INDIANA DEPARTMENT OF EDUCATION
NOTICE OF PROCEDURAL SAFEGUARDS
Effective August 13, 2008

As the parent of a child who has or may have a disability, the federal and state laws give you certain rights – called procedural safeguards. If you would like a more detailed explanation of these rights, you should contact the principal of your child's school, a school administrator, your local special education director, or any of the resources listed on the last page of this notice of procedural safeguards (from this point forward referred to as the Notice). You may also contact the Indiana Department of Education, Center for Exceptional Learners, 151 West Ohio Street, Indianapolis, IN 46204; (317) 232-0570 or toll free at (877) 851-4106. This Notice makes reference to the **Division** which means the Division of Special Education within the Indiana Department of Education (now called the Center for Exceptional Learners, Office of Special Education).

A copy of this Notice must be given to parents once each year and upon:

- Initial referral or parent's request for evaluation;
- Filing of the first complaint during the school year;
- Filing of the first due process hearing during the school year;
- The date the school decides to take disciplinary action that constitutes a change of placement, including removal to an interim alternative educational setting for weapons, drugs, or serious bodily injury; and
- Parent's request.

You may choose to receive the Notice by electronic mail communication if the school makes that option available.

Special Education Terms

Article 7 means Indiana's special education regulations that are found in the Indiana Administrative Code (IAC) at 511 IAC 7-32 through 7-47.

Case Conference Committee (CCC) is a group comprised of school personnel and the student's parents that is responsible for determining the student's eligibility for special education and related services and developing and reviewing the student's individualized education program (IEP).

Day means a calendar day unless specifically indicated as a school, instructional or business or day.

Free Appropriate Public Education (FAPE) means special education and related services that:

- Are provided under public school supervision and at no cost to the parent;
- Meet the standards of the Indiana Department of Education (the IDOE);
- Include early childhood (preschool), elementary, and secondary education;
- Are provided in accordance with the student's IEP; and
- Include earning course credits and a diploma for academic requirements to the same extent the credit is awarded to students without disabilities.

IDEA means the Individuals with Disabilities Education Improvement Act and includes the federal law and regulations governing special education.

Individualized Education Program (IEP) is a written document that is developed, reviewed, and revised by the CCC describing how the student will access the general education curriculum (if appropriate) and the special education and related services to be provided. A **Transition IEP** is an IEP developed for a student who will turn 14 or enter the 9th grade during the time the IEP is in effect.

Student With a Disability means a student who has been evaluated in accordance with Article 7 and determined by the case conference committee to be eligible for special education and related services. Each student with a disability who is enrolled in public school is entitled to a free appropriate public education.

Both you and the school share a role in your child's education. If there are issues or concerns about your child's education, you and your child's teacher should discuss them. We urge you to be actively involved in your child's education.

WRITTEN NOTICE

The school must give you *written notice* when it:

- Proposes to initiate or change the identification, evaluation, special education placement or anything related to providing a FAPE to your child; or
- Refuses to initiate or change the identification, evaluation, special education placement or anything related to providing a FAPE to your child.

This means the school must give you written notice when it proposes or refuses:

- To conduct an initial evaluation;
- To conduct a reevaluation;
- To determine/identify a child's initial eligibility; or
- To change something in your child's IEP, such as educational placement, special education or related services, or anything related to the provision of a FAPE.

Notices[1] and Timelines

The **Notice of Initial Evaluation** and **Notice of Reevaluation** must include:

- A statement that the school is proposing or refusing to conduct the initial evaluation or reevaluation;
- A description of each evaluation procedure, assessment, record, or report the school used as the basis for its proposed or refused action;
- A description of other factors relevant to the school's proposal or refusal to conduct the initial evaluation or reevaluation;
- If proposing to conduct an initial evaluation –
  - A description of any evaluation procedures the school proposes to conduct
  - The timeline for conducting the evaluation and convening the CCC meeting
  - An explanation of how to obtain a copy of the evaluation report, at no cost, at least five (5) school days prior to the initial CCC meeting and
  - An explanation of how to request a meeting with someone who can explain the results of the evaluation at least five (5) school days prior to the initial CCC meeting;
- If proposing to conduct a reevaluation –
  - A description of the reevaluation process and
  - The timeline for conducting the reevaluation and convening the CCC meeting;
- If refusing to conduct the initial evaluation or reevaluation, an explanation of your right to contest the school's decision by requesting mediation or a due process hearing;

[1] The actual names of these written notices may differ across school corporations and charter schools.

- A statement that the parent of a student with a disability has protection under the procedural safeguards provision of 511 IAC 7-37-1; and
- A list of sources for parents to contact for assistance in understanding Article 7.

Timeline: The **Notice of Initial Evaluation** and **Notice of Reevaluation** must be received by the parent within 10 school days of the date the school receives the parent's request for an evaluation.

For initial educational evaluations, the **Notice of Initial Findings and Proposed Action** must include:

- A description and overall findings of each evaluation, procedure, assessment, record, or report the school used as the basis for the proposed initial eligibility;
- A description of the proposed eligibility; and
- An explanation of why the school may propose this action (eligibility).

Timeline: The written notice before an initial CCC meeting must be received by the parent at least five (5) school days before the initial CCC meeting.

The **Written Notice** about proposed or refused changes to an IEP must include:

- A description of the action proposed or refused by the school;
- An explanation of why the school proposes or refuses to take the action;
- A description of each evaluation, procedure, assessment, record, or report the school used as a basis for the action proposed or refused;
- A description of any other options the CCC considered and the reasons why those options were rejected;
- A description of any other factors that are relevant to the school's proposal or refusal;
- A statement that the parent of a student with a disability has protections under the procedural safeguards provisions described in 511 IAC 7-37-1 and how you may get a copy of a description of the Notice;
- A statement that you have the right to challenge the proposed or refused action after receiving the written notice on any IEP subsequent to the initial IEP by:
    - requesting and participating in a meeting with a school official who has the authority to facilitate the disagreement,
    - initiating mediation, or
    - requesting a due process hearing;
- A statement that if you challenge the proposed IEP within 10 school days of receiving the written notice, the school must continue to implement the current IEP (except as provided in 511 IAC 7-42-8(e) and (f) regarding newly enrolled students with an IEP from another school district); and
- Sources for you to contact for assistance in understanding your rights.

Timeline: The written notice about proposed or refused changes to an IEP must be received by the parent at least 10 school days before the school takes the action proposed in the Written Notice.

All of the written notices must be printed in a format that is easy to read, be in language understandable to the general public, and be in your native language or other principle mode of communication, unless it is clearly not feasible to do so. If this is not a written language, the school must take steps to ensure that the notice is translated orally or by other means into your native language or other mode of communication. If your language is not a written language, the school must assure and document that you understand the notice.

PARENTAL CONSENT

The school needs your **written consent** (your agreement) before it can do certain things with regard to your child's special education program.

Consent means:

- You have been fully informed, in your native language or other mode of communication, of all information regarding the action/activity for which your consent is sought.
- You understand and agree in writing to the action/activity for which the school is asking for your consent, and the document the school asks you to sign (to indicate your consent) includes a description of the action/activity for which consent is sought, a list of the records (if any) that will be released, and to whom.
- You understand the consent is voluntary on your part and you may revoke (withdraw) your consent at any time. If you revoke your consent, it is not retroactive and does not cancel an action that the school has already taken.

The school must obtain your consent in the following seven (7) circumstances –

1. Before your child is evaluated for the first time

The school cannot conduct an initial evaluation of your child to determine whether your child is eligible to receive special education and related services without first providing you with written notice of the proposed initial evaluation and obtaining your written consent. The school must make a reasonable effort to obtain your consent for an initial evaluation.

Your consent for initial evaluation does not mean that you are also giving consent for the school to provide special education and related services.

If your child is or will be enrolled in a public school and you refuse to give consent for an initial evaluation or fail to respond to the school's request for your consent, the school may (but is not required to) utilize mediation or a due process hearing to obtain your consent. The school will not violate its obligation to locate, identify, and evaluate your child if it does not pursue mediation or a due process hearing.

