

# Special Education

Navigating Article 7  
IEPs & 504s

# IDEA '04 (Individuals with Disabilities Education Act)

- Our nation's Special Education (SPED) law (1975)
  - In exchange for federal funding, IDEA requires states to provide a free appropriate public education (FAPE) in the least restrictive environment (LRE). The statute also contains detailed due process provisions to ensure the provision of FAPE.
- In Indiana, **Article 7** contains the rules to implement these requirements, as adopted by the State Board of Education (SBE), for youth aged 3-22.
  - Six principles: free appropriate public education (FAPE), appropriate educational evaluation, Individualized Education Plan (IEP), least restrictive environment (LRE), procedural safeguards (often referred to as NOPS), and parent participation in decision.

# Key Terms & Definitions

- **Free Appropriate Public Education (FAPE)** recognizes that children with disabilities are entitled to a publicly financed education that is appropriate to their age and abilities.
- A **student with a disability** is a student who has been evaluated in accordance with Article 7 and determined eligible for special education and related services by a CCC.
- **Special education** is specially designed instruction provided to students who have been determined eligible through an educational evaluation. It must be provided at no cost to the parent(s) and in accordance with the student's IEP.
- **Related services** are services such as occupational therapy (OT), physical therapy (PT), an educational interpreter, transportation, etc., that are necessary to allow the student to benefit from his/her special education.
- **“At no cost”** means that the parent(s) do not have to pay extra for special education and related services. The school may charge for the same things that it charges the parent(s) of a student without disabilities (such as textbook rental, lab fees, etc.).

# Case Conference Committee (CCC)

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

# Who is on the CCC?

- The CCC must include:
  - A representative of the school (sometimes referred to as the public agency representative or PAR) who:
    - Knows about the school's resources and has the authority to commit or expend them,
    - Knows about the general education curriculum, and
    - Can provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities;
  - The student's **teacher of record (TOR)** or a teacher licensed in the area of the student's suspected disability if the student has not yet been determined eligible. The speech language pathologist serves as the TOR for a student with a language or speech impairment only;
  - At least one of the student's general education teachers, unless it is certain that the student is not or will not be participating in the general education environment;
  - A person able to describe what the evaluation information means in terms of how to best instruct the student and the instructional implications of the evaluation information; and
  - The parent(s) of a student less than 18 years of age or the student of legal age. In some cases this may include a guardian or educational representative for the student.
  - **Exceptions:** school personnel may fulfill more than one role; the student may be included (usually at parent discretion); a member of the M-team must attend if purpose is to determine initial eligibility; both parent and school may invite "others who have knowledge or special expertise" about the student.

# Individualized Education Plan (IEP)

- An **IEP** is the written document, developed by parent(s) and school personnel, describing how the student will participate in the general education curriculum, and any special education or related services to be provided.
- Among other components, the IEP:
  - identifies the child's academic achievement and functional performance (classification),
  - describes how the child will be included in the general education curriculum (placement),
  - establishes annual goals for the child and describes how those goals will be measured,
  - states what special education and related services are needed by the child,
  - describes how the child will be appropriately assessed including through the use of alternate assessments, and
  - determines what accommodations may be appropriate for the child's instruction and assessments.
- The IEP is a legally binding document.

# Least Restrictive Environment (LRE)

- Special education services must be provided in the **least restrictive environment (LRE)**. This means that a student with a disability is educated with students without disabilities to the maximum extent possible for each individual student.
- LRE may change from child to child, school to school, and district to district.
  - In developing the IEP, parents and the local educational agency are empowered to reach appropriate decisions about what constitutes LRE for the individual child, including placements that may be more or less restrictive in order to maximize the child's benefit from special education and related services.
  - For some students, this means that they will be educated in the general education classroom, but for others it will mean that they are with non-disabled students only for certain periods of time such as lunch, recess, or a particular class.

# Teacher of Record (TOR) & Teacher of Services (TOS)

- Each student with a disability must have a **TOR** identified and assigned to him/her who is appropriately trained and/or licensed in the area of the student's disability.
- TOR responsibilities:
  - Providing direct or indirect services to the student according to the student's IEP.
  - Participating in the CCC meeting as the student's teacher to assist in developing measurable goals, benchmarks, and objectives to meet the student's needs.
  - Monitoring and implementation of the IEP and providing progress reports to the parent(s) on the IEP.
  - Making sure that all staff responsible for implementing the student's IEP have access to it and know their responsibilities for ensuring the IEP is implemented as written.
  - Making sure that all supplementary aids and services, program modifications, supports for school personnel, and accommodations on statewide or districtwide assessments are provided as required in the student's IEP.
  - Serving as a consultant and resource person for personnel who are working with the student.
  - Participating in reevaluations of the student.
  - Making sure that the CCC is notified of any changes to the student's IEP when the parent(s) and the school make changes without holding a CCC meeting.
- A **TOS** is any teacher who provides services to a student with a disability.
  - This could be a general education classroom teacher or a special education teacher (could be TOR) who provides direct instruction to the student



# Notice of Procedural Safeguards (NOPS)

- The procedural safeguards affirm the right of the student's parent(s) ...
  - To be fully informed,
  - To participate in the process,
  - To receive prior notice and provide consent,
  - To have any information that could personally identify the student held in confidence,
  - To examine all relevant records, and
  - To a timely and impartial resolution of disputes.
- The school must provide the parent(s) a copy of the **NOPS** at least once a year and whenever:
  - A student is referred for an initial evaluation,
  - A parent requests an evaluation,
  - A parent files a complaint (only the first complaint in the school year is required),
  - A parent requests a due process hearing (only with the first hearing request in the school year),
  - A disciplinary change of placement is made or recommended, and
  - A parent requests a copy of the Notice.

# Parental Responsibilities & Participation

- In order for the parent(s) of a child with a disability to access a FAPE for a child, the parent(s) must:
  - Give written consent for educational evaluations of the student;
  - Participate as a member of the CCC in developing and revising the student's IEP;
  - Give written consent for the school to implement the student's initial IEP;
  - Partner with school personnel as the student's advocate to identify and ensure appropriate special education and related services; and
  - Ensure the IEP is designed to meet the student's unique educational needs in the LRE appropriate for the child.
- Communication is essential!
  - Remember the 3 P's: Stay Positive, Proactive, and Partnership-Minded
  - Assume honorable intentions
  - Keep a running list or agenda of items about which you want to speak with specific school personnel
  - Take someone with you to meetings
  - Maintain the focus on the needs and interests of the student
  - If necessary (and possible), schedule the next meeting before leaving

# Process & Timelines

- Identification, referral, initial evaluation, CCC meeting, IEP development & implementation, annual review or reevaluation
- The CCC **must** meet:
  - Within the stated timeline for an initial evaluation or reevaluation;
  - At least annually;
  - When requested by the parent(s) or school personnel;
  - Within **10 school days** of the date a student with a disability enrolls from another school district or state;
  - Within **10 school days** of a disciplinary change of placement;
  - To determine an interim alternative educational setting (IAES); and
  - Every **60 school days** when a student with a disability has been placed on full time homebound services.
- Definition of days:
  - Calendar days: Everyday
  - Business days: Monday-Friday, except federal and state holidays
  - Instructional (school) days: Any day or part of a day that students are expected to be in attendance at the school the student attends or will attend. Please note that a full instructional day is counted if the student only attends a half day of school.

# Identification & Referral

- A student may be found eligible for special education and related services in one or more of the thirteen (13) disability categories:
  - Autism Spectrum Disorder (ASD)
  - Blind or Low Vision (BLV)
  - Cognitive Disability (CD)
  - Deaf or Hard of Hearing (DHH)
  - Deaf-Blind (DB)
  - Developmental Delay (DD) (early childhood only)
  - Emotional Disability (ED)
  - Language or Speech Impairment (LSI)
  - Multiple Disabilities (MD)
  - Other Health Impairment (OHI)
  - Orthopedic Impairment (OI)
  - Specific Learning Disability (SLD)
  - Traumatic Brain Injury (TBI)
- A student's parent(s) or school personnel working with the student may make a referral or request for an educational evaluation.
  - If the parent(s) make the request, the request must be made **verbally or in writing to licensed personnel** such as teachers, school counselors, school psychologists, school social workers, building principals, and other administrators. It is always a good idea for the parent(s) to put the request in writing.

# Written Notice

- Within **10 school days** after the parent(s) makes a request for an educational evaluation, the school must provide the parent(s) with **written notice** responding to the request, as well as a copy of the *Notice of Procedural Safeguards*.
- Written notice must:
  - Inform the parent(s) if the school agrees or declines to conduct the evaluation,
  - Describe the information the school used to make its decision,
  - Explain the reason for the decision,
  - Advise the parent(s) of procedural safeguard protections, and
  - Provide a list of sources to contact for help in understanding special education rules.
- If the school **agrees** to conduct the educational evaluation, the notice will *also* include:
  - The evaluation timeline,
  - A description of the evaluation procedures, and
  - How the parent(s) may obtain a copy of the evaluation report or schedule a meeting to discuss the results of the educational evaluation prior to the CCC meeting.
- If the school **refuses** to conduct an evaluation, the notice must tell the parent(s) what action(s) they can take if they want to disagree with the school's decision. For example, the parent may ask the school to participate in mediation or request a due process hearing.

