

INDIANA DEPARTMENT OF EDUCATION NOTICE OF PROCEDURAL SAFEGUARDS AND PARENT RIGHTS IN SPECIAL EDUCATION

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

As the parent of a child who has or may have a disability, you have certain rights (also called procedural safeguards) under federal and state laws. These are listed in this *Notice of Procedural Safeguards and Parent Rights in Special Education*. The notice of your rights must be given to you in your native language or in a means of communication you can understand. If you would like a more detailed explanation of these rights, you should contact the principal at your child's school, a school administrator, the special education director, or the Indiana Department of Education, Division of Exceptional Learners, Room 229, State House, Indianapolis, IN 46204-2798; 317-232-0570 or 877-851-4106 (toll free), or any of the resource agencies listed on the last page of this *Notice*.

A copy of the *Notice of Procedural Safeguards and Parent Rights in Special Education* must be given to you, at the time of:

- initial referral for evaluation;
- notification of a case conference committee meeting;
- reevaluation of the student;
- filing of a due process hearing;
- a decision to place the student in an interim alternative educational setting;
- filing of expulsion charges; and
- notification of a proposed placement or denial of placement.

SPECIAL EDUCATION TERMS

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

Article 7 refers to 511 IAC 7-17 through 7-31 that contain Indiana's special education regulations.

Student with a disability means a student who has been determined by the case conference committee to have at least one of the 13 disabilities identified by Article 7.

Case conference committee is the group of individuals that decides if a student is eligible for special education services and, if eligible, the type of special education and related services the student needs.

Individualized education program (IEP) is a written document developed by the case conference committee that, among other things, describes the student's needs and the special education and related services to be provided to meet those needs.

Free appropriate public education (FAPE) means special education and related services that, among other things:

- are provided at no cost to the parent;
- include early childhood (preschool), elementary, and secondary education;
- are provided in accordance with the student's IEP;
- are provided in such a way that a student with a disability has an equal opportunity to participate in activities and services that are available to students without disabilities; and
- include earning course credits and a diploma if academic standards and other requirements for receiving a regular high school diploma are met.

OPPORTUNITY TO OBTAIN INFORMATION

As the parent of a student with a disability, you have the right to contact and meet with school personnel or the school's governing body to:

- obtain an explanation or clarification of these procedural safeguards or due process procedures;
- discuss questions or issues; and
- obtain local access in a convenient place to:
 - federal and state laws governing special education;
 - the school's standards, policies, and procedures pertaining to special education;
 - the school's approved comprehensive plan for the delivery of special education and related services;
 - approved applications; and
 - the final monitoring report of the school.

PARENTAL CONSENT

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

1. *What does consent mean?*

Consent means that—

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

2. *When must the school obtain my consent?*

Your consent must be obtained—

- **Before your child is evaluated for the first time** to determine whether he or she is eligible for special education. However, your consent for an initial educational evaluation does not mean that you have consented to any other services or placement.
- **Before the school can provide special education and related services for the first time.**
- **Before your child is tested as part of a reevaluation.** A reevaluation is required every 36 months. The school must try to obtain your consent before conducting the reevaluation, but the school may proceed without your consent if it can demonstrate that it has taken reasonable measures to obtain your consent and you have failed to respond. Reasonable measures include records of telephone calls made or attempted and the results of those calls; copies of correspondence sent to you and any responses received; and records of visits made to your home and the results of those visits. If you decline to consent, the school may request mediation or a due process hearing.
- **Before an additional evaluation is conducted.** An additional evaluation is an evaluation that you or the school have requested be done, after an initial evaluation has been completed and at a time other than when a reevaluation is due to be conducted. Informed parental consent is required before the school may conduct the additional evaluation.
- **Before a change of placement occurs.** Once you have consented to the school providing special education and related services to your child, your consent is required before a change of placement can occur, except in certain disciplinary situations. A "change of placement" includes changing the child's identified disability category, changing the amount or location of services in the IEP if the changes affect the goals and objectives, and changing the actual placement. Although your consent is required for a change of placement, your consent is not required for every change in your child's IEP. Your refusal to consent to these types of proposed changes will not result in a failure to provide your child with a free and appropriate public education.