2. Before the school can provide special education and related services for the first time

The school must obtain your informed consent before providing special education and related services to your child for the first time. The school must make a reasonable effort to obtain your consent for the initiation of special education and related services. If you refuse to give consent for services to begin or if you fail to respond to the school's request for your consent, the school may not use mediation or a due process hearing to override the lack of consent.

If you do not provide consent and, as a result, the school does not provide special education and related services, the school is not in violation of the requirement to make a FAPE available to your child and is not required to have a CCC meeting or develop an IEP for the special education and related services for which the school sought your consent.

3. Before the school reevaluates your child, unless the school can demonstrate that it has taken reasonable steps to obtain your consent but you have failed to respond

If your child is found eligible and receives special education services, a reevaluation of your child must be considered at least once every three years. The school may reevaluate your child without your written consent if the school took reasonable steps to obtain your consent and you failed to respond.

If you refuse to consent to a reevaluation of your child, the school may (but is not required to) utilize mediation or a due process hearing to override your refusal to consent. The school will not violate its obligation to locate, identify, and evaluate your child if it does not pursue mediation or a due process hearing.

4. Before the school can access your child's public benefits or insurance programs or private insurance proceeds

With your consent, the school may use Medicaid or other public benefits or insurance programs or your private insurance to provide or pay for special education or related services. The school cannot require you to sign up for public benefits or insurance programs or incur any out-of-pocket expenses.

The school may not use the public benefits or insurance programs if doing so will decrease available lifetime coverage, result in you paying for services that would otherwise be covered, increase your premiums, result in loss of coverage, or risk the loss of eligibility for home and community based waivers. If you refuse to allow the school to access your child's public benefits or insurance or private insurance, the school must ensure that services are provided to your child at no cost to you.

5. Before the school can release the student's educational records to officials of any participating agency that is providing or paying for transition services or invite to the CCC meeting a representative from any participating agency (other than a public agency) who may be providing or paying for transition services

If your child will turn 14 or enter the 9th grade during the time the IEP is in effect, the CCC must develop a Transition IEP designed to help prepare your child to make the transition from secondary to post-secondary life. There are a number of agencies that assist students with transition services. The school must obtain your written consent before sharing your child's educational records with Vocational Rehabilitation Services or any other participating agency that may be providing or paying for transition services. When the CCC is developing or revising a Transition IEP and it is appropriate to include a representative of any participating agency that may provide or pay for transition services, the school must obtain your consent before inviting the agency representative(s) to the CCC meeting.

6. Before the school district of legal settlement and the school district where the nonpublic (private) school is located can exchange information about a student who has been unilaterally enrolled in a nonpublic school

If you unilaterally enroll your child in a nonpublic school in a school district other than your child's school district of legal settlement, the school district where the nonpublic school is located is responsible for locating, identifying, evaluating, and if eligible, making services available to your child. If at any time, the school district serving the nonpublic school and the school district of legal settlement need to share information about a student, you must provide your written consent before this can occur.

7. Before the public agency representative, teacher of record, general education teacher, or instructional strategist (individual who can interpret instructional implications of the evaluation) may be excused from attending and participating in all or part of a CCC meeting

The school must obtain your written consent before any of the four required school CCC participants may be excused from all or part of a CCC meeting if their area of expertise is to be discussed or modified. With your agreement the member may be excused if:

- The member's area of the curriculum or related service is not being modified or discussed in the CCC meeting; or
- The CCC meeting involves modification to or discussion of the member's area of the curriculum or related service and the member agrees to attend the relevant part of the meeting, or submits written input into the development of the IEP to you and other CCC members prior to the CCC meeting.

Your consent is <u>not</u> required --

- When the school reviews existing data or information as part of an initial evaluation or a reevaluation;
- When the school administers a test or other assessment that is given to <u>all</u> children unless consent is required of all parents;
- When a teacher or specialist administers a screening instrument to determine appropriate instructional strategies for curriculum implementation;
- When progress monitoring data is collected for students participating in a response to intervention process; or

- When the school proposes to change your child's identification, placement, special education, related services, or the provision of FAPE (but see section below – "*What happens if I disagree with the action the school is proposing or refusing in a subsequent IEP?*")

Can I decline to consent?

Yes. However, if you decline to consent to an initial evaluation or reevaluation the school can ask you to engage in mediation on the issue or it can initiate a due process hearing. The school may not use mediation or due process if you decline to consent to the initial provision of special education and related services.

Can I withdraw (revoke) my consent after it has been given?

Yes. You have the right to change your mind. Giving consent is voluntary. You can revoke (withdraw) your consent in writing at any time. Your written revocation should be sent to the school or the special education director. If you revoke your consent, it is not retroactive and does not cancel an action that the school has already taken.

What are the limitations on my consent?

The school must ensure that your refusal to consent to one service or activity does not deny you or your child the right to receive other services, benefits, or activities provided by the school.

What happens if I disagree with the action the school is proposing or refusing in a subsequent IEP?

When the school proposes or refuses an action concerning you child's special education and related services, it must provide you with written notice, and you must receive that notice at least 10 school days before the school can take the proposed action. If you disagree with the proposed action described in the written notice, you may:

- Request and participate in a meeting with a school official who has the authority to resolve the disagreement;
- Initiate mediation; or
- Request a due process hearing.

If you take any of these actions within 10 school days after receiving the written notice, the school cannot take the proposed action and must continue to implement the student's current IEP.

If you fail to take any of these actions within 10 school days after receiving the written notice, the school may implement (take) the proposed action.

You may take any of these actions after 10 school days of the date you receive the written notice, but the school may continue to implement the proposed action.

EVALUATIONS

An educational evaluation is a procedure to collect information about a child to determine if a student has a disability and inform the CCC about your child's special education and related service needs. The information is gathered from a variety of sources (including from parents) and through a variety of assessment instruments.

Initial Educational Evaluation

If you suspect your child has a disability and requires special education and related services, you may request that the school conduct an initial educational evaluation of your child. A comprehensive evaluation must be conducted before the CCC can determine if a student is eligible for special education and related services. Your written consent is required before the school can conduct the evaluation.

How do I request an initial educational evaluation?

You may request that the school conduct an initial educational evaluation of your child by:

- sending a signed written request to licensed school personnel (e.g., teacher, principal, guidance counselor, or school psychologist), or
- making a verbal request to licensed school personnel.

The school must send you written notice about the evaluation and obtain your written consent before conducting the evaluation.

What are the timelines for an initial evaluation?

The initial evaluation must be conducted and the CCC convened within 50 school days of the date the school receives your written consent. If your child has participated in a response to intervention (RtI) process and has not made adequate progress within an appropriate period of time, the school must conduct the initial evaluation and convene the CCC within 20 school days of the date it receives your written consent.

How do I get a copy of the initial evaluation report and can I meet with someone who can explain the evaluation results to me before the initial CCC meeting?

At the time you provide your written consent for the initial evaluation, you may request that the school provide you with a copy of the evaluation report and/or request a meeting with someone who can explain the evaluation results prior to the initial CCC meeting. Upon your request, the school must provide you with a copy of the report and arrange a meeting with someone who can explain the evaluation results. Both of these things must occur at least five (5) school days prior to the initial CCC meeting. If you do not request that a copy of the report be provided prior to the CCC meeting, the school will provide you with a copy at the initial CCC meeting.

Reevaluation

If your child is found eligible and receives special education services, the CCC must consider your child's need for reevaluation at least once every three years, unless you and the school agree that reevaluation is not necessary. If, at any time during the three-year period, you believe a reevaluation is needed, you may ask (verbally or in writing) licensed personnel for a reevaluation. The school must provide you with written notice about the reevaluation and must obtain your consent before conducting the reevaluation. Unless the reevaluation is being conducted to reestablish your child's eligibility, the reevaluation must be conducted and the CCC must convene within 50 school days of the date the school receives your written consent. Your consent for a reevaluation is not required if the school has made reasonable efforts to obtain your consent and you failed to respond.

Unless you and the school agree otherwise, a reevaluation to reestablish your child's eligibility may not occur more than one time a year.

Independent Educational Evaluation

You have the right to request an independent educational evaluation of your child at the school's expense if you disagree with the school's evaluation. Upon your request for an independent educational evaluation, the school must provide you with information about where an independent educational evaluation may be obtained and the criteria that apply to independent educational evaluations.