# Early Intervening Services & Response to Intervention (RTI)

- Article 7 permits schools to implement a process known as **comprehensive and coordinated early intervening services (CCEIS)**. Early intervening services are provided to students who *have not been identified* as needing special education and related services, but who need additional academic and behavioral support to succeed in the general education classroom.
- Many schools are utilizing a systematic process referred to as **response to intervention (RTI)**. The RTI process utilizes screening and periodic monitoring of progress of all students.
  - Students identified as needing additional educational or behavioral assistance are provided help through interventions to support each student's unique needs for success.
  - Students who do not make adequate educational gains with the supports are provided more structured and intensive supports with progress monitoring.
  - If students are still in need of support, a referral for special education evaluation may be the next step.
  - Parental permission is not required as part of the RTI process. However, the parent(s) must be sent **written notice** if a student requires an intervention that is not provided to all students in the general education classroom.
- A referral for an educational evaluation can be made by the parent(s) or school personnel **at any time** during the RTI process. **The use of an RTI process cannot delay the appropriate educational evaluation of a student suspected of having a disability.**

# Parent Consent & Request

- If the school agrees to conduct the evaluation, the parent(s) must provide written consent before the school may proceed. This consent is only for the school to conduct an initial educational evaluation; it is not consent for any special education services.
- There is no deadline by which the parent(s) must provide the school with written consent, but the sooner written consent is provided, the sooner the evaluation can be conducted.
- At this time, the parent(s) may also request a copy of the evaluation report and/or a meeting with someone who can explain the evaluation results prior to the CCC meeting.
  - If the parent(s) make such a request, the school must provide the evaluation report and/or meet with the parent(s) **at least five (5) school days prior to the CCC meeting.**
  - If the parent(s) does not request a copy of the educational evaluation report before the CCC meeting, then the evaluation report will be provided to them at the scheduled CCC meeting.

# Educational Evaluation

- A multidisciplinary team, sometimes called the M-Team, conducts the educational evaluation.
  - This team is a group of qualified professionals that may include:
    - a general education teacher;
    - a special education teacher;
    - a school psychologist or speech language pathologist;
    - or other qualified professional(s) based on the student's unique needs or suspected disability.
  - Parent(s) play an important role with the M-Team by providing input and information about the student.
- The team reviews existing information, **identifies the suspected disability or disabilities for which the student should be evaluated**, and determines what, if any, additional information is needed to help the CCC determine whether the student is eligible for special education services.
- After this review, if additional data is needed to make an eligibility determination, the M-Team gathers the additional information identified. This process may include **administering tests, conducting observations, and collecting information from a variety of sources.**



# Timeline & Exceptions

- The M-Team must complete its evaluation, and the CCC must convene within **50 school days** from the date written parental consent is provided to licensed school personnel, except in five situations:
  - If the student has **completed the RTI process and not made adequate progress** within an appropriate period of time, the school has **20 school days** from the date licensed personnel receive written parental consent to conduct the evaluation and convene the CCC.
  - If the parent(s) requests an initial evaluation **during the time a student is suspended or expelled**, there is a similar **20 school day** timeline. This is often referred to as an expedited evaluation.
  - For a student who is receiving *First Steps* early intervention services (from birth to age 3) and **transitions from the *First Steps* program to the public school early childhood program**, the initial educational evaluation must be completed, the CCC convened, and any necessary special education services made available for the student no later than the **student's 3rd birthday**.
  - If the parent(s) provides written consent for an educational evaluation in one school corporation and the student **moves to another school corporation while the evaluation is pending**, the “new” school corporation must complete the educational evaluation **as quickly as possible and within a time period agreed upon by the school and the parent(s)**. At 511 IAC 7-40-5(d)(4)(A) it states that the receiving school must ensure ‘prompt completion’ of the educational evaluation.
  - If the parent(s) repeatedly **fails to make the student available** for the educational evaluation the school must document these events and **will not necessarily be held to** the 50 school day timeline.

# Evaluation Report

- An initial educational evaluation must be comprehensive and conclusive. Information must be gathered in all areas related to the suspected disability, including information and input from the parent(s).
- Each evaluation report must, for each disability category, include information and analysis in the categories of, if applicable:
  - Development,
  - Cognition (ability to acquire knowledge),
  - Academic achievement,
  - Functional performance or adaptive behavior,
  - Communication skills,
  - Motor skills and sensory responses,
  - Social and developmental history, and
  - Medical and/or mental health information and any other assessments or information that will help the CCC make its determination.
- The M-Team compiles the information into an evaluation report, and the school sends a **written notice** to the parent(s) that includes:
  - A summary of the evaluation results,
  - The school's proposal on the student's eligibility (at 511 IAC 7-42-4 it states the written notice must include a description of any action that may be proposed), and
  - An explanation of the reasons for the school's proposal.

# CCC Meeting

- The CCC meeting must be scheduled at a “mutually agreed upon time and place” by the parent(s) and school personnel. (Many schools set up the conference at the time parental consent for the evaluation is received.)
- Once the CCC meeting is arranged, the school will send the parent(s) a **written notice** that includes the date, time, location, purpose, and the names and titles of participants expected to be in attendance. The notice must also advise the parent(s) of their **right to invite anyone the parent(s) determines to have special knowledge or expertise about the student.**
- The CCC reviews the evaluation results and other information, determines if the student is eligible, and if so, develops an individualized education program.
  - During the CCC, if the parent(s) disagree with the evaluation report, they may:
    - explain to the school personnel the specific reason(s) for the disagreement ,
    - seek input from other professionals who know the student well or have worked with the student in the past, and/or
    - ask the school for an independent educational evaluation to be conducted (at public expense).

# Independent Educational Evaluation (IEE)

- The **IEE** is an evaluation conducted by a qualified professional who is not an employee of the school.
  - If the parent(s) disagrees with the results of the school's educational evaluation, the parent(s) may request an IEE at public expense. In this case, the school pays for the IEE or otherwise assures that it is at no cost to the parent(s). If the IEE is at public expense, the parent(s) is allowed only one IEE each time the school conducts an evaluation.
- Should the parent(s) requests that the school pay for an IEE, the school must provide information about **where** the parent(s) can get an IEE for the student, as well as the **school's criteria** for an IEE. The parent(s) may choose a different independent evaluator so long as the evaluator is qualified and meets the school's criteria. The school may ask the parent(s) why an IEE is necessary, but the school may not delay its response to the parent(s) request if the parent(s) chooses not to answer the school's questions. Within **10 business days** of the parent(s) request, the school must either:
  - Notify the parent(s) in writing that the school will pay for the IEE; or
  - Initiate a due process hearing to show that the school's educational evaluation is appropriate.
- If an IEE is paid for by the school, a copy must be received by the school and the results of the IEE must be considered by the student's CCC.
- If the parent(s) obtains an IEE at their own expense, the parent(s) chooses whether to share the results with the CCC. If the parent(s) shares the information from the IEE obtained at their own expense with the CCC, the CCC must consider the information in making decisions about the student's educational needs.

# Eligibility

- Students suspected of having a specific learning disability cannot be found eligible for special education on the basis of a specific **‘point discrepancy’** between the student’s intellectual ability and classroom performance. To find a student eligible as a student with a specific learning disability, the CCC must review and consider data that, in addition to the documentation of appropriate instruction in reading and math, verifies the student:
  - Does not achieve adequately for the student’s age or grade level standards when provided with learning experiences and instruction appropriate for the student’s age or state grade level standards;
  - Does not make sufficient progress to meet age or grade level standards based on the student’s response to scientific, research-based intervention; or
  - Exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to age, grade level standards, and intellectual development.

# Decision Making

- Information about the student is shared with and by all CCC members. Everyone can offer input into and participate in the discussion about the decisions to be made, such as:
  - Is the student eligible as a student with a disability?
  - If so, what disability category (if more than one was initially suspected)?
  - If eligible, what are the student's educational needs, and what special education and related services are appropriate to meet the student's needs?
- Decisions are *not* made by a vote or consensus of the CCC members. **The only two individuals who have a final say in the final decision of the CCC meeting are the parent(s) and the school representative authorized to commit the school's resources.**
  - After any CCC meeting, the school must provide the parent(s) with **written notice** about any action it is proposing or refusing to take with regard to the student's **identification, evaluation, eligibility, services, placement, or anything else affecting the provision of a FAPE**, regardless of whether there was agreement between the parent(s) and the school representative.
  - After receiving this notice, the parent(s) **may contest** the school's decision by asking for and participating in a meeting with a school official, participating in mediation, or requesting a due process hearing. The parent(s) may also ask to reconvene the CCC for further discussion and consideration.

# IEP Development

- The CCC develops the IEP after considering all of the information about the student. The CCC must consider various general factors when developing an IEP, such as:
  - The student's strengths,
  - The concerns of the parent(s) for improving the student's education,
  - The results of any recent educational evaluations or assessments, and
  - The student's academic, developmental, communication and functional needs.
- In addition, the CCC must consider special factors (when applicable) such as:
  - Positive supports and interventions when a student's behavior affects his/her learning,
  - Supports to provide school personnel with knowledge and skills to implement the student's IEP,
  - Language needs of a student with limited English proficiency, and
  - Instructional and communication needs for a student whose vision and/or hearing is impaired.

# IEP Content

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



# IEP Content cont'd.

- ***A description of the special education services and supports that will be provided to the student or to staff working with the student*** – The type of services and supports to be provided to a student and staff will be based on the student's educational needs. The supports are designed to help the student achieve his/her annual goals and participate in the general education curriculum, extracurricular activities, and other nonacademic activities with non-disabled students as much as possible. In addition to specially designed instruction, the student may need related services, accommodations, or modifications in order to benefit from his/her special education. If staff members who are in contact with the student need supports or training to better understand the student's strengths and needs or to implement the student's IEP, those may be listed as well.
- ***The projected date the services will begin and end, and the length, frequency, and location of the services*** – The IEP must include the dates of when the school expects services to begin and end, how often the services and supports will occur, how long each service or support will last, and where the student will receive the service or support.
- ***Information about how the student will participate in local and statewide assessments*** – Schools test students at various times during the school year. ISTEP (the Indiana Statewide Testing of Educational Performance) is the statewide test that schools give to students. Most students will participate in the ISTEP+ either with or without accommodations.
  - For students with more significant cognitive disabilities, the state has an assessment called ISTAR (the Indiana Standards Tool for Alternate Reporting). The ISTAR assessment has two achievement levels (academic competence and/or independent functioning) that the CCC must consider for a student to be eligible to participate in.
  - All assessment decisions for the student are based on his/her expected educational outcomes using existing performance data available to the CCC. Students in high school who intend to graduate with a high school diploma must participate in the end of course assessment (ECA) for Algebra 1 and Language Arts 10/ISTEP+ 10. Students who have a significant cognitive disability will be assessed minimally at grade 10 and optionally at higher grades.