Your consent is **not required** before the school:

- reviews existing data or information as part of an initial evaluation or a reevaluation;
- administers a test or other assessment that is given to all children unless consent is required of all parents; or
- changes your child's placement for disciplinary reasons and certain other decisions relating to discipline (See **STUDENTS WITH DISABILITIES AND DISCIPLINARY ACTION** below).

3. *Can I decline to consent?*

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

4. *Can I withdraw my consent after it has been given?*

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

5. *What are the limitations on my consent?*

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

EVALUATIONS

An educational evaluation is a procedure to collect information about a child to determine if a student has a disability and the kinds of special education and related services the student may need. The information is gathered from a variety of sources and through a variety of assessment instruments.

Initial Educational Evaluation

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

1. *How do I request an initial educational evaluation?*

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

- sending a signed written request to certified school personnel, such as the teacher, principal, guidance counselor, or school psychologist, or
- making a verbal request and signing the school's consent for evaluation form.

When you request an evaluation, the school will talk to you or send you written information about the child's learning difficulties, the evaluation process, the timeline for the evaluation, obtaining a copy of the evaluation report, and sources you may contact for additional information. You and the school will review existing information about the student to decide what kinds of assessments or evaluations are needed. If the case conference committee decides it has enough information to make a decision on the student's eligibility for special education, no additional assessments will be conducted unless you request them.

2. *What is included in an initial educational evaluation?*

A child's eligibility for special education cannot be made on the basis of a single test, so the evaluation must be comprehensive and must be conducted by a team of qualified professionals, including at least one teacher licensed in, or other specialist with knowledge in, the area of the student's suspected disability. An initial educational evaluation gathers a variety of information about the child in all areas related to the child's suspected disability, and may include information on the child's vision, hearing, health, social and emotional status, general intelligence, academic performance, communication status, and motor skills.

3. *Will I get a copy of the report on the initial educational evaluation?*

You are entitled to a copy of the report of the initial educational evaluation at least five school days before the case conference committee meets. You may go to your child's school to pick up your copy of the report. You also have the right to have someone from the school explain the results of the evaluation before the case conference committee meets. If you do not pick up the report prior to the case conference committee meeting, the school will provide you with a copy of the report at the time of the case conference committee meeting.

Reevaluation

If your child is found eligible and receives special education services, a reevaluation of your child must be conducted at least every 36 months. Your consent is needed for the reevaluation. However, if you do not respond to the school's attempts to get your consent, the school can conduct the reevaluation without your consent if it can document that it made a reasonable effort to contact you. If you decline to consent, the school may use mediation or a due process hearing to resolve the issue.

Independent Educational Evaluation

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

1. *What is an independent educational evaluation?*

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

2. *What does "at public expense" mean?*

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

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

If you request an independent evaluation at public expense, the school must, within ten business days of receiving your request, either:

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

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

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

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

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

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

5. What are the criteria for an independent educational evaluation?

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

6. What if a hearing officer requests an independent educational evaluation?

If a hearing officer requests an independent educational evaluation as part of a hearing, the school must pay the cost of the evaluation.

CASE CONFERENCE COMMITTEE

The Case Conference Committee (CCC) is a group of individuals that includes **you** and school personnel and is responsible for:

- determining your child's eligibility for special education;
- developing, reviewing and revising the IEP;
- determining the appropriate special education and related services, taking into consideration a number of general and special factors; and
- determining placement in the least restrictive environment.

The school must take whatever action is necessary (including providing an interpreter) to make sure you understand what happens in the case conference committee meeting,

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

- You have the right to participate in all CCC meetings for your child until he or she reaches 18 years of age. You have the right to participate after the student turns 18 if you have obtained guardianship of the student.
- You have the right, at any time, to request that the CCC meet.
- You have the right to have the CCC meeting scheduled at a mutually agreed upon date, time, and place.
- You are a member of the CCC, and decisions will **not** be made without you unless you choose not to participate.
- If you want to participate, but cannot attend the CCC meeting in person, you may participate by telephone or other means.
- You may bring other individuals that you believe have knowledge or special expertise about your child to any CCC meeting.