If you obtain an independent educational evaluation at public expense, the results of the evaluation must be considered by the CCC and may be used in a due process hearing.

What is an independent educational evaluation?

An "independent educational evaluation" or IEE means an evaluation conducted by a qualified evaluator who is not employed by the school that provides your child's education.

What does "at public expense" mean?

"At public expense" means that the school either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to you.

What happens if I request an independent educational evaluation at public expense?

If you request an IEE at public expense, the school must, within 10 business days of receiving your request, either:

- notify you in writing that it will pay for an IEE, or
- initiate a due process hearing to have a hearing officer decide if the school's evaluation is appropriate.

If you request an IEE, the school may ask for the reason(s) that you disagree with the school's evaluation. However, your explanation is not required, and the school may not delay either providing the IEE at public expense or asking for a due process hearing to defend its evaluation.

If the school initiates a due process hearing and the decision of the hearing officer is that the school's evaluation is appropriate, you still have the right to an IEE, but the school will not pay for it.

How many independent educational evaluations may I request?

You are entitled to only one (1) IEE at public expense each time the school conducts an evaluation with which you disagree.

What if I obtain an independent educational evaluation at my own expense?

If you obtain an IEE at your own expense and the evaluation complies with the school's criteria for an evaluation, the results of the evaluation must be considered by the case conference committee. You may also use the results of a privately obtained IEE in a due process hearing regarding your child.

You have the right to request a due process hearing to obtain reimbursement for the expense of the IEE. The hearing officer will determine if you are entitled to reimbursement. However, the hearing officer cannot order reimbursement if the privately obtained IEE did not meet the school's criteria for an evaluation, unless applying those criteria would deny your right to any IEE.

What are the criteria for an independent educational evaluation?

If an IEE is paid for by the school, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the evaluator, must be the same as the criteria the school uses when it conducts an evaluation, to the extent the criteria are consistent with your right to an IEE. Except for these criteria, the school may not impose conditions or timelines related to obtaining an IEE at public expense.

CASE CONFERENCE COMMITTEE MEETINGS

The CCC is a group of individuals that includes **you** and school personnel. The CCC is responsible for determining the student's eligibility, and if eligible, developing the student's IEP (including a Transition IEP). In developing an IEP, the CCC must consider a variety of general and special factors and determine the special education and related services that will meet the student's unique needs, as well as address all of requisite IEP components. The school must take whatever action is necessary (including providing an interpreter) to make sure you understand what happens in the CCC meeting.

What are my rights and responsibilities as a member of the CCC?

- You have the right to participate in all CCC meetings for your child until he or she reaches 18 years of age. You have the right to participate after the student turns 18 if you have obtained guardianship of or have been appointed as the educational representative for the student.

- You have the right to request that the CCC meet if you believe that a required component of the student's IEP needs to be changed to ensure the provision of a FAPE.
- You have the right to have the CCC meeting scheduled at a mutually agreed upon date, time, and place.
- If you want to participate, but cannot attend the CCC meeting in person, you may participate by telephone or other means.
- You may bring other individuals that you believe have knowledge or special expertise about your child to any CCC meeting.

When must the CCC meet?

- Within 50 school days from receipt of your written consent for an initial educational evaluation or reevaluation (unless the reevaluation is to reestablish the student's eligibility).
- At least annually.
- Upon the request of the parent or the school when either believes that a required component of the student's IEP should be changed to ensure the provision of a FAPE.
- Within 10 school days of a student's enrollment when the student had been receiving special education services in the previously attended school.
- Within 10 school days of a disciplinary change of placement to determine if the student's behavior is a manifestation of the student's disability.
- To determine the interim alternative educational setting (IAES), unless the IAES is already identified in the student's IEP.
- At least every 60 school days when the student receives services in a homebound or alternative setting.

CONFIDENTIALITY OF AND ACCESS TO EDUCATIONAL RECORDS

The Family Educational Rights and Privacy Act of 1974 (FERPA), as well as other state and federal laws, govern the confidentiality of a student's educational records. The school must protect the confidentiality of personally identifiable information concerning your child during the collection, storage, and destruction of information. A school official is responsible for ensuring the confidentiality of information and has received training in these procedures. The school provides training regarding confidentiality to anyone on the staff who collects or maintains this information, and must maintain a current list of the names and positions of school employees who have access to personally identifiable information in your child's educational record. This list is available for public inspection. The school must keep a record of those persons, except parents and authorized employees of the school district, who obtain access to a student's record, including names, dates, and purposes for the access. The school must also provide you, upon your request, with a list of the types and locations of education records collected, maintained, or used by the agency.

Terms

Directory Information means information about a student contained in the student's educational record that would not generally be considered harmful or an invasion of privacy if disclosed that can be made public without your consent in accordance with the school's policy. It includes information such as name, address, grade level, field of study, dates of attendance, and similar data.

Educational Record means records directly related to a student and maintained by the school or someone acting on the school's behalf. Educational records include, among other things, test protocols that contain personally identifiable information regarding a student or the student's IEP, audio clips, video clips, scanned images, and other electronically recorded or produced information, but do not include records of instructional, supervisory, administrative, or ancillary personnel that remain in the sole possession of the maker, are used only as a personal memory aid, and are not accessible to or revealed to any other person.

Personally Identifiable Information means information by which it is possible to identify a student with reasonable certainty including, but not limited to, the following:

- the name of the student, the student's parent, or any other family member;
- the address of a student;
- a personal identifier such as the student's social security or student identification number; and
- a list of personal characteristics, including disability designation, that would make it possible to identify the student with reasonable certainty.

Access To Your Child's Educational Record

Do I have the right to see my child's educational record?

You or your representative have the right to inspect and review your child's educational record with respect to the identification, evaluation, educational placement and provision of FAPE to your child. The school must let you look at your child's record unless the court has decided you cannot see them or your child has turned 18 years old (and no guardian has been appointed). Your child's non-custodial parent has the same access right unless the school has received a court order terminating or restricting the non-custodial parent's access to the record. If a record includes information that concerns your child and other children, you have the right to review only the information about your child.

The school cannot unnecessarily delay the opportunity for you to look at the record and must show you the record within 45 calendar days of your request **or** prior to any case conference committee meeting, resolution session, or due process hearing.

The right to inspect and review educational records includes the right to:

- an explanation and interpretation of your child's record from school personnel;
- have other arrangements made to review and inspect, including obtaining a copy of the record, if the school's failure to provide those copies deprives you of the opportunity to review and inspect the record;
- a copy of the record if you are involved in a pending due process hearing; and
- have someone inspect and review the record for you (with your consent).

The school may charge you for copies of the record, except for a copy of the evaluation report and IEP, but cannot charge more than the actual cost of duplication. The fee must not prevent you from seeing the record or exercising your rights to review or inspect the records. The school cannot charge a fee to search for records.

Does the school have to obtain my consent every time it wants to disclose personally identifiable information about my child?

The school must obtain your written consent before any personally identifiable information about your child may be released to any person not otherwise entitled under FERPA to have access to it or used for any purpose other than meeting requirements of the IDEA. An educational agency or institution may not release information from educational records to participating agencies without parental consent unless authorized to do so under FERPA.

The school may be required or permitted to disclose the student's educational record to others, such as to a new school the student will be attending or to law enforcement authorities when criminal activity is reported. When a student transfers to a new school, the student's record will include the current IEP and a statement concerning behaviors that required current or past disciplinary action. In other situations, a statement concerning behaviors that required current or past disciplinary action will be transmitted in accordance with the policies on transmitting records of students without disabilities.

There are a number of situations in which the school may disclose personally identifiable information about your child without your consent. The school may disclose information without your consent to any of the following:

- other authorized school officials or individuals acting on behalf of the school;
- another school where the student is enrolled or intends to enroll (but the school must take reasonable steps to notify you of the disclosure);
- federal or state education officials for audit, evaluation, accreditation, or enforcement purposes;
- in connection with financial aid sought by the student;
- state or local juvenile justice agencies in accordance with Indiana Code (IC) 20-33-7-3;
- an organization conducting a study on behalf of the federal or state education agencies;
- in response to a judicial order, lawfully issued administrative or judicial subpoena;
- the court (when the school has initiated legal action against you or the student or when you or the student initiate a legal action against the school);
- appropriate parties in a health or safety emergency;
- an accrediting organization (to facilitate the organization's accrediting functions);
- a parent of a student under the age of 18; or
- a parent of a dependent student as defined by the Internal Revenue Code.