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

# IEP Content cont'd.

- ***The student's participation with non-disabled students*** – If the IEP does not limit a student's participation in any way, the student should be able to participate with non-disabled students in academic classes and other educational programs such as vocational education, art, music, industrial arts, consumer and homemaking education, field trips and convocations. The student should also be able to participate in nonacademic and extracurricular activities such as meals, recess, athletics, recreational activities, school-sponsored groups or clubs, graduation ceremonies, and student employment.
  - If the CCC decides that a student needs supplementary aids and services in order to participate with non-disabled students in extracurricular or nonacademic activities, the CCC should include these in the IEP. If the CCC decides that there are times that the student will not participate with non-disabled students, the CCC must identify those situations in the IEP. This covers all educational, extracurricular, and other nonacademic activities.
- ***The student's need for extended school year (ESY) services*** – ESY services means special education and related services that are provided to a student at times when other students are not in school (like during the summer or after school). The CCC decides, based on the student's educational needs, if a student needs ESY services. If the CCC decides the student needs ESY services, the services must be described in the student's IEP. This description must be specific enough that all involved with the student understand the ESY services to be provided and when/how they will occur.
- ***The student's placement in the least restrictive environment (LRE)*** – The CCC decides where the student should be placed. For example, will the student be placed in the general education classroom and receive some or all of the special services and supports in that classroom, or will the student spend only part of the day in the general education classroom and receive services and supports in another location? There are a variety of placement options ranging from full time placement in a general education classroom to placement in a private residential setting. Unless the CCC decides something else, a student with a disability should attend the school s/he would attend if not disabled and be in classes and school buildings with non-disabled students of the same chronological age. Generally, the CCC begins by looking at whether the student's needs may be met in a general education classroom in the student's home school. If not, the CCC would look at other options to meet the student's needs in the LRE. Special classes, separate schools, or other removal of students from the general education environment should occur only if the nature and severity of the disability is such that education in general education classes using supplementary aids and services cannot be satisfactorily achieved.

# IEP Content cont'd.

- **Written notes to document the CCC meeting** – The IEP and the documentation of the CCC may include a section called written notes. This document may blend the required components of the IEP and other necessary details such as the date and the purpose of the meeting, the names and titles of everyone who participated in the meeting, the issues discussed, the rationale for various decisions made by the CCC, and other educationally relevant notes considered by the CCC.
- **Information on transfer of rights when the student turns 18** – When the CCC is developing an IEP for a student who will turn 17 when the IEP is in effect, the parent(s) and the student must be notified that the parental rights will transfer to the student when the student turns 18. The statement that the parent(s) and student have been notified of this transfer must be documented in the IEP.
  - **Transition IEP** - The IEP developed for a student who will be turning 14 or entering the 9th grade. A Transition IEP includes all of the components described above, but is driven by an understanding of the student's needs once s/he leaves high school. A student has a Transition IEP until the completion of high school.

# Related Services

- A **related service** is a developmental, corrective, or other supportive service that is provided to help a student benefit from his/her special education program. The CCC decides what related services, if any, a student needs.
  - For example, a student who is deaf or hard of hearing may need an educational interpreter in order to participate in the school setting. Or, a student who is orthopedically impaired may need physical therapy to help him/her learn to get around the school more independently. The most common related service is transportation.
  - The IEP must state the type of related service to be provided, when the service will begin and end, how frequently the service will be provided (daily, weekly, monthly, etc.), the length of the service (15 minutes, 30 minutes, one hour, etc.), and where the service will be provided.
    - The IEP should be specific and detailed enough so that both the parent(s) and school personnel can clearly determine how much of a service the student should be receiving at any one time during and throughout the school year.

# Accommodations

- Students with disabilities may require instructional or testing accommodations. An **accommodation** “levels the playing field” without changing what is being taught or tested. An accommodation is “intended to reduce or eliminate the effects of a student’s disability,” but *does not reduce what the student is expected to learn*, for example:
  - The student is given extra time to complete assignments and tests.
  - The student is allowed to complete assignments and tests using a computer instead of writing by hand.
  - The student is provided with special lighting or work space.
- Accommodations must be used routinely in classroom situations in order for the CCC to apply the accommodation(s) to assessments. The student needs the opportunity to practice and become familiar with the accommodation. Routine practice in comfortable situations allow the student to become accustomed to the accommodation. It is not permissible to use an accommodation during high stakes testing situations if it is not used routinely in classroom assessment because the student needs to be familiar with the process.
- On some standardized tests, such as ISTEP, some accommodations are not allowed because they have been determined to affect the validity of the test scores. However, there is no limitation on accommodations that can be provided to the student in other situations to support classroom learning on functional assessments.

# Accommodations vs. Modifications

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

# Behavior

- The CCC must consider (regardless of disability) whether the student has any behaviors that interfere with the student's learning or the learning of other students.
  - They will consider ways to address those behaviors and to help the student learn new behaviors or skills by using positive behavioral interventions, strategies, and supports, planned interventions designed to prevent identified behaviors from occurring.
  - Any needed interventions must be included in the student's IEP and should be *consistently implemented wherever and whenever the behaviors occur*.

# Functional Behavioral Assessment (FBA)

- **FBA** is a process where data is collected and used to identify both a pattern of behavior and the reason or purpose of the behavior for the particular student.
- An FBA may be assembled based on existing data for the student or may involve getting written parental consent to collect new assessment data.
- Using FBA data, the CCC develops strategies and supports to address the behaviors.
  - This will include considering necessary training for any personnel working with the student.



# Behavioral Intervention Plan (BIP)

- The CCC may develop a **BIP** to address behavior or may address behaviors through goals and objectives that are a part of the student's IEP.
  - Agreed upon by CCC and integrated into IEP = *legally binding*
- At minimum, the BIP describes:
  - The student's behavior,
  - Why the behavior occurs,
  - The positive interventions, strategies and supports that may be necessary to address the behavior and make sure that interventions are consistently implemented across different settings,
  - Any supports or technical assistance for staff that may be necessary to ensure the plan is supported and implemented, and
  - The skills that will be taught and monitored in order to change the student's behavior, if applicable.

# IEP Implementation

- The school must provide a copy of the IEP at no cost to the parent(s) within **10 business days** of the date of the CCC meeting.
- **Written parental consent** must be obtained for the school to provide special education services for the first time.
- Once the parent(s) has given consent for the school to provide special education services, the school *must continue* to provide special education services included in the current IEP unless the parent(s) withdraws their consent for services.
  - However, written consent from the parent(s) is not required to revise the IEP. After communicating with the parent(s) about the IEP changes being made, the school has to provide the parent(s) with **written notice** before it can implement any of the proposed changes. This written notice must also inform the parent(s) of what steps they may take, should the parent(s) disagree with the proposed changes.

# Written Notice

- In addition to providing the parent(s) with a copy of the IEP, the school must also provide the parent(s) with a written notice that:
  - Describes what the school is proposing or refusing to offer.
    - For example, if the parent(s) asked for 30 minutes of speech therapy two times a week, but the school wants to provide 30 minutes one time per week, the written notice would say that the school is proposing speech therapy for 30 minutes each week and is refusing the request for 60 minutes of speech therapy each week;
  - Describes all of the information the school used in decision-making;
  - Explains why the school made its decision(s);
  - Describes any other options the CCC considered;
  - Describes any other factors that are relevant to the school's proposal or refusal;
  - Explains that the parent(s) has protection under the procedural safeguards and how to obtain a copy of the safeguards;
  - Explains what action the parent(s) can take if they disagree with what the school wants to do [applies only to IEPs written after the parent(s) consented to the initial IEP];
  - Explains that if the parent(s) takes any actions to disagree with the IEP within the timeline, the school must continue to implement the student's current IEP (rather than the proposed IEP); and
  - Provides a list of resources for the parent(s) to contact if they want help in understanding the notice or other special education rules.
- The IEP may serve as the **written notice** if it contains all of the information described above.

# Annual Review & Revisions

- The CCC must meet to review the IEP at least once a year to see if the student is achieving his/her annual goals and revise the IEP as needed to appropriately address the student's educational needs.
- If the CCC makes changes to a student's IEP, the school must provide the parent(s) with **written notice** before it can implement the changes.
  - This written notice must also inform the parent(s) of what steps they may take should the parent(s) disagree with the proposed changes.
- If the CCC has completed its annual review and/or revision of the IEP and the parent(s) and school **agree** to change the IEP without having the whole CCC getting together, the parent(s) and school personnel can change the IEP without getting together for an actual meeting.
  - The school may ask that the agreement to change the IEP without the CCC meeting be put in writing or signed off on by the parent(s). Any changes to the IEP that the parent(s) and school agree to must also be put in writing (**written into the student's IEP**).