2. When must the CCC meet?

The case conference committee must meet:

- within 60 instructional days of your written consent for an initial educational evaluation or an additional evaluation;
- within 12 months of the previous CCC meeting;
- upon the request of the parent, teacher, or administrator;
- when a change of placement is proposed or is being considered;
- within 10 instructional days of a student's enrollment when the student had been receiving special education services in the previously attended school;
- to determine if the student's behavior is a manifestation of his or her disability;
- to determine the actual setting when the school has decided to place the student in an interim alternative educational setting;
- to develop a plan for assessing the student's functional behavior or to revise an existing behavioral intervention plan; and
- at least every 60 instructional days when the student receives services in a homebound or alternative setting.

PLACEMENT IN THE LEAST RESTRICTIVE ENVIRONMENT

Each student with a disability is entitled, to the maximum extent appropriate, to be educated with students without disabilities in the least restrictive environment for that student. Placement and services are not determined on the basis of the student's disability, but on the student's needs and goals and objectives. A student's placement is to be reviewed at least once a year. A student with a disability is to be educated in the school the student would attend if not disabled, and in classes with his or her chronological peers, unless an alternative is determined appropriate by the case conference committee and the reasons are documented in the IEP.

The school must make available a continuum or range of placement options to meet students' needs. The continuum includes the general education classroom with special education and related services being provided in the classroom during the course of the school day, resource rooms, separate classrooms, separate public and private non-residential and residential schools or facilities, and instruction in homebound or hospital settings.

For early childhood programs, the continuum begins with programs designed primarily for students without disabilities and includes programs designed primarily for students with disabilities, home-based programs, and separate non-residential and residential schools or facilities.

In selecting the least restrictive environment, the CCC must consider any potential harmful effect on the student or on the quality of services needed.

The school must make available to students with disabilities the same variety of educational programs and services that are available to students without disabilities. Each student's case conference committee determines the appropriateness of these programs and services. Each student with a disability has an equal opportunity to participate with students without disabilities in nonacademic and extracurricular services and activities, to the maximum extent appropriate. Reasons for a student with a disability not participating **must** be included in the IEP.

PRIOR WRITTEN NOTICE BY THE SCHOOL

The school must give you **written notice** when it proposes to do either of the following:

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

If the school is proposing to change the student's identified disability category or current placement, the case conference committee must meet as well.

What must be included in the notice?

- a description of the action proposed or refused by the school;
- an explanation of why the school proposed or refused to take the action;
- a description of any other options the school considered and the reasons why those options were rejected;
- a description of each evaluation procedure, test, record, or report the school used as a basis for the action proposed or refused;
- a description of any other factors that are relevant to the school's proposal or refusal;
- a statement that you have procedural safeguards protections and how you may get a copy of the *Notice of Procedural Safeguards and Parent Rights in Special Education*;
- sources for you to contact for assistance in understanding your rights;
- a statement that disagreements between you and the school regarding a student's eligibility for special education or the contents of the student's IEP may be resolved through mediation or a due process hearing; and
- a statement that parental consent may be revoked at any time, that the revocation must be in writing, and that revocation of consent does not have any retroactive effect if the activities consented to have already occurred.

If the school is proposing an action concerning your child, you must be given written notice about the proposed action within a reasonable amount of time before the action is taken. If the school refuses to take some action you have requested, the school must give you written notice of the refusal within a reasonable time after the decision is made to deny your request. The school must take steps to be sure that you understand the information in any notice given to you.

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

CONFIDENTIALITY OF AND ACCESS TO EDUCATIONAL RECORDS

The Federal Educational Rights and Privacy Act (FERPA), as well as other state and federal regulations, govern the confidentiality of a student's educational records. The school must protect the confidentiality of personally identifiable information concerning your child during the collection, storage, and destruction of information. A school official is responsible for ensuring the confidentiality of information and has received training in these procedures. The school provides training regarding confidentiality to anyone on the staff that collects or maintains this information and must maintain a current list of the names and positions of school employees who have access to personally identifiable information in your child's educational record. This list is available for public inspection. The school must keep a record of those persons, except parents and authorized employees of the school district, who obtain access to a

student's record, including names, dates, and purposes for the access. The school must also provide you, upon your request, with a list of the types and locations of education records collected, maintained, or used by the agency.