In addition, your consent is not necessary for the school to disclose directory information (name, address, grade level, etc.) for school pictures, yearbooks, award ceremonies, and similar events. A student's special education record is not directory information.

If you refuse to consent to disclosure of personally identifiable information when the school believes that sharing such information is necessary, the school may initiate a due process hearing to have the disclosure authorized. If you believe the school has violated a rule governing educational records, you may file a complaint with the Division or the Family Policy Compliance Office, US Department of Education, 600 Independence Avenue, SW, Washington DC 20202-4605.

Do I have the right to review my child's record when he or she becomes an adult student?

Until your child reaches age 18, you have access to all educational records maintained by the school. When a student turns 18 (and no guardian is appointed), or when he or she becomes a student at a postsecondary educational institution, he or she becomes an "eligible student" and rights under FERPA transfer to him/her. However, parents retain access to student records of children who are their dependents for tax purposes. Also, the school must provide any notice required under IDEA to both the student and the parents when the child turns 18 years of age.

Amending (Changing) Something in Your Child's Educational Record

How do I change or amend something in my child's educational record?

If you believe that information in your child's educational record is inaccurate or misleading or that it violates your child's privacy or other rights, you may ask the school to amend the record. Your signed and dated request for amendment must specify the information that you believe is inaccurate, misleading, or otherwise in violation of your child's rights and must be sent to the principal of your child's school or the local director of special education. Within 10 business days of receiving your request, the school will notify you whether or not it agrees to amend the record. If the school agrees, the record must be changed within a reasonable period of time.

What happens if the school turns down my request to change or amend my child's educational record?

If the school refuses to amend the record, it must notify you in writing within 10 business days after it receives your request to amend the record and advise you that you have the right to a hearing to challenge the information contained in the child's educational record. If you request a hearing to challenge information in your child's record, the school must conduct the hearing. A hearing to amend a student's educational record is not the same as a special education due process hearing and will be conducted according to the requirements of FERPA. The school must:

- hold the hearing within 15 business days after it has received the request for the hearing from you or the eligible student;
- give you or the eligible student written notice, at least five (5) business days in advance, of the date, he time, and place, of the hearing; and
- give you or the eligible student a full and fair opportunity to present evidence relevant to the issues raised. You or the eligible student may, at yours or the eligible student's own expense, be assisted or represented by one or more individuals of your choosing, including an attorney.

Any individual, including a school official who does not have a direct interest in the outcome of the hearing, may conduct the hearing. The hearing officer must issue his or her written decision within 10 business days after the hearing is conducted. The hearing officer's decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

If, as a result of the hearing, the hearing officer decides that the information in question is inaccurate, misleading, or a violation of your child's rights, the school must change the record and inform you in writing of the change. If the hearing officer determines the information in question is accurate and not misleading or a violation of your child's rights, the school must inform you of your right to place a statement in your child's educational record commenting on the disputed information and reasons for your disagreement. The school must keep your statement in the educational record for as long as the record is maintained and if records are disclosed to anyone, with your written consent, your comments will also be disclosed.

Destruction of Records

The school maintains a student's educational record for at least three years after the student exits from the special education program. The school will inform you when personally identifiable information that the school has collected, maintained, or used is no longer needed to provide educational services to the student. You may request that the school destroy this information. Destruction of information means that the school will either physically destroy the information or remove the personal identifiers so that the information is no longer personally identifiable. However, the school is entitled to maintain a permanent record, including the child's name, address, phone number, grades, attendance records, classes attended, grade level completed and year completed, without time limitation. Additional details are available in the annual notice the school publishes.

TRANSFER OF RIGHTS AT THE AGE OF 18

When a student reaches the age of 18, all of the special education rights that belonged to the parent transfer to the 18-year-old student, unless:

- a guardian has been appointed by the court; or
- an educational representative has been appointed.

If a guardian has been appointed by the court, the educational rights transfer to the guardian, unless the court order specifies differently. If an educational representative has been appointed, the educational rights transfer to the educational representative.

At the CCC meeting before the student turns 17, the school must provide you and the student with written notice that the rights will transfer at age 18. The school must also provide written notice to you and the student at the time the student turns 18. Although you, as the parent, will continue to receive any notice required by Article 7, the student makes all of the decisions related to his or her special education services, unless a guardian or educational representative has been appointed.

REQUIREMENTS FOR UNILATERAL PLACEMENT OF CHILD IN NONPUBLIC (PRIVATE) SCHOOL AT THE PUBLIC SCHOOL'S EXPENSE

The IDEA and Article 7 do not require the school to pay for the cost of education, including special education and related services, for a student with a disability at a nonpublic school or facility if:

- the school made a FAPE available to the student, and
- you chose to place the student at the nonpublic school or facility.

However, the school district where the nonpublic school or facility is located is responsible for identifying, evaluating, and making special education and related services available through a Service Plan to students with disabilities attending the nonpublic school or facility through parental unilateral placement. A student with a disability who is unilaterally enrolled in a nonpublic school or facility is not entitled to a FAPE, but is entitled to some level of special education and related services.

Reimbursement For Nonpublic School Placement And Limitations On Reimbursement

If your child previously received special education and related services through the public school and you choose to enroll your child in a nonpublic preschool, elementary school, or secondary school without the consent or referral by the public school, you may seek reimbursement from the public school for the costs of the nonpublic school or facility.

If you are unable to reach agreement with the public school on the issue of reimbursement, you may request a due process hearing to resolve the issue.

The hearing officer or the court may require the school to reimburse you for the cost of the nonpublic school or facility if either finds that:

- The school did not make a FAPE available to the student in a timely manner prior to the student's enrollment in the nonpublic school or facility, and
- The nonpublic placement is appropriate (the nonpublic placement may be found to be appropriate even if it does not meet state standards applicable to public school education).

The hearing officer or the court may reduce or deny the reimbursement if they find that:

- At the most recent CCC meeting you attended prior to removing your child from public school, you did not inform the CCC that you were rejecting the placement the school proposed in its offer of FAPE, including stating your concerns and your intent to enroll your child in a nonpublic school or facility at the public school's expense, or
- You did not give the school written notice at least 10 business days before removing your child that you were rejecting the placement the school proposed in its offer of FAPE, including stating your concerns and your intent to enroll your child in a nonpublic school or facility at the public school's expense; and
- Prior to you removing your child from public school, the school provided you with the requisite written notice of the school's intent to evaluate the child, including a statement of the reason for evaluation that was appropriate and reasonable, but you did not make your child available for the evaluation.

The hearing officer or the court may not reduce or deny reimbursement if you failed to provide the written notice listed above, if either finds that:

- Providing the written notice would likely result in physical harm to the student;
- The school prevented you from providing the written notice; or
- You had not received a copy of the Notice that described the written notice requirement.

The court (but not the hearing officer) may reduce or deny reimbursement if the judge finds that your actions were unreasonable.

STUDENTS WITH DISABILITIES AND DISCIPLINARY ACTION

The IDEA and Article 7 use the term "removal" to describe the situation when the school unilaterally removes the student from his/her current placement for disciplinary reasons. A short-term removal pursuant to the student's IEP is not considered a removal for disciplinary purposes. A removal is considered a suspension, unless the removal meets the criteria that exempts the removal from being considered as such, and the school must follow the suspension procedures required by Indiana law and Article 7.

Disciplinary Change of Placement

A student with a disability is subject to the same disciplinary action for violating school rules as any other student. However, if a student is subjected to a disciplinary change of placement, there are additional procedural safeguards that apply. A **disciplinary change of placement** occurs when the student is removed for more than 10 consecutive school days or is subjected to a series of removals that cumulates to more than 10 school days in a school year and constitutes a pattern.

When the number of days of suspension a student with a disability has been subjected to is a series of removals that cumulates to more than 10 school days, the principal or the principal's designee must determine if the series of removals constitutes a pattern.