# Disagreement over changing the IEP

- If the student's parent(s) disagrees with the IEP changes described in the written notice, they must take action within **10 school days** of receiving the written notice. If they do not take any action within 10 school days of receiving the written notice, the school is required to implement the revised IEP.
- If the parent(s) takes one of the following actions within 10 school days of receiving the written notice, the school must continue to implement the current IEP until the disagreement about the proposed IEP is resolved. The parent(s) may:
  - Request **and participate in** a meeting with someone from the school who can resolve the problem,
  - Initiate mediation, or
  - Request a due process hearing.
    - If the disagreement is not resolved at this time, the school must continue to implement the current IEP. This is sometimes called the "Stay Put" provision.
    - If the parent(s) does not take any of the three actions, the school may implement the changes described in the written notice on the 11th school day after the parent(s) receives the written notice about the IEP changes or the "effective date" written on the IEP if this date is later than the 11th day.

# Reevaluation

- The school must consider the potential need for **reevaluation** for each student receiving special services at least once every **three (3) years**.
  - The CCC will review existing information and determine if additional information is required in order to continue to develop an appropriate IEP
  - Reevaluation may be requested (by parent or teacher) to determine if the student is eligible for special education under a different or additional eligibility category, or to inform the CCC of the student's developing needs, like the need for assistive technology or a related service.
    - Again, the school must respond to the request in writing (see Written Notice).
    - Written parent consent must be sought (and attempts documented), but is not required.
    - If reevaluation's purpose is to reestablish eligibility under current category, the CCC has until the **next annual** meeting.
    - If the reevaluation is to determine if the student is eligible under a different or additional category or to provide information to the CCC about the student's needs, the reevaluation must be conducted and the CCC convened within **50 school days** of the date the parent(s) provides written consent to licensed personnel.

# Back to IEP Implementation

- The school must implement the IEP *as it is written and must provide the services described* in the student's IEP:
  - No later than **10 school days** after the school receives the written parental **consent** to implement the initial IEP, or
  - On the **eleventh school day** after the parent(s) receives the written **notice** of proposed changes to the IEP *unless* the parent(s):
    - Has given the school written permission to implement the changes earlier, or
    - Has taken one of the three actions when they disagree with the proposed changes, or
  - By the student's **3rd birthday** if the student is moving from early intervention services (First Steps) to early childhood education.
  - The effective or start date **indicated** in the IEP.

# Revocation of Consent for Services

- Any time after the parent(s) has given the school permission to provide special education services, they may revoke or withdraw their consent. To revoke consent, the request must be made **in writing** and given to school personnel.
- Before the school stops providing special education services, the school must provide the parent(s) with **written notice** explaining the consequences of the request for revocation of services.
- After the parent(s) receives the written notice from the school, all special education instruction, related services, accommodations, and any other services and supports provided to the student will stop. The student will be placed in a general education classroom and will receive education as a non-disabled student.
- After consent is revoked, **neither the parent(s) nor the student will be entitled to the protections or the safeguards under Article 7 or IDEA '04**. If the parent(s) revokes consent for services and later decide they want the student to receive special education services again, they must request an initial evaluation and go through the CCC process to decide if the student is still eligible for services.



# Relocation of Students with IEPs

- **For a student moving from one Indiana school district to another:** When a student with an IEP moves from one school district to another within Indiana, the new school must **immediately** provide the student with a FAPE. The new school must provide services similar to those described in the student's IEP from the old school, until the CCC meets. The CCC must meet within **10 school days** of the date the student enrolls in the new school and either adopt the student's IEP from the old school or develop a new IEP.
- **For a student moving into an Indiana school district from another state:** The new school must **immediately** provide the student with a FAPE, including services that are similar to those described in the student's IEP. If the school thinks a new evaluation is necessary, it may request **written consent** to conduct a reevaluation of the student from the parent(s). Nonetheless, the school must continue to provide the services listed in the IEP from the receiving school until an evaluation is conducted and the CCC reviews, revises or develops an IEP for the student.

# Early Childhood Special Education

- Children who are **three** years of age and have a disability are eligible for special education and related services provided by the public school.
- A child who is not yet school aged may receive special education and related services through one of two paths:
  - as a transition from services received from First Steps, or
  - through a referral by a family member or health care worker who is working with the family and child.

# First Steps

- **First Steps** is Indiana's program for providing services for eligible infants, toddlers, and their families.
- A transition planning conference must be convened by the First Steps service coordinator **before the student's 3rd birthday**. The First Steps provider must obtain parental **consent** prior to submitting student-specific documentation to the school corporation of legal settlement, typically the public school where the family lives.
  - If parent consent is received, at least **6 months** prior to the student turning 3 years of age, the First Steps provider must transmit the most recent **Individualized Family Service Plan (IFSP)** report and evaluation reports from any source to the public school where the family lives.
    - An IFSP is the equivalent of an IEP for infants and toddlers with disabilities. It is developed through an assessment and evaluation process, identifies the child's present levels of development and performance, establishes goals for future development and performance, and outlines how the child will receive early intervention and other services. Unlike an IEP, the IFSP explicitly integrates the needs of the family with those of the child and presents a comprehensive plan that enables the family to meet its goals.
  - If parental consent is not received, at least **6 months** prior to the student turning 3 years of age, the First Steps provider must inform the public school where the family lives that it will be invited to a transition planning conference for a child who will be transitioning who may be eligible for special education services. Without parental consent, no student-specific information may be shared.
    - If the public school representative is unable to attend the transition meeting, the school must make arrangements to convene a CCC meeting with the parent(s) to determine eligibility. This CCC meeting must ensure that by the time of an eligible student's 3rd birthday, the school has an IEP developed and available for implementation.
      - If the student's 3rd birthday occurs during the summer, services must be provided during the summer if the student's IEP requires extended school year services (ESY). Otherwise, the IEP should indicate that services will start at the beginning of the school year.

# Referral

- If the parent(s) suspects the child has a disability, s/he may contact the **school responsible** for providing educational services to students and request an initial evaluation.
  - Any family member or health care worker working with the family and child could also make the referral.
- The parent(s) will need to provide the school with **written consent** for the educational evaluation to begin.
- Once the child is evaluated, the CCC will meet to determine the student's eligibility and, if eligible, develop an IEP for services.
  - There is an additional disability category of eligibility limited to students 3-5 who are not yet eligible for kindergarten.
    - **Development Delay (DD)** – a delay in the student's development of gross motor, cognitive, receptive or expressive language, social or emotional, self-help, or other adaptive skills. The severity of the delay and the number of areas in which the delay occurs causes a student to be eligible as a student with a developmental delay.

# Early Childhood Educational Services

- The student's CCC determines the **number of hours per day and days per week** of special education instructional time and whether there are related services needed that the student will receive.
- Services are to be tailored to the unique developmental and educational needs of the individual student. The school cannot decide on its own (unilaterally decide) to limit the instructional time or services based on disability categories, students' ages, or administrative convenience.
  - These services may be received in a general education preschool, a special education preschool, a community preschool setting, at home, or in a combination of these settings as determined appropriate by the CCC.

# Transition from School to Adult Life

- For students who will be **turning 14** or entering into the 9th grade (or earlier if determined necessary by the CCC), the CCC develops a **Transition IEP** to help the student begin working on the skills the student needs to meet his/her goals for after high school.
  - When the CCC is going to make decisions about transition, the student must be invited to the CCC meeting. The parent(s) decides if the student will attend the CCC meeting until the student legally becomes an adult (turns 18). If the student does not attend the meeting, someone from the school must talk to the student to gather information on the student's likes and what he/she would like to do after high school.
- Transition goals may include:
  - Going to school at a university, community college, or vocational/technical school,
  - Participating in on-the-job training,
  - Getting a specific job or exploring specific career options,
  - Applying for adult services from a state or community agency, and/or
  - Living independently.

# Age Appropriate Transition Assessments

- In order to develop an appropriate Transition IEP for the student, the school must collect data and information on the student that can be used to help plan for his/her life after high school. The collection of data on the student's postsecondary expectations is referred to as **age appropriate transition assessments**.
- Age appropriate transition assessments are used to:
  - identify the student's strengths, preferences, and needs;
  - assist in identifying appropriate postsecondary goals related to training, education, employment, and (if appropriate) independent living skills;
  - help identify transition services needed to assist the student in reaching his/her postsecondary goals.
- These can be an informal assessment, such as an observation of or interview with the student, or a formal assessment, such as a verbal or written test on career readiness.
- The collection of data is relevant to the student's current age and should provide the student and those working with him or her specific information about the student's strengths and desires for his/her future.
- The CCC must use all of the information from the age appropriate assessments when developing the student's Transition IEP.

# Additional Components of a Transition IEP

- A Transition IEP is very similar to the IEP for younger students, but the main focus is to prepare the student for accomplishing his/her personal goals for when s/he leaves high school.
- In addition to the things that must be included in any IEP, a Transition IEP includes:
  - Information from age appropriate transition assessments on the student's strengths, preferences, and interests;
  - Measurable postsecondary goals (goals for "after high school") related to training, education, employment, and (if appropriate) independent living skills;
  - Annual goals which are reasonably designed to enable the student to meet their postsecondary goals;
  - Courses of study (e.g., classes) that the student needs to take while in high school to reach his/her postsecondary goals;
  - Documentation of whether the student will work on a high school diploma or a certificate of completion;
  - The transition services needed to help him/her reach the postsecondary goals;
  - The names of the individuals or agencies who will provide the transition services; and
  - Documentation that the CCC reviewed information and provided information to the parent(s) on the kinds of adult services available through the state or local community, if appropriate.



# Transition Service Providers

- If a state or local agency may be paying for or providing “transition” services to the student, the school must get **written consent** from the parent(s) or adult student to invite a person from that agency to attend the CCC meeting.
  - If written consent is provided, the school must invite a person from the agency to attend the meeting.
  - For example, when a student is eligible for a Transition IEP, the school may ask for written consent so that school personnel may talk with a Vocational Rehabilitation (VR) counselor about the student and determine if the student may be eligible for VR services.
    - If they believe the student might be eligible for VR services, the school must obtain written consent to invite a VR counselor to the CCC meeting and must give the parent(s) information (both verbally and in writing) about available VR services and how to get the services for the student.

