of mentor and ensure an open mind when trying to provide additional information about your son or daughter (or his/her educational needs).

Remember the three Ps for communicating with others: Stay Positive, Proactive, and Partnership-Focused.

Keep a running list or agenda of items about which you want to speak with specific school personnel. That way, when the opportunity presents itself you can mark them off your list and save both you and the school personnel time. Although you are entitled to time with school personnel, remember that they have other families they work with (and families of their own). By having a list you can keep the conversation focused to the issues and hopefully clarify anything prior to it becoming a problem.

Take someone with you to the meeting, even if it is a neighbor. It is sometimes helpful just to feel like you have someone else in that room who is listening to what is being said to (and can discuss it with you later).

If emotions should arise, everyone should keep their focus on the needs and interests of the student. The individualized education program (IEP) is what the student will do or accomplish. If there happen to be personnel development or training needs, those items are discussed in "other factors relevant to the proposed placement" or the notes section. An IEP does not contain goals that the adults working with the student will complete.

Should it become evident that another meeting is necessary, try to schedule it before parting ways. That way, everyone involved knows when to expect to resume the conversation or planning process.

Should you feel that you and the school personnel are not going to reach a solution, ask whether the school is willing to try mediation. It is a free service offered by the Indiana Department of Education (and is described in Section XI of this document: *RESOLVING DISAGREEMENTS - Complaints, Mediation, and Due Process Hearings*).



## Who Must and May Be Invited and Who May Be Excused From Case Conference Committee Meetings

Position	Required for Initial	Required for Annual or to Revise IEP	Required for Transition IEP	Required if Student is ≥ 18 yrs	Can Be Excused	Need Parent Consent to Invite
Student	No	No	Yes	Yes	Log Attempts	No
Public Agency Representative	Yes	Yes	Yes	Yes	Yes	No
Parent	Yes	Yes	Yes	No*	Log Attempts	No
Teacher of Record	Yes	Yes	Yes	Yes	Yes	No
General Educator	Yes	Yes**	Yes**	Yes**	Yes	No
Instructional Strategist	MDT Rep	Yes	Yes	Yes	Yes	No
Multidisciplinary Team Member	Yes	No	No	No	No	No
State School Representative	<i>If considering state facility</i>				No	No
Private Facility Representative	<i>If considering private facility</i>				No	No
Nonpublic School Representative	<i>If considering service plan</i>				No	No
First Steps Representative	<i>If First Steps Intake and Parent requests</i>					No
Transition Services Agency Representative	<i>If Transition IEP and with Parent consent</i>					Yes
Alternative Program Representative	<i>If considering alternative program</i>				No	No
Public Agency Representative of Service	<i>If considering placement in facility served by a different PAR</i>				No	No
Other	<i>Need Parent consent if not employed by the public agency</i>				N/A	Maybe

\* If parent has not obtained guardianship and if not educational representative has been appointed, student = parent

\*\* Unless the student is not expected to participate in the general education environment

## A DECISION-MAKING GUIDE FOR CASE CONFERENCE COMMITTEES (CCC)

(as Alternate Assessment is Discussed)