If the principal or designee determines that the series of removals does not constitute a pattern, then the current removal does not result in a disciplinary change of placement, and --

- The principal or designee must follow the procedures for suspending a student, including notices to the parent, and
- School personnel, in consultation with at least one of the student's teachers, must determine the extent to which services are needed to allow the student to continue to participate in the general education curriculum and make progress toward meeting the student's IEP goals (although this could be done in another setting during the period of removal/suspension).

If the principal or designee determines that it constitutes a pattern, the removal/suspension is considered a disciplinary change of placement, and the principal or designee must:

- Notify you of the disciplinary change of placement on the date the decision is made and send you a copy of the Notice (if the school is unable to reach you on the date the decision is made, the school must mail you a notice of the disciplinary change of placement and Notice on the following business day); and
- Convene the CCC to conduct a manifestation determination within 10 school days of the date the disciplinary change of placement decision is made.

Manifestation Determination

When the CCC conducts a manifestation determination, it reviews all relevant existing information about the student to determine whether the conduct/behavior in question:

- was caused by or had a direct and substantial relationship to the student's disability, or
- was the direct result of the school's failure to implement the student's IEP.

If the CCC determines that either of these to be true, the student's conduct/behavior is determined to be a manifestation of the student's disability, and the CCC must:

- Conduct a functional behavioral assessment (FBA) and develop a behavioral intervention plan (BIP), unless an FBA was conducted prior to the behavior resulting in disciplinary action. If an FBA was previously conducted, the CCC must develop a BIP to address the student's behavior; or
- Review an existing BIP and modify it as necessary to address the current conduct/behavior that resulted in disciplinary action.

Unless the student has been placed in an IAES or you and the school agree to a change of placement as part of the BIP, the school must return the student to the placement from which he/she was removed.

If the conduct/behavior is determined not to be a manifestation of the student's disability, the school may impose disciplinary sanctions in the same manner as it does for students without disabilities. The CCC must determine the appropriate services to be provided to the student during the period of removal, including the services needed to:

- continue to participate in the general education curriculum, although in different setting;
- progress toward meeting the IEP goals; and
- receive, as appropriate, an FBA and behavioral intervention services and modifications designed to prevent the conduct/behavior from recurring.

If these services are to be provided in an IAES, the CCC also determines the specific setting.

If you disagree with the CCC determination that the conduct/behavior is not a manifestation of the student's disability, you may request mediation and/or a due process hearing. The due process hearing in this situation is expedited.

Interim Alternative Educational Setting (IAES) For Weapons, Drugs, Or Serious Bodily Injury

The school may remove a student with a disability to an IAES for up to 45 school days if the student, while at school, on school grounds, or at a school function under the jurisdiction of the IDOE or a public agency:

- Carries a weapon to school or possesses a weapon;
- Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance; or
- Has inflicted serious bodily injury upon another person.

Weapon includes all of the following:

- A dangerous weapon is defined by federal law as "any weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that this term does not include a pocket knife with a blade of less than 2.5 inches in length."
- A deadly weapon is defined by state law as "(1) A loaded or unloaded firearm. (2) A destructive device, weapon, device, taser [as defined in IC 35-47-8-3] or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury. (3) An animal (as defined in IC 35-46-3-3) that is: (A) readily capable of causing serious bodily injury; and (B) used in the commission or attempted commission of a crime. (4) A biological disease, virus, or organism that is capable of causing serious bodily injury." See IC 35-41-1-8.
- A firearm, defined by state law, is "any weapon that is capable of expelling or designed to expel or that may readily be converted to expel a projectile by means of an explosion." See IC 35-47-1-5.

Illegal Drug means a controlled substance, but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health care professional or any other authority under the Controlled Substance Act or any other provision of federal law.

Controlled Substance means a drug or other substance identified under Schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act [21 United States Code (USC) § 812(c)] or IC 35-48-2.

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

If the school decides to place your child in an IAES for weapons, drugs, or serious bodily injury the school must:

- Notify you of this decision and provide you with a copy of the Notice; and
- Convene a CCC meeting and conduct a manifestation determination within 10 school days of the date of the decision to place the student in an IAES.

However, even if the CCC determines the student's conduct/behavior is a manifestation of the student's disability, the student remains in the IAES for up to 45 school days.

In addition to the manifestation determination, the CCC must determine the IAES and appropriate services needed to allow the student to:

- continue to participate in the general education curriculum, although in another setting,
- progress toward meeting the IEP goals; and
- receive as appropriate an FBA and behavioral intervention services and modifications designed to prevent the conduct/behavior from recurring.

If you disagree with the placement the school proposes as the IAES, you may request mediation or a due process hearing to resolve the disagreement. (See section on **Expedited Due Process Hearings and Appeals** below.)

Interim Alternative Educational Setting For Student Who Poses A Risk Of Harm To Self Or Others

A student with a disability may also be removed to an IAES if a hearing officer, upon the school's request for an expedited hearing, determines that there is a substantial likelihood that returning the student to his or her current placement (the student's placement prior to removal) will result in injury to the student or to others. The hearing officer may order this change of placement to an IAES for up to 45 school days.

Referral to and Action by Law Enforcement and Judicial Authorities

The IDEA and Article 7 do not:

- Prohibit the school from reporting a crime committed by a student with a disability to appropriate authorities, or
- Prevent state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

If the school reports a crime committed by a student with a disability, the school:

- must ensure that copies of the student's special education and disciplinary records are transmitted for consideration by the authorities to whom the school reports the crime, and
- may transmit a copy of the student's educational record, without first obtaining the parent's consent, only to the extent permitted by FERPA and as required by IC 20-33-7-3.

PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE

A student who has not yet been determined eligible for special education and who is subject to disciplinary action may be covered by the protections and safeguards of Article 7 **if** the school has knowledge or is considered to have knowledge that the student is a student with a disability before the behavior resulting in disciplinary action occurred. If the school has knowledge that the student may have a disability, the school must provide the student the same protections as a student with a

disability who is subjected to disciplinary action. (See **Students with Disabilities and Disciplinary Action** above.)

The school is considered to have knowledge that the student may have a disability if:

- You expressed concern in writing to licensed school personnel that the student needs special education services;
- You requested an evaluation of the student; or
- The student's teacher or other school personnel has expressed a specific concern about a pattern of behavior demonstrated by the student directly to school supervisory personnel.

However, the school is not considered to have knowledge that the student may have a disability and the student is not entitled to the protections if:

- You have not allowed the school to conduct an evaluation;
- You refused services under Article 7 or the IDEA; or
- The school conducted an evaluation, the CCC determined the student not to be eligible, and the school provided notice to you that the student was not eligible.

If a school does not have knowledge that your child has a disability prior to taking disciplinary measures, your child may be subjected to the same disciplinary measures as those applied to children without disabilities who engage in comparable behaviors consistent with the following limitations:

- If you made a request for an initial evaluation of your child during the time period in which your child is subjected to suspension, expulsion, or placement in an interim alternative educational setting, the evaluation must be conducted and the case conference committee must convene within 20 school days of the date you provided written consent for the evaluation.
- Until the evaluation is completed, your child remains in the educational placement determined by school authorities, which can include suspension or expulsion without educational services.
- If your child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the school and information provided by you, the school must provide special education and related services in accordance with the IDEA and Article 7.

COMPLAINTS

A complaint is a written, signed allegation that the school is not complying with one or more of the procedural requirements of state or federal statutes, regulations, rules, or constructions governing special education. It is submitted to the Division for investigation in accordance with the requirements of Article 7.

Who may file a complaint?

Any individual, group of individuals, agency, or organization may file a complaint with the IDOE, alleging the school's failure to comply with the requirements of Article 7 or the IDEA. You may also file a complaint if the school is not complying with orders issued by an independent hearing officer or the Board of Special Education Appeals (BSEA) as the result of a due process hearing.

What must be included in the complaint?