# Transfer of Rights

- When a student turns **18 years** of age, all the student's special education rights given to the parent(s) under federal and state special education laws transfer to the student *unless* a court of law has appointed a guardian for the student or the school has appointed an educational representative.
  - If neither has been appointed, the rights are transferred and the student is entitled to make the decisions about his/her education such as consenting to evaluations, requesting and attending CCC meetings, inviting others to attend a CCC meeting, taking action if he/she disagrees with the school's proposed IEP, and requesting mediation or a due process hearing.
- At a CCC meeting **before the student turns 17** years of age, the school must provide the parent(s) and the student with **written notice** that the rights will transfer to the student at the age of 18.
  - The school must also provide the student and the parent(s) with **written notice** that the rights have transferred at the time the student turns 18 years of age, unless a guardian or educational representative has been appointed for the student.
  - The school will continue to send all written notices to both the student and the parent(s), but the student of legal age has the right to make educational decisions and take the same actions the parent(s) could take before the student turned 18 years of age.

# Guardians & Educational Representatives

- There are two ways that the parent(s) can continue to make the educational decisions for a student who is 18 years of age or older:
  - By having a court of law appoint the parent(s) as the **guardian** of the student, or
  - Asking the school to appoint an **educational representative**.
- A guardian is a person appointed by a court of law to make decisions for and/or manage the affairs of an individual who cannot make decisions or take care of his/her affairs because of a disability or other reasons.
- If a guardian has not been appointed, the school may appoint an educational representative if:
  - The student makes a written request for a representative to be appointed, or
    - If the student requests an educational representative, the student may ask that the educational representative be removed or replaced at any time. The student's request to no longer have an educational representative must be made in writing to the school.
  - Two qualified individuals examine or interview the student and decide that the student is not able to give informed consent on his/her own behalf.
    - The two individuals cannot be related to the student, and only one of the two can be employed by the school.
    - The two individuals must be:
      - A physician with an unlimited license,
      - A licensed nurse practitioner,
      - A licensed clinical psychologist,
      - A licensed psychologist,
      - A licensed school psychologist, or
      - A licensed clinical social worker.

# Informed Consent

- The school must appoint the student's parent(s) to serve as the educational representative.
  - If the student's parent(s) is not available, the school must appoint a trained educational surrogate parent.
- When someone other than the student requests an educational representative, the student must be examined or interviewed by two individuals who must decide if the student is able to give **informed consent**. This means they will decide if the student is able to:
  - Consistently understand the nature, benefit, and consequences of the services or other program options offered by the school,
  - Make rational educational decisions based on the benefits and consequences of one service or program over another, and
  - Communicate his/her understanding of the decision in a meaningful way.
- If they decide the student is not able to do these things, each person must state in writing that the student is incapable of providing informed consent. The school is not responsible for the costs of the examination.
- When the school receives the **written information** from both individuals, the school will appoint an educational representative. An educational representative may be appointed **up to 60 calendar days before the student's 18th birthday or anytime after that if appropriate**.

# Summary of Performance (SOP)

- When a student graduates with a high school diploma, leaves high school with a certificate of completion, or completes school by turning 22 years of age during the school year, the school must provide the student with a written summary of the student's academic achievement and functional performance.
- The **SOP** is a written plan that describes what the student has achieved and provides recommendations for helping the student achieve his/her goals for life after high school.
- A SOP should include the following basic items, but it may include more than this:
  - Basic demographic information about the student (name, address, date of birth, etc.).
  - The student's goals for after high school that take into account the student's educational program and the student's interests, preferences, and strengths.
  - A summary of the student's academic achievement and functional skill levels.
  - Recommendations on what the student may need to reach his/her goals for after high school, such as accommodations, modifications, or assistive technology that the student uses or would be helpful to the student to meet his/her goals.

# Confidentiality

- The Family Educational Rights and Privacy Act (FERPA), IDEA '04, and Article 7 generally require the school to obtain parental consent before disclosing or releasing personally identifiable information from the student's educational record. However, there are also a number of situations in which the school may release certain information about a student without obtaining written parental consent.
- A student's **educational record** includes any records directly related to a student and maintained by the school or someone acting on the school's behalf.
  - Among other things, an educational record includes test protocols that contain personally identifiable information regarding the student and his/her individualized education program (IEP), audio or video clips, scanned images, and other electronically recorded or produced items.
  - **Personally identifiable information** about a student means "information by which it is possible to identify a student with reasonable certainty," such as name, address, and social security or student test numbers.

# Rights to Inspect Educational Records

- The parent(s) and students of legal age have the right to inspect and review the educational record.
- When the parent(s)/student of legal age makes a request to inspect and review the record, the school must provide access to the record:
  - Without unnecessary delay;
  - Before any meeting regarding an IEP, interim alternative educational setting (IAES) or manifestation determination;
  - Before a resolution session or any due process hearing; and
  - Within **45 calendar days** of the request.
- In addition to looking at the student's record, the parent(s)/student of legal age also has the right to:
  - Have information interpreted or explained by school personnel,
  - Have alternative arrangements or a copy of the record made if the location of the originals would prevent the parent(s) from being able to inspect and review the record,
  - Have a representative inspect and review the record on behalf of the parent(s) or student of legal age, and
  - Receive a copy of the record for use in a pending due process hearing.
- The school is entitled to charge the parent(s) a fee for the making the copies of anything except IEPs and educational evaluation reports.

# Exceptions

- If the school has not received a **court order** terminating or restricting a parent's authority to access a student's educational record, the school must allow custodial and non-custodial parents to inspect and review the record.
- In situations where the school may disclose information **without consent**, the school personnel must make a reasonable attempt to notify the parent(s)/student of legal age of the disclosure and, upon request, provide the parent(s)/student of legal age with a copy of the information that was disclosed [511 IAC 7-38-1(q) and (r)].



# Amending the Educational Record

- If there is information in the student's educational record that the parent(s)/student of legal age believes is **inaccurate, misleading, or otherwise violates the student's rights**, the parent(s)/student of legal age may submit a written request to the school specifying the information he/she would like changed or deleted.
- The school must respond in writing to the request within **10 business days**, letting the parent(s)/student of legal age know whether or not the school will amend (change) the student's educational record as requested.
  - If the school declines to amend the educational record, the letter must tell the parent(s)/student of legal age that he/she may request a hearing to have a hearing officer decide if the educational record should be amended, how to request such a hearing, and the procedures for the hearing. A hearing to amend an educational record is different than a special education due process hearing.
- The school must maintain a student's educational record for at least **three years** after the student exits from the special education program and in accordance with the school's own policy for retaining student records.
  - In addition, the school cannot destroy a student's record if there is a pending request to inspect and review the record.

# Procedural Safeguards

- NOPS contains information about:
  - The parent's right to written notice before the school can take certain action;
  - The situations in which the school must obtain the parent's written consent before taking certain action;
  - The parent's right to request an evaluation;
  - The parent's right to a copy of the initial educational evaluation report prior to the case conference committee (CCC);
  - The parent's right to a meeting with school personnel to discuss the initial educational evaluation report prior to the CCC;
  - The parent's right to participate as a member of the CCC;
  - The parent's rights regarding the student's educational record;
  - The transfer of rights to the student at 18 years of age;
  - The parent's right to access complaints, mediation, and due process hearings;
  - The requirements for a parent's unilateral placement of a student with a disability in a private school;
  - The protections and procedures for students who are subject to certain **disciplinary actions**.
    - This includes protections for those students who are being evaluated but have not yet been determined eligible for special education;
  - The school's reporting of crimes allegedly committed by a student with a disability; and
  - The contact information for the school and other agencies and organizations that can provide assistance to the parent(s) in understanding Article 7.

# Student Discipline

- When a student with a disability breaks one of the school rules, s/he may be disciplined the same as a student without a disability. However, a student with a disability has additional protections in certain situations.

# Removal

- IDEA 2004 and Article 7 use the term **removal** to refer to any situation in which a student is removed from his/her placement for any period of time. Schools often describe removals as *detention, in-school suspension, out-of-school suspension, expulsion, etc.*
- The school may remove a student with a disability for up to **10 consecutive school days** when the student breaks school rules as long as the same discipline would apply to a student without a disability who broke the same rule.
- The school may remove the student up to the 10 consecutive school days **each** time the student breaks such rules. If the student is ever removed for only part of a day, it counts as a whole day of removal.
- After a student has been removed for more than **10 cumulative school days** in the school year:
  - The school principal or his/her designee must decide if this removal is a change of placement, and
  - The school must provide special education services to the student during this and any future days of removal.
- The school does not have to provide any services to the student during the first 10 school days the student is removed.

# Exceptions

- If the student's IEP or BIP states the student can be removed for short periods of time (listed as an appropriate intervention), these short-term removals will not count toward "Days of Removal."
- If the school asks the parent to pick up the student due to the student's behavior, this counts as a removal unless the IEP or BIP says that the school may have the parent(s) pick the student up from school when this behavior occurs.
- If the student:
  - can continue to progress in the general curriculum,
  - receives the services described in the student's IEP, and
  - participates with non-disabled students to the same extent as in the student's placement,then an in-school suspension does not count as a removal. If these three provisions do not qualify, then it would be considered a change of placement unless the student's CCC makes a different determination.
- If the student is suspended from transportation and transportation is a related service in the student's IEP, the suspension will count as a removal unless the school provides the student with alternative transportation. If transportation is not a related service in the student's IEP, the suspension from the bus does not count as a removal.