The complaint must:

- Be in writing and signed by the complainant;
- Include the name and contact information of the complainant
- Include a statement alleging that the school has violated a requirement of Article 7, the IDEA, or the federal regulations implementing the IDEA;
- Include facts on which the alleged violation is based; and

- If the complaint alleges a violation with respect to a specific student, the complaint must also include:
  - The name and address of the residence of the student;
  - The name of the student and available contact information if the student is a homeless student;
  - The name of the school the student is attending;
  - A description of the nature of the alleged violations with respect to the student, including the facts related to the alleged violation; and
  - A proposed resolution to the problem to the extent known and available to the complainant at the time.

The complaint must allege a violation that occurred not more than one year prior to the date of the complaint.

The complaint must be sent to the Division and the school district serving the student. A sample form for filing a complaint may be found at:
http://www.doe.in.gov/exceptional/speced/complaint_investigations/welcome.html.

What happens after a complaint is filed and how long does the investigation take?

The school has 10 calendar days from the date it receives your complaint to:

- Respond to the complaint in writing and forward the response to the Division and to you, the complainant;
- Resolve the complaint with you, prepare a written agreement that you and the school both sign, and forward the agreement to the Division, indicating if any issues remain to be investigated;
- Obtain your written agreement to engage in mediation (you must agree to participate in mediation in order for the mediation to occur); or
- Notify the Division to begin investigating the complaint.

If you and the school agree to mediate the alleged violations, the mediation must occur within 20 calendar days from the date you and the school agree in writing to engage in mediation. If mediation is successful, the mediation agreement must be sent to the Division. If you and the school resolve some, but not all of the issues, the Division will investigate any unresolved issues.

If the school fails to respond within the first 10 days, the Division will begin its investigation of all of the issues in the complaint on the 11th day. The Division will assign a complaint investigator who will contact you and the school to obtain information needed to make an independent determination as to whether a violation has occurred.

The investigator will review all of the relevant information, make a determination, and issue a report containing the investigator's findings of fact, conclusions, and corrective action as applicable. The investigator will mail a copy of the report to you and the school within 40 calendar days of the date the complaint was filed, unless the investigator has been granted extra time to complete the investigation.

What if I disagree with the complaint investigator's report?

If you disagree with the complaint investigation report, you may request reconsideration by writing to the Division within seven (7) calendar days of your receipt of the report. Your written request for reconsideration must state the specific portions of the report that you want reconsidered, and specific facts to support your request for a change in the report. The school also has the right to ask for reconsideration, following the same procedure. If you request reconsideration, the response from the Division Director is due within 60 calendar days after the original complaint was received by the Division. However, if additional time was granted for the complaint investigation report, the deadline for the Division Director's reconsideration response is also extended by the same number of days. The Division Director will mail the response to the request for reconsideration to you and the school.

Also. . .

- If a complaint contains issues that are also the subject of a due process hearing, the Division will set aside those issues pending the conclusion of the due process hearing.
- Any issue that is not part of the due process hearing will be investigated in accordance with Article 7 requirements.
- If you file a complaint containing an issue that was previously decided through a due process hearing involving the same parties, the Division will inform you that the decision of the hearing officer or the BSEA is binding.

MEDIATION

Mediation is a voluntary process that may help you and the school resolve a disagreement about your child's disability identification or eligibility, the appropriateness of the evaluation or proposed or current services or placement, the provision of FAPE, or reimbursement for services you've obtained privately. Mediation is also available to resolve a complaint.

Mediation is a way to discuss and resolve disagreements between you and the school with the help of an impartial third person who has been trained in effective mediation techniques. Because it is a voluntary process both you and the school must agree to participate in order for the mediation session to occur. The mediation session is scheduled in a timely manner and held in a location that is convenient to the parties to the dispute.

A mediator does not make decisions; he or she facilitates discussions and decision making. The discussions in a mediation session are confidential and may not be used as evidence in subsequent due process hearings or civil court proceedings. If the mediation process results in full or partial agreement, the mediator will prepare a written mediation agreement that must be signed by both you and the school's representative. In addition to describing the things you've agreed to, the mediation agreement will state that all discussions that occurred during the mediation are confidential and may not be used as evidence in a due process hearing or other civil court proceeding. The signed agreement is legally binding on both you and the school and is enforceable in court. You may also elect to enforce the mediation agreement through the complaint investigation process handled by the Division.

When is mediation available?

Mediation is available to resolve a disagreement between you and the school regarding the identification, evaluation, placement, services, or the provision of a FAPE to your child. The school may also request mediation to resolve your formal complaint of procedural violations. You may request mediation before, at the same time, or after requesting a due process hearing. Requesting mediation will not prevent or delay a due process hearing, nor will mediation deny any of your other rights. You or the school may suggest mediation, and it begins when both agree to participate. Participating in mediation is voluntary for both you and the school.

How do I request mediation?

In order to initiate the process, you and the school must both sign a *Request for Mediation* form that is then sent to the Division. A *Request for Mediation* form may be obtained from the school or from the Division. It is also available at: http://www.doe.in.gov/exceptional/speced/dp-mediation.html. Once the request is signed by both you and the school, the Division will assign a mediator who will contact both you and the school to schedule a timely meeting in a convenient location.

How is a mediator chosen and do I have to pay for the mediator?

The Division maintains a list of mediators who are trained, qualified, and knowledgeable about the laws and regulations relating to the provision of special education and related services. A mediator is assigned on a general rotation basis.

No employee of IDOE (including the Division), a local school corporation, or other public agency providing special education services is eligible to be a mediator. Mediators must not have any personal or professional conflict of interest. Mediators are not considered to be employees solely because they are paid to provide this service. The Division bears the cost of the mediation process.

The school may establish procedures to offer you the opportunity to meet at a convenient time and location to have someone from a parent training center, community parent resource center, or alternative dispute resolution entity to discuss the benefits of the meditation process when you have opted not to participate in mediation with the school. However, the Division must approve any procedures established by the school before they can be implemented, and the procedures cannot be used to delay or deny your right to a due process hearing if you decline to participate in such a meeting. The Division pays for the cost of these meetings.

DUE PROCESS HEARINGS, APPEALS, COURT ACTIONS and ATTORNEYS' FEES

A due process hearing is a formal proceeding in which evidence is presented to an independent hearing officer to resolve a dispute between you and the school regarding your child's disability identification and eligibility, the appropriateness of an evaluation or proposed or current placement and services, or any other dispute involving the provision of a FAPE.

A request for a due process hearing must be made within two (2) years of the date you knew or should have known about the alleged action forming the basis of your dispute with the school. This two-year limit does not apply if you were prevented from requesting the hearing due to specific misrepresentations made by the school that it had resolved the problem you complained about or if the school withheld pertinent information from you. Only a parent, the school, or the IDOE may request a due process hearing regarding a student with a disability. The school must provide you with information about free or low-cost legal and other relevant services in your area when you file a due process hearing or upon your request.

How do I request a due process hearing?

To request a due process hearing, you need to send a signed, written request that includes:

- The student's name and address (or name and available contact information for a homeless student);
- The name of the school the student is attending;
- The reasons for the hearing request, including
  - A description of the nature of the problem, and
  - Any facts related to the problem; and
- A proposed resolution to the problem to the extent known and available to you at the time.

The request must be sent at the same time to the superintendent of public instruction and the school district. A model form for requesting a hearing is available from the Division at http://www.doe.in.gov/exceptional/speced/dp-dueprocess.html.

What happens after I send a request for a due process hearing?

Once a request for hearing is received, an independent hearing officer is appointed, and he/she is provided with a copy of your hearing request. Otherwise your request remains confidential. The Division will send you and the school a letter notifying you of the hearing officer's appointment. In addition, the school must abide by certain requirements within specific time periods after it receives your request for a due process hearing (see below for more details). The school must also inform you of the availability of mediation and any free or low-cost legal and other relevant services in the area.

What actions must the school take once it receives my request for a due process hearing?

Within 10 calendar days of receiving your request for a due process hearing, the school must send you written response regarding the subject matter of your due process hearing request including, if not already provided:

- An explanation of why the school proposed or refused to take the action that is the subject of the due process hearing;
- A description of the options the CCC considered, and the reasons they were rejected;
- A description of each evaluation procedure, assessment, record, or report the school used as the basis for its decision;
- A description of the factors the school believes are relevant to its proposal or refusal; and
- A response that specifically addresses the issues raised in the due process hearing request.

If the school believes your due process hearing request does not contain all of the required information listed above, it may send a letter to you and the hearing officer indicating that your request does not comply with the requirements. If the school is going to send this letter, it must do so within 15 calendar days of receiving your request for a due process hearing. The hearing officer then has five (5) calendar days to determine if your request is sufficient and will immediately inform both you and the school in writing of the decision. If the hearing officer agrees with the school, he/she must identify how your request is insufficient so that you can amend the request if appropriate. If the school does not challenge the contents of your request for a due process hearing, it is considered to meet all of the requirements.

Within 15 calendar days of receiving your request for a due process hearing, the school must provide you with the opportunity for a resolution meeting to see if the matter can be resolved. Information on the resolution meeting is described below and a sample *Resolution Form* may be accessed at: http://www.doe.in.gov/exceptional/speced/docs/2008-08-25-ResolutionSessionForm.pdf.

What is a resolution meeting, who attends, and what happens?

Prior to the opportunity for a due process hearing, the school must convene a meeting called a "resolution meeting." The meeting must include a representative from the school with decision-making authority and relevant members of the CCC who have information about the facts alleged in the hearing request. Unless you bring your attorney to this meeting, the school may not have an attorney at the meeting. The purpose of this meeting is for you to discuss your request and the facts that formed the basis of your request so that the school has the opportunity to resolve the dispute. You can agree with the school to use an alternative means to hold the resolution meeting (e.g., via video conference or conference telephone call).

Do I have to attend the resolution meeting?

You do not have to attend a resolution meeting if you and the school agree in writing to waive it, or if you both agree to use the mediation process. If there is no agreement to waive the resolution session or use mediation, you must participate in the resolution meeting.

If you fail to participate, the timelines for the resolution process and due process hearing will be delayed until the meeting is held. If, at the end of 30 calendar days from the date of the due process hearing request, you have not participated in the resolution meeting and the school has made reasonable efforts to obtain your participation, the school may ask the hearing officer to dismiss your request for a due process hearing.

If the school fails to hold or participate in the resolution meeting within 15 calendar days from the date of your request for a due process hearing, you may ask the hearing officer to start the 45 calendar day timeline for the due process hearing.

What if the school and I come to an agreement and resolve the issues that are the subject of my hearing request during the resolution meeting?

If you and the school come to an agreement during this meeting, you will both sign a legally binding written agreement that will be enforceable in a court of appropriate jurisdiction. After it is signed, either you or the school may void the agreement by notifying the other party in writing within three (3) business days for the date the agreement was signed. The resolution agreement is also enforceable through the complaint investigation process handled by the Division.

What if we waive the resolution meeting or if we don't reach agreement?

If you and the school agree in writing to waive the resolution meeting or if you cannot resolve the issues in mediation or a resolution meeting within 30 calendar days of the date the school received your request for a hearing, the due process hearing may proceed. The 45 calendar day timeline for the due process hearing begins at this point.

Can I change or add issues to my request for a hearing after it has been determined to meet all of the requirements?

Once your request for a due process hearing has been determined to meet all of the requirements, you cannot change or add issues to the request unless one of the following occurs:

- The school agrees in writing that you can add or change issues and has the opportunity to conduct a resolution meeting on the new or changed issues, <u>or</u>
- The hearing officer gives you permission to make changes (but this cannot occur within the last five (5) days prior to the due process hearing).

If you are permitted to make changes or add issues to your request for a hearing, it may be treated as the first request for a due process hearing, and all of the timelines and events such as the sufficiency of your request and the resolution session could begin again.

When and where will the due process hearing take place?

Before the hearing occurs, the hearing officer will contact you and the school to make arrangements for a prehearing conference. One of the things you will decide at the prehearing conference is when and where the hearing will occur. The hearing will be held at a time and place reasonably convenient to you and the school. The hearing officer will send you written notice about the time and the place of the hearing, as well as other procedural matters.

Who conducts the due process hearing?

An independent hearing officer conducts the due process hearing. The Division maintains a list of individuals who serve as hearing officers, along with a list of each individual's qualifications. Individuals who serve as hearing officers cannot be employees of the IDOE or the school corporation or any other public agency involved in the student's care or education, and they cannot have any professional or personal interest that would conflict with their objectivity in conducting the hearing. An individual who is otherwise qualified to conduct a hearing is not an employee of the school or agency solely because he/she is paid by the school or agency to serve as the hearing officer. Every hearing officer must meet the qualifications set forth in Article 7 and established by the superintendent of public instruction.

Can I raise new or additional issues during the due process hearing?

You will not be able raise issues at the hearing that you did not include in your hearing request, unless the school agrees otherwise.

What are my rights and the school's rights during a due process hearing?

You and the school have the right to:

- Be accompanied and advised by legal counsel or by individuals with knowledge and training with respect to special education or the problems of students with disabilities;

- Present evidence, confront, cross-examine, and compel the attendance of any witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed at least 5 (five) business days prior to the hearing;
- Separate the witnesses so that they do not hear other witnesses' testimony;
- Be provided with an interpreter;
- Conduct discovery;
- Obtain a written or electronic verbatim transcript of the hearing; and
- Obtain a written or electronic copy of the findings of facts and decision.

As a parent, you also have the right to:

- Decide whether your child (who is the subject of the hearing) will attend the hearing;
- Have the hearing opened or closed to the public;
- Recover reasonable attorney fees if a court determines you prevailed; and
- Obtain a written or an electronic verbatim transcript of the proceedings, as well as a written or electronic copy of the hearing officer's written decision, including findings of fact, conclusions, and orders without cost to you.

Before the hearing, you are entitled to inspect, review, and obtain a copy of your child's educational record, including all tests and reports upon which the school's proposed action is based.

In addition, at least five (5) business days before the date of the hearing, you and the school must disclose to each other any evaluations either of you intends to use in the hearing. Specifically, copies of all evaluations and recommendations based on those evaluations must be exchanged by that deadline. If either you or the school fails to make these disclosures on time, the hearing officer may bar the evidence from the hearing. If an evaluation is underway and has not been completed, it is necessary to inform each other and the hearing officer.

What authority or discretion does the hearing officer have?

The hearing officer may:

- Issue subpoenas;
- Determine whether individuals are knowledgeable with respect to special education in order to assist in the proceedings;
- Frame and consolidate issues in the hearing to provide clarity;
- Bar the introduction of evaluations or recommendations not timely disclosed to the other party;
- Order a student to be placed into an IAES; and
- Rule on any other matters with respect to the conduct of the due process hearing (subject to administrative or judicial review).

How does the hearing officer make the decision?

The decision of the hearing officer is made on substantive grounds based on a determination whether the school provided your child with a FAPE. If your request for a hearing includes or is based on alleged procedural violations, the hearing officer may find that your child did not receive a FAPE only if he or she finds that the procedural violations occurred <u>and</u> that they:

(1) Impeded your child's right to a FAPE,

(2) Significantly impeded your opportunity to participate in the decision making process regarding the provision of FAPE, or

(3) Deprived your child of educational benefits.

As part of his/her decision and order, the hearing officer may order the school to comply with the procedural requirements.

When will I get a copy of the hearing officer's written decision?

The hearing officer must conduct the hearing and mail you and the school a written decision within 45 calendar days from either: (1) the date that you and the school agreed in writing to waive the resolution meeting, or (2) the 30th calendar day following the IDOE receipt of your request for a hearing if you and the school did not resolve the issues in mediation or a resolution meeting during the 30 calendar day period. However, it may be longer than 45 calendar days if the hearing officer grants a request for an extension of time from you or the school. The hearing officer's decision is final and the orders must be implemented unless you or the school appeal the decision by requesting review by the BSEA.

Who pays for the due process hearing?

The school is responsible for payment of the hearing officer's fees and the court reporter's charges. You are responsible for your costs of participating in the due process hearing (e.g., witness fees, your attorney's fees, costs of copying documents, etc.) Under certain circumstances, the school may be required to reimburse you for your attorney's fees.

What if I disagree with the hearing officer's written decision?

If you disagree with the hearing officer's written decision, you may request a review of the decision by the BSEA. Your petition for an impartial review must be submitted within 30 calendar days of the date you receive the written decision from the hearing officer.