# Disciplinary Change of Placement

- A change of placement occurs when any of the following occurs:
  - The student is removed for more than **10 consecutive school days** in a row.
  - The student is moved to an interim alternative educational setting (IAES) for **45 school days** for misconduct involving weapons, drugs, or serious bodily injury.
  - The principal determines that a **series of removals constitutes a pattern.**

# Series of Removals

- A **series of removals** means the student has been removed more than once. When the principal examines a “series of removals,” s/he is looking at all of the times a student has been removed during **a school year**.
- When a student has been removed for more than **10 cumulative school days** in a school year, the principal (or someone appointed by the principal) decides if the series of removals constitutes a pattern. This means that the principal or designee must look at all of the removals and decide if there is a pattern or connection between them that, in effect, amounts to a change of placement for the student.
- The principal or designee must consider the following questions:
  - Has the student been removed **more than once** during the school year for more than **a total of 10 school days**?
  - Is the student’s behavior for this removal substantially **similar** to the behavior that caused the student to be removed earlier in the school year?
  - Do the length of each removal, the total number of days the student has been removed, and the **proximity** of the removals support a finding of a “pattern” of removals?
- The principal may also consider the student’s disciplinary history, the student’s ability to understand consequences, the supports provided to the student prior to the misconduct, and any other relevant factors.

# Removal Results

- If a removal **does not** result in a change of placement:
  - The student's removal continues for the number of days decided by the school. School staff must talk with at least one of the student's teachers to decide what services the student needs in order to continue to participate in the general curriculum (although in a different setting due to the removal) and make progress on the goals in his/her IEP. These services must be provided beginning on the **11th day** of suspension in a school year.
- If the removal **does** result in a change of placement:
  - The school must **immediately** notify the parent(s) of the change of placement and provide the parent with a copy of the Notice of Procedural Safeguards.
  - Within **10 school days** of the date of the change of placement for disciplinary reasons, the CCC must meet to decide if the student's behavior/misconduct is a manifestation of (caused by) the student's disability. Article 7 calls this a **manifestation determination**. If the CCC determines that the student's behavior/misconduct is a manifestation of the student's disability, the CCC must take further action.



# Manifestation Determination

- When a student's removal for disciplinary reasons is a change of placement, the CCC must meet to determine manifestation.
- The CCC reviews all of the relevant information about the student, including the IEP, teacher observations, and information provided by the parent(s), and answers the following questions:
  - Was the student's behavior/misconduct caused by or does it have a "direct and substantial relationship" to the student's disability?
  - Was the student's behavior/misconduct caused by the school's failure to implement the student's IEP?
  - If the answer to **either** question is "yes," the student's behavior/misconduct is considered to be a manifestation of the student's disability.

# Misconduct as a Manifestation of the Student's Disability

- If the behavior/misconduct is a manifestation of the student's disability, the CCC must:
  - Conduct a functional behavioral assessment (FBA) (if it has not already been conducted) and implement a BIP.
  - Review the BIP (if a BIP has already been developed), and make any changes needed to address the student's behavior/misconduct.
- The student **cannot be removed or otherwise disciplined** for the behavior/misconduct, and the student must go back to his/her regular placement (unless the parent(s) and the school decide to change the student's placement).
- There is one **exception** to this rule – if the student has been removed to an interim alternative educational setting (IAES) due to misconduct involving weapons, drugs or serious bodily injury, the school may keep the student in the interim setting for up to **45 school days**, even if the CCC decides that the conduct was caused by the student's disability.
- In addition, if the CCC decides that the student's behavior/misconduct was caused by the school's failure to implement the IEP, the school must take immediate steps to fix the problem.

# Misconduct Not as a Manifestation of the Student's Disability

- If the CCC decides that the behavior is not a manifestation of the student's disability, the student may be removed or otherwise disciplined in accordance with the school's disciplinary policies for nondisabled students.
- The school must provide educational services to the student while the student is removed. The CCC decides what educational services the student needs and where the student will be placed during the removal. The services designed by the CCC must allow the student to:
  - Continue to participate in the general education curriculum, even though the student is in a different setting;
  - Progress toward meeting the goals in the student's IEP; and
  - Receive services described in an FBA and/or BIP (if appropriate) to address the student's misconduct.
- The parent(s) may **challenge** the school's decision by requesting mediation and/or a due process hearing if not in agreement with the manifestation determination. If the parent(s) requests a due process hearing, the hearing must be conducted more quickly than a due process hearing on other issues.

# Interim Alternative Educational Setting (IAES)

- An **IAES** is where the student is placed when the school removes the student from his/her placement for disciplinary reasons. For example:
    - The student has been removed for more than **10 days** in the school year, but the removals are not determined by the principal or designee to be a change of placement. During placement in the IAES, the school decides what services will be provided to the student.
    - The student's removal is considered a change of placement, but the CCC determines that the student's conduct was not a manifestation of the student's disability. The CCC decides what services the student will receive during placement in the IAES.
    - The student is removed for up to **45 school days** for misconduct involving:
      - **Bringing a weapon to school, or**
      - **While at school, on school property, or at a school function, the student:**
        - has a weapon,
        - knowingly has or uses illegal drugs,
        - sells or tries to buy a controlled substance, or
        - causes serious bodily injury (involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty) to someone.

The CCC decides what services the student will receive during placement in the IAES.

  - A hearing officer orders the student placed in an IAES for up to **45 school days** after he/she decides that the student is substantially likely to hurt himself/herself or others if the student remains in his/her current placement.
- If the parent(s) disagrees with what the school proposes for the IAES placement (e.g., homebound placement, placement in an alternative school, placement in a separate classroom, etc.), the parent(s) may request mediation and/or a due process hearing.

# Protections for Students Not Yet Eligible

- There are times when a general education student may still be protected by the provisions of Article 7 if a suspected disability is present.
- If any of the following occurred **before** the student violated the school rules, the school is considered to have **knowledge** that the student may be a student with a disability, and the student is entitled to the protections of Article 7:
  - The parent(s) sent something in writing (email, letter, note, etc.) to licensed school staff that s/he believed the student might need special education services;
  - The parent(s) requested an initial evaluation of the student; or
  - The student's teacher or other school staff told a supervisor that s/he had concerns about the student's pattern of behavior.
- However, the student is not entitled to Article 7 protections if, at the times any of the following occurred:
  - An evaluation had been requested but the parent(s) did not allow the evaluation to occur,
  - An evaluation had been requested but the school provided the parent(s) with written notice that no evaluation would take place and the parent(s) did not take any action for due process,
  - The student had been evaluated and determined eligible, but the parent(s) did not consent to services, or
  - The student had been evaluated, determined not eligible, and the school provided the parent(s) with the appropriate notice that the student was not eligible.

# Resolving Disagreements

- In many cases when a disagreement over the provision of special education and related services occurs, it will be a small disagreement that can be resolved by a meeting between the parent(s) and a school representative or by having another case conference committee (CCC) meeting.
- By working together to reach an agreement, the parent(s) and school personnel are able to continue a positive relationship and often find a solution to the disagreement **in less time** than if they have to use a more formal process such as a due process hearing.
- Tips for parents when a disagreement arises –
  - Be sure to identify the specific problem or concern.
  - Prepare to communicate your problem or concern clearly.
  - If you need more information or assistance in understanding the law, contact one of the parent information centers or a consultant at the Indiana Department of Education (IDOE.)
  - Find out who is most directly involved that can help you solve the problem and schedule time to talk to this person either in person or by phone.
  - If necessary, ask to hold a CCC meeting.

# Using the Procedural Safeguards

- When the parent(s) and school personnel are not able to resolve their disagreement by talking or having another CCC meeting, the three options for parent(s) are:
  - Filing a **complaint**,
  - Requesting and participating in **mediation**, and/or
  - Requesting a **due process hearing**.

# Complaints

- A **complaint** is a claim that the school has violated federal or state special education rules or has failed to comply with an order issued by an independent hearing officer (IHO) or the Board of Special Education Appeals (BSEA).
  - For example, the person filing the complaint might claim that the school failed to do something it is required to do – such as not providing all of the services listed in the student’s individualized education program (IEP). Or, it may say that the school is doing something that the rules say it cannot do – such as changing the student’s placement without giving the parent(s) prior written notice.
- The violation alleged in the complaint must have occurred within **one year** of the date the complaint is filed.
- A complaint is not used to resolve a disagreement with the school about the student’s eligibility, evaluation, services, placement or the provision of a FAPE.
- A complaint must be signed; the IDOE cannot investigate an anonymous complaint
- The IDOE provides a sample form that may be used to file a complaint:  
<http://www.doe.in.gov/exceptional/speced/docs/2008-08-15-FilingComplaint-ElectronicVer.pdf.pdf>  
<http://www.doe.in.gov/exceptional/speced/docs/2008-08-15-FilingComplaint-PaperVer.pdf>



# Filing a Complaint

- A complaint may be filed by the parent(s) or any other individual, a group of individuals, or by an agency or organization.
- All complaints must:
  - Be in writing;
  - Include a statement that the school is not following one or more requirements of Article 7 or IDEA 2004;
  - Include any facts about the situation;
  - Include contact information for the person filing the complaint;
  - Be signed by the person filing the complaint; and
  - Be faxed, mailed, or hand-delivered to the IDOE and the school.
- If the complaint claims the school is not following the law regarding a **specific student** (such as “the school did not complete Johnny’s initial educational evaluation within 50 school days”), the complaint must also include:
  - The student’s name and address;
  - The name of the school the student attends;
  - A description of the what rules weren’t followed, including facts related to the situation; and
  - A recommendation for how the situation should be resolved (if the person filing the complaint has a recommendation).
- Again, the written complaint must be sent to the IDOE and the school. It is recommended that, when sending the complaint to the school, it should be addressed to the school Superintendent or the local special education director.

# After the Complaint is Filed

- The IDOE assigns a **complaint investigator** who will contact the school and the person filing the complaint.
- The school has **10 days** from the date the IDOE receives the complaint to:
  - Provide a written response to the IDOE;
  - Resolve the disagreement with the individual filing the complaint, including:
    - Putting the agreement in writing,
    - Having the person filing the complaint and school representative sign the agreement,
    - Sending the written agreement to the IDOE, and
    - Notifying the IDOE if any issues still need to be investigated;
  - Agree with the person filing the complaint to engage in mediation (the mediation must be completed within **20 days** from the date the parties agree to mediation);
  - Notify the IDOE to investigate the complaint because the school will not be taking any of the other actions.

# Complaint Investigator

- A complaint investigator will investigate the complaint if:
  - The school does not respond;
  - The school notifies the IDOE to begin the investigation; or
  - The school and the parent(s) are not able to reach an agreement on an issue.
- The complaint investigator issues a written report within **40 days** from the date the IDOE receives the complaint.
  - S/he will send a copy of the report to both the person who filed the complaint and the school.
  - If the investigator determines that the school did not follow the law, the report will tell the school what action it must take to correct the situation. The report will also include the timeline for the school to take the action, and s/he will monitor the school's progress in correcting the situation. In some instances a IDOE monitoring specialist will assist in monitoring the school's compliance with ordered corrective action.

# Disagreement with Report

- If the person filing the complaint or school disagrees with the complaint investigation report, either may request a reconsideration (which is another name for a review) by the Director of Special Education for the IDOE.
  - Whoever asks for a reconsideration must send a **written request** to the IDOE within **7 days** of the date s/he receives the complaint investigation report.
- If anyone requests reconsideration, the IDOE reviews the file, any new information available, and decides if any changes should be made to the original report.
  - If there are changes to the original report, the IDOE will issue a revised complaint investigation report.
  - If there are no changes, the IDOE will send a letter to all parties stating that no changes are being made. This must be done within **60 days** of the date the IDOE received the complaint.

# Mediation

- **Mediation** is a voluntary and confidential process that allows a trained and impartial mediator help the parent(s) and school discuss and resolve a disagreement.
  - The mediator helps the parties to express their views and positions and to understand the views and positions of the other party. The mediator's role is to help the parties communicate and, if possible, reach an agreement. The mediator does not recommend solutions or take sides.
- Mediation may be used to resolve:
  - A complaint;
  - A disagreement from the CCC meeting regarding:
    - The identification of or student's eligibility as a student with a disability,
    - The appropriateness of the evaluation, level of services, or placement,
    - Anything else affecting the provision of a FAPE; or
  - A disagreement about the school reimbursing the parent(s) for services obtained by the parent(s) (e.g., private therapy, evaluation, etc.).

# Requesting Mediation

- A Request for Mediation form may be obtained from your local special education office, the IDOE, completed electronically on the IDOE website at:

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

or downloaded at:

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

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

# The Mediator's Role

- Mediators have different educational and professional backgrounds, but have been trained in effective mediation techniques and have been determined by the IDOE to be impartial, knowledgeable about the laws and regulations relating to special education, and otherwise qualified to serve as a mediator.
- An individual serving as a mediator cannot be an employee of the IDOE or the school or other public agency involved in the education or care of the student.
- The IDOE assigns mediators on a general rotation basis. This means that when mediation is requested, the IDOE contacts the mediator at the top of the rotation list to see if s/he is available. If that person is not available, the IDOE will contact the next person on the list.
- The mediator:
  - Works with the parent(s) and school to schedule a convenient date, time, and location for the mediation;
  - Helps the parent(s) and the school identify and talk about the issues causing the disagreement;
  - Gives everyone the opportunity to present his or her point of view; and
  - Helps the parent(s) and school personnel look at whether there is any common ground and/or any issues on which they might be able to agree.

# Key Points About Mediation

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



# Due Process Hearings

- A **due process hearing** is an administrative law proceeding before an impartial independent hearing officer (IHO).
  - The parent(s) and the school have the opportunity to present witnesses and other evidence.
  - At the conclusion of the hearing, the IHO considers all of the information and issues a written decision.
  - This option is a time consuming process and may involve hiring an attorney or an advocate. It is generally used as a last resort when other attempts to resolve the disagreement(s) have failed.
- A due process hearing can be used to settle a disagreement about:
  - The student's identification or eligibility as a student with a disability;
  - The appropriateness of the educational evaluation, level of services, or placement;
  - Anything else related to the provision of a FAPE; or
  - Reimbursement for services obtained by the parent(s).

# Requesting a Due Process Hearing

- A student's parent(s), the school, or the IDOE may request a due process hearing.
- In general, a due process hearing must be requested within **two years** of the date that the parent(s) or school **knew or should have known** about the issue or action that caused the disagreement.
- A request for a due process hearing must be in writing and include:
  - The parent's name, address, and phone number;
  - The student's name and address;
  - The name of the school corporation and the school the child attends;
  - The reason(s) the parent(s) is requesting the hearing that includes a description of the problem and any facts related to the problem; and
  - How the parent(s) would like the problem solved (if the parent(s) knows).
- A request for a due process hearing **must** be sent, at the same time, to the Superintendent of Public Instruction at the IDOE and the school (the school superintendent or the director of special education).
- A form for requesting a due process hearing may be completed electronically on the IDOE website at:  
<http://www.doe.in.gov/exceptional/speced/docs/RequestDueProcessHearing-ElectronicVer.pdf>  
or downloaded at:  
<http://www.doe.in.gov/exceptional/speced/docs/RequestDueProcessHearing-PaperVer.pdf>

# After the Request

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

# Written Response

- Within **10 days** of receiving the parent's request for a due process hearing, the school must send the parent(s) a written response about the issues in the due process hearing request.
  - If the school has not already sent the parent(s) a written notice about the action it wants to take or refuses to take, it must also provide the parent(s) with this written notice.
- The school may decide the parent's request for a due process hearing does not contain all of the required information.
  - If so, the school must notify the parent(s) and the IHO in writing within **15 days** of the date the school received the request for a due process hearing.
  - The IHO has **5 days** to decide if the parent's request for a due process hearing meets all of the requirements. The IHO must immediately notify the school and the parent(s) of his/her decision in writing.
    - If the IHO agrees with the school, the parent(s) must rewrite the request for a due process hearing so that it meets all of the requirements. If the request has to be rewritten, the **process starts over** when the school receives the revised request for a due process hearing.

# Resolution Meetings

- A **resolution meeting** is an opportunity for the parent(s) and the school to talk about the issues in the parent's due process hearing request to see if they can resolve them without a due process hearing.
  - The school must schedule the meeting within **15 days** of the date it received the parent's request for a due process hearing.
  - The resolution meeting includes the parent(s), a representative of the school district who has decision-making authority, and any members of the CCC who may have information that can help resolve the issues.
- In order to have a due process hearing, the parent(s) **must participate** in a resolution meeting. However, the parent(s) and the school have two other options:
  - If the parent(s) and school agree, they can use mediation in place of the resolution meeting.
  - The parent(s) and school may also decide that neither wants to participate in a resolution meeting. If the parent(s) and school agree that they will not have a resolution meeting, they have to put their agreement in writing.
- If the parent(s) and the school do not agree to the alternatives to a resolution meeting, the school must make reasonable efforts to get parent participation in the resolution meeting.
- If the parent(s) does not participate in the resolution meeting, the school may ask the IHO to **dismiss** the parent's due process hearing request.
- The student's parent(s) may bring an attorney or an advocate to the resolution meeting.
  - If the parent(s) brings an attorney, the school may also bring an attorney.
  - The school's attorney may not attend the resolution meeting if the parent's attorney does not attend.

# Results of the Resolution Meeting

- If an agreement is reached during the resolution meeting, the agreement must be put in writing and signed by the parent(s) and the school's representative.
  - Once the agreement is signed, the parent(s) and the school have **3 business days** to change their minds and cancel the agreement. If either one wants to cancel the agreement, it must be done in writing.
  - The agreement is a legally binding document (like a contract), and it can be enforced by the court.
- If a resolution meeting is held, but no agreement is reached, the school has **30 days** from the date that the request for due process hearing was received to continue to try to resolve the matter.
  - This means that, if the resolution meeting was scheduled within **15 days** of the date the school received the due process hearing request, it has at least another **15 days** to continue to try to reach an agreement with the parent(s).
  - At the end of that **30 days**, or if the parent(s) and the school have agreed not to hold a resolution meeting, the timeline for conducting the due process hearing begins.
    - **The hearing must be held and the IHO must give the parent(s) and the school a written decision within 45 days, unless the IHO agrees with a request for additional time from the parent(s) or the school.**

# Conducting the Due Process Hearing

- Before the actual due process hearing, the IHO will hold a prehearing conference to talk about the issues for the due process hearing, as well as when and where the hearing will take place. The prehearing conference may occur in person or by other means such as by phone.
- The hearing will be held at a time and place that is convenient for the parent(s) and the school.
- During the due process hearing, the parent(s) and the school have a chance to present their side of the story.
  - Each side can have witnesses testify (answer questions) and can provide documents in support of their position. It is similar to what happens in court, but it is not as formal. The IHO serves as the “judge.” A court reporter will record the hearing and provide a written transcript of the hearing.
- A student’s parent(s) (or the parent’s attorney or advocate) has the right to:
  - Decide if the student will attend the hearing;
  - Decide if the hearing will be open or closed to the public;
  - Inspect, review, and obtain a copy of the student’s educational record;
  - Obtain one free copy of the written or electronic version of the transcript of the due process hearing;
  - Obtain one free copy of the IHO’s decision in either written or electronic format; and
  - Have their attorney’s fees paid by the school if a court decides that the parent(s) prevailed in the due process hearing or in court.