The petition must be in writing, signed, and filed simultaneously with the school and the superintendent of public instruction. The petition must specify the reasons you disagree with the hearing officer's decision and identify those parts of the hearing officer's findings, conclusions, and orders with which you disagree.

What happens when the Board of Special Education Appeals reviews the hearing officer's decision?

The BSEA will review the entire record of the hearing to ensure the procedures of the hearing were consistent with the requirements of special education due process procedures. You or the school may request to make an oral or written argument to the BSEA, or the BSEA may ask you and the school to do so. The BSEA may also decide to conduct a hearing to gather additional information.

If the BSEA asks for oral argument or wants to conduct a hearing, you have the right to be represented by counsel or other individuals with knowledge and training with respect to special education or the problems of students with disabilities. The BSEA must schedule the proceeding at a time and place reasonably convenient to you, your child, and the school. Both you and the school have the same rights as in the due process hearing. The BSEA will make an independent decision at the completion of its review. The BSEA's written decision will contain findings of fact, conclusions of law, and, if necessary, orders. The written decision will be mailed to you and the school. You have the option of receiving the BSEA's decision in an electronic, rather than written format, either of which is free of charge.

How long does it take the Board of Special Education Appeals to conduct a review?

The BSEA must mail its written decision to you and the school within 30 calendar days from the date the petition for review was first received by the IDOE. However, a longer period of time is allowed if the BSEA has granted either party's request for an extension of time.

What if I disagree with the decision of the Board of Special Education Appeals?

The BSEA's decision is final unless you or the school file a civil action in a state or a federal district court. An appeal to court must be filed within 30 calendar days of the date you receive the BSEA's decision. The party requesting review shall see that the court receives the record of the administrative proceedings. The party requesting review has the obligation to request a certified record from the IDOE to be used for the appeal. The court may hear additional evidence upon either party's request, make a decision based on a preponderance of the evidence, and order the relief it determines

appropriate. The court's decision may be appealed to a court with appellate jurisdiction. Federal district courts of the United States have jurisdiction of actions brought under the IDEA without regard to the amount in controversy.

You may be entitled to file a lawsuit under other state or federal laws. However, if you are seeking a remedy that is also available under the IDEA or Article 7, you must first go through a due process hearing and administrative appeal.

Expedited Due Process Hearings and Appeals

An expedited due process hearing means that the due process hearing is conducted and the decision rendered within 20 school days from the date the request for a hearing is received by the school. The hearing officer's decision is due within 10 school days after the hearing is conducted.

An expedited due process hearing is available in only three situations:

- when you disagree with the school's determination that the student's behavior is not a manifestation of the student's disability;
- when you disagree with the student's disciplinary change of placement; or
- when the school believes that returning the student to his or her current placement (the placement prior to removal) is substantially likely to result in injury to the student or to others.

A request for an expedited due process hearing is made in the same manner as a request for all other due process hearings. A resolution session must occur within seven (7) calendar days of the date of the hearing request unless you and the school agree to waive the session or participate in mediation instead. The requirements of sufficiency of the due process request are not applicable in an expedited hearing.

If the issues have not been resolved within 15 calendar days of the date of the hearing request, the hearing may proceed. The hearing officer may not grant any extensions of time in an expedited hearing.

Can the hearing officer change my child's placement to an interim alternative educational setting if he or she poses a risk of harm to self or others?

Yes. If the school demonstrates by substantial evidence that there is a danger that your child or other students are likely to be injured if your child stays in his or her current placement, the hearing officer may change your child's educational placement to an interim alternative educational placement for up to 45 school days.

If I have an attorney during the due process hearing, appeal, or court proceeding, can I be reimbursed by the school for my attorney's fees?

If an attorney represents you during a due process hearing (including an appeal and subsequent civil action), the court may award you reasonable attorney's fees if you ultimately prevail. You may also be eligible for an award of attorney fees if you are the prevailing party and were substantially justified in rejecting the school's settlement offer. The school may negotiate with you or your attorney regarding the amount of reimbursement and, if necessary, about who prevailed. If agreement is not reached through these negotiations, you may file an action in state or federal court for resolution of the disagreement.

The school or the IDOE may also ask that your attorney pay the school's or the IDOE's attorney's fees if your attorney requests a hearing or files a subsequent cause of action that is frivolous, unreasonable or without foundation or if your attorney continued to litigate after the litigation was obviously frivolous, unreasonable or without foundation. The school or the IDOE may also ask that you or your attorney pay their attorney's fees if your hearing request was made for any improper purpose, such as to harass, to unnecessarily delay, or to needlessly increase cost of litigation.

An action for attorney fees must be filed in a state or federal court within 30 calendar days after a final decision that is not appealed. Any fees awarded must be based on rates prevailing in the community

in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under the IDEA and Article 7.

The court may not award attorneys' fees for:

- services performed after the school made a timely written settlement offer to you if:
  - the relief you finally obtained is not more favorable to you than the school's settlement offer (unless you were justified in rejecting that settlement offer), and
  - the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins and the offer is not accepted within 10 days;
- any meeting of the CCC, unless the meeting was convened as result of an administrative proceeding or judicial action;
- a mediation session that was conducted prior to the time the due process hearing request was filed; or
- your attorney's attendance at the resolution meeting.

The court may reduce an award for attorneys' fees if:

- You or your attorney unreasonably protracted the final resolution of the controversy;
- The fees unreasonably exceed the hourly rate prevailing in the community for similar services by attorneys of comparable skills, reputation, and experience;
- The time spent and legal services furnished were excessive, considering the nature of the action or proceeding; or
- Your attorney or you did not provide the school with appropriate information in the due process hearing request.

The court may not reduce reimbursement for attorney fees if the court finds that the school (or in some cases, the IDOE) unreasonably protracted the final resolution of the action or proceeding or there was a violation of 20 USC §1415.

Appeal

Each party has the right to appeal the hearing officer's written decision, and the appeal procedures are the same, except the petition for review must be filed with the BSEA and other parties involved in the proceeding no later than three (3) business days from the date of receiving the hearing officer's decision. Any reply to the petition for review must be filed and received by the other parties within three (3) business days of the date the petition for review is filed.

When a request for review is made, the BSEA:

- cannot grant any extensions of time;
- cannot hear oral argument;
- may nominate a single member of the BSEA to review the hearing record and issue a decision without the participation of the other two BSEA members; and
- must issue a written decision within 10 business days of the date of the BSEA's receipt of the request for review.

Student's placement and status during due process proceedings (hearing, appeal, judicial review)

Generally, during any of these proceedings, the student remains in his or her current placement, unless you and the school agree to a different placement. However, there are the exceptions to this general rule:

- If the proceeding involves the student's initial admission to school, the student will be placed in school until the proceedings are completed, as long as you consent to such placement.

- If the proceeding involves a disagreement about the student's interim alternative educational setting, the student remains in the interim alternative educational setting chosen by the school for up to 45 school days, pending the hearing officer's decision, unless you and the school agree on a different placement.

RESOURCES

If you need help in understanding the Notice or have any questions about the safeguards or other provisions of Article 7, you may contact any of the following agencies:

Indiana Department of Education
Center for Exceptional Learners
Office of Special Education
151 West Ohio Street
Indianapolis, IN 46204
Telephone: 317-232-0570
Fax: 317-232-0589
Toll-free: 1-877-851-4106

IN*SOURCE (Indiana Resource Center for Families with Special Needs)
1703 South Ironwood
South Bend, IN 46613-1036
Telephone: 574-234-7101
Fax: 574-234-7279
Toll-free 1-800-332-4433

About Special Kids (ASK)
4755 Kingsway Drive, Suite 105A
Indianapolis, IN 46205
Telephone: 317-257-8683
Fax: 317-251-7488
Toll-free: 1-800-964-4746 (Voice)
Toll-free: 1-800-831-1131 (TTY)

Indiana Protection & Advocacy Commission
4701 North Keystone Avenue, Suite 222
Indianapolis, IN 46205
Telephone: 317-722-5555
Fax: 317-722-5564
Toll-free: 1-800-622-4845 (Voice)
Toll-free: 1-800-838-1131 (TTY)