# Appeals

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



# Expedited Due Process Hearings

- There are times when a due process hearing must be expedited. There are three (3) situations when an expedited hearing occurs:
  - If a student's parent(s) requests a due process hearing because s/he disagrees with the school's decision about changing the student's placement due to disciplinary action;
  - If a student's parent(s) requests a due process hearing because s/he disagrees with the school's decision about whether a student's behavior is a manifestation of the student's disability; or
  - If the school believes that putting a student back in his/her current placement would be dangerous for the student.

# Expedited Timelines

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

# 504 Plans

- Section **504** of the Rehabilitation Act of 1974 prohibits discrimination on the basis of disability in programs or activities that receive Federal financial assistance from the U.S. Department of Education.
  - Title II prohibits discrimination on the basis of disability by state and local governments.
  - Section 504 is an antidiscrimination law and does not provide any type of funding.
    - The Office of Civil Rights (OCR) is responsible for enforcing compliance in the educational context.
- Section 504 requires recipients (schools) to provide to students with disabilities appropriate educational services designed to meet the individual needs of such students to the same extent as the needs of students without disabilities are met.
  - An appropriate education for a student with a disability under the Section 504 regulations could consist of education in regular classrooms, education in regular classes with supplementary services, and/or special education and related services.

# IEP vs. 504 Plan

- Section 504 is a broad federal civil rights law that protects all individuals with a handicap.
- IDEA only applies to students who require special education because they have one of the specified types of disabilities.
  - Students who qualify under Section 504 must have a 504 plan that outlines the services to be provided. Some students will also qualify under the more stringent IDEA. These students will have an IEP rather than a 504 plan, since a student cannot have both a 504 plan and an IEP.
  - The parent(s) cannot opt for a 504 plan if the student is eligible for special education since the school is required to provide an IEP to a student who is eligible for one, because of the greater rights and entitlements under the IDEA than under Section 504; a school district must comply with more procedural requirements and formalities under the IDEA.
- All children on IEPs have been identified as having a disability and therefore cannot be discriminated against because of their disability under the Vocational Rehabilitation Act of 1973 (Section 504). All students with IEPs and all students on 504 plans are covered by this civil rights legislation.
- There are no categorical restrictions as to what supports and services might be appropriate on an IEP or a 504 accommodation plan.
  - Section 504 applies to academic, non-academic and extracurricular activities, including sports.

# Students Protected Under Section 504

- Section 504 covers qualified students with disabilities who attend schools receiving Federal financial assistance.
- To be protected under Section 504, a student must be determined to:
  - have a **physical or mental impairment that substantially limits one or more major life activities;**  
or
  - have a record of such an impairment; or
  - be regarded as having such an impairment.
- Section 504 requires that school districts provide a free appropriate public education (FAPE) to qualified students in their jurisdictions who have a physical or mental impairment that substantially limits one or more major life activities.

# Determination of Impairment

- The determination of whether a student has a physical or mental impairment that substantially limits a major life activity must be made on the basis of an individual inquiry.
- The Section 504 regulatory provision defines a physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems:
  - neurological;
  - musculoskeletal;
  - special sense organs;
  - respiratory, including speech organs;
  - cardiovascular;
  - reproductive;
  - digestive;
  - genito-urinary;
  - hemic and lymphatic;
  - skin;
  - and endocrine;
  - or any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.
  - The regulatory provision does not set forth an exhaustive list of specific diseases and conditions that may constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of such a list.

# Definition of Major Life Activities

- Major life activities, as defined in the Section 504 regulations, include functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (This list is not exhaustive.)
- Other functions can be major life activities for purposes of Section 504. In the Amendments Act, Congress provided additional examples of general activities that are major life activities, including eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, and communicating.
- Congress also provided a non-exhaustive list of examples of “major bodily functions” that are major life activities, such as the functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.
- The Section 504 regulatory provision, though not as comprehensive as the Amendments Act, is still valid – the Section 504 regulatory provision’s list of examples of major life activities is not exclusive, and an activity or function not specifically listed in the Section 504 regulatory provision can nonetheless be a major life activity.

# Qualified Students

- At the elementary and secondary educational level, a "qualified student with a disability" is a student with a disability who is:
  - of an age at which students without disabilities are provided elementary and secondary educational services;
  - of an age at which it is mandatory under state law to provide elementary and secondary educational services to students with disabilities;
  - or a student to whom a state is required to provide a free appropriate public education under the Individuals with Disabilities Education Act (IDEA).
- At the postsecondary educational level, a qualified student with a disability is a student with a disability who meets the academic and technical standards requisite for admission or participation in the institution's educational program or activity.



# Evaluation

- School districts are required to individually evaluate a student before classifying the student as having a disability or providing the student with special education.
  - School districts may (and often do) use the same process to evaluate the needs of students under Section 504 as they use to evaluate the needs of students under the IDEA.
  - In determining whether a student has a physical or mental impairment that substantially limits that student in a major life activity, school **must not** consider the ameliorating effects of any **mitigating measures** that student is using.
    - Congress released a non-exhaustive list of mitigating measures as follows:
      - medication;
      - medical supplies, equipment or appliances;
      - low-vision devices (which do not include ordinary eyeglasses or contact lenses);
      - prosthetics (including limbs and devices);
      - hearing aids and cochlear implants or other implantable hearing devices;
      - mobility devices;
      - oxygen therapy equipment and supplies;
      - use of assistive technology;
      - reasonable accommodations or auxiliary aids or services;
      - and learned behavioral or adaptive neurological modifications.

# Outside Independent Evaluation

- The results of an outside independent evaluation may be one of many sources to consider. Multi-disciplinary committees must draw from a variety of sources in the evaluation process so that the possibility of error is minimized.
- All significant factors related to the subject student's learning process must be considered. These sources and factors include **aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, and adaptive behavior**, among others.
- Information from all sources must be documented and considered by knowledgeable committee members. The weight of the information is determined by the committee given the student's individual circumstances.

# Reevaluation

- Under Section 504, periodic reevaluation is required.
- This may be conducted in accordance with the IDEA regulations, which require reevaluation at **3-year** intervals (unless the parent and public agency agree that reevaluation is unnecessary) or more frequently if conditions warrant, or if the child's parent or teacher requests a reevaluation, but not more than **once a year** (unless the parent and public agency agree otherwise).
- Reevaluation is required **prior to** a significant change of placement, which is defined as:
  - more than **10 days**,
  - transferring a student from one type of program to another, or
  - terminating or significantly reducing a related service.

# Nature of Services

- Schools are required to provide a FAPE that consists of regular or special education and related aids and services designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met.
- As long as the student is eligible under Section 504, that student is always entitled to such services.
  - The protections of Section 504 extend only to individuals who meet the **regulatory definition** of a person with a disability.
    - To qualify, the impairment or disability must last for an actual or expected duration of 6 months or more.
  - If a school district reevaluates a student and determines that the student's mental or physical impairment no longer substantially limits his/her ability to learn or any other major life activity, the student is no longer eligible for services under Section 504.

# Reasonable Accommodations

- A "reasonable accommodation" is:
  - physical modifications to the school that are **necessary** for the student to enjoy full use of the school building
    - **Example: an elevator, a wheelchair ramp, handrails, motorized doors**
  - a change in rules, policies, procedures, etc. when needed to allow the student to use or enjoy school, including extracurricular activities, to the same extent as students who do not have disabilities
    - **Example: allowing the student with diabetes to have a snack in the classroom, allowing the student with ADHD to stand up when needed during class**
- Personnel must be trained in how to teach a student with a disability and must have appropriate materials and equipment for the student to use.

# 504 Process vs. IEP Process

- Parent(s) must get notice of the 504 team meeting, but the school **does not** have to give notice in writing.
- There are no **mandatory members** of a 504 team. Sometimes, the 504 team is the same as the CCC under IDEA, but it does not have to be.
  - The 504 team must include people who know the student, can explain the evaluations, and know about placement options.
- The 504 team should decide if the student is a "qualified disabled person." If s/he is, a 504 plan must be developed.
  - The 504 plan **does not** have to be in writing, but parent(s) can and should ask for it to be put in writing.
- If the school wants to change the student's program, it only has to give parent(s) notice if there is going to be "**a significant change**" in the student's placement.
- Section 504 **does not** require parent consent to implement.

# Relocation of Students with 504 Plans

- If a student with a disability transfers from another school district with a Section 504 plan, the receiving district should review the plan and supporting documentation.
  - If a group of persons at the receiving school district, including persons knowledgeable about the meaning of the evaluation data and knowledgeable about the placement options determines that the plan is appropriate, the district is required to implement the plan.
  - If the district determines that the plan is inappropriate, the district is to evaluate the student and determine which educational program is appropriate for the student.
- Recipient school districts are required to establish and implement **procedural safeguards** that include notice, an opportunity for parents to review relevant records, an impartial hearing with opportunity for participation by the student's parents or guardian, representation by counsel and a review procedure.

# Resources

- **ASK Indiana (About Special Kids)**, 1-800-964-4746 <http://www.aboutspecialkids.org/>
- **IN\*SOURCE**, 1-800-332-4433 <http://insource.org/>
- **Indiana Department of Education**, 1-877-851-4106 <http://www.doe.in.gov/specialed>
- **Indiana Protection and Advocacy Services Commission**, 1-800-622-4845, TTY – 1-800-838-1131 <http://in.gov/ipas/>
- **Wright's Law (SPED Law & Advocacy)** <http://www.wrightslaw.com/info/iep.index.htm>