“Educational record” means records directly related to a student and maintained by the school or someone acting on the school's behalf. Educational records include paper documents, as well as electronic (audio, video, scanned images) media, but do not include records of instructional, supervisory, administrative, or ancillary personnel that remain in the sole possession of the maker and are not accessible to or revealed to any other person.

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

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

“Directory information” means information about a student contained in the student's educational record that would not generally be considered harmful or an invasion of privacy if disclosed that can be made public without your consent in accordance with the school's policy.

Access to your child's educational record

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

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

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

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

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

The school may charge you for copies of the record, but not more than the actual cost of duplication. The fee must not prevent you from seeing the record or exercising your rights to review or inspect the records. The school cannot charge a fee to search for records or for the first copy of a document (i.e., current IEP, case conference committee report, report of initial educational evaluation) that the school is required to provide.

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

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

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

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

- other authorized school officials or individuals acting on behalf of the school;
- another school where the student is enrolled or intends to enroll;
- federal or state education officials for audit, evaluation, accreditation, or enforcement purposes;
- in connection with financial aid sought by the student;
- an organization conducting a study on behalf of the federal or state education agencies;
- in response to a judicial order, lawfully issued administrative or judicial subpoena;

- the court (when the school has initiated legal action against you or the student);
- appropriate parties in a health or safety emergency;
- an accrediting organization (to facilitate the organization's accrediting functions);
- a parent of a student under the age of 18; or
- a parent of a dependent student as defined by the Internal Revenue Code.

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

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

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

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

Amending (changing) something in your child's educational record

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

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

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

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

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

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

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

Destruction of records

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

EDUCATIONAL SURROGATE PARENT

When no parent is available, the rights of a student with a disability are protected by the appointment of an educational surrogate parent. An educational surrogate parent is a volunteer who has received training and has been appointed by the school to represent a student with a disability in educational matters, including identification, evaluation, placement, and the provision of a free appropriate public education. The educational surrogate parent participates as a member of the case conference committee.

An educational surrogate parent must be appointed when:

- no parent can be identified;
- the whereabouts of the parent cannot be determined; or
- the student is a ward of the state, unless the court order creating the wardship permits the student to remain in the home or expressly reserves to a parent the authority to make decisions regarding the student's education or upbringing.

An educational surrogate parent is authorized to:

- attend case conference committee meetings;
- give (or refuse to give) consent for evaluation, identification/eligibility, services, and placement;
- inspect and review the student's educational record;
- file a complaint;
- request mediation or a due process hearing; and
- exercise all of the rights described in this *Notice*.

To be eligible to serve as an educational surrogate parent, an individual:

- cannot be an employee of a school corporation or public agency involved in the education or care of the student (but may be an employee of a private agency providing non-educational care for the student);
- cannot have an interest that conflicts with the interest of the student;
- matches the student's cultural and linguistic background, to the extent possible; and
- has knowledge and skills that ensure adequate representation of the student.

If the juvenile court has placed the student in a foster home, the school will assign the foster parent as the educational surrogate parent, if the foster parent is eligible, has received training, and is willing to serve.

PLACEMENT OF CHILDREN BY PARENTS IN PRIVATE SCHOOLS

The school is not required to pay for the cost of your child's education in a private school if the public school made a free appropriate public education available to your child, and you choose, instead, to enroll your child in a private school. The public school is required to make some special education and related services available to a student with a disability who is enrolled in a private school by his or her parents; however, the public school determines what services will be provided and where they will be provided.

1. What if I place my child in a private school because I believe the public school did not make a free appropriate public education available to my child?

If you place your child with a disability in a private school because you believe the public school was not providing a free appropriate public education, you may request reimbursement from the public school for the costs of the private school. If you and the school are unable to reach agreement on the issue of reimbursement, you may utilize mediation or a due process hearing to resolve this issue.

If you enroll your child (who previously received special education and related services from the public school) in a private preschool, elementary or secondary school without the consent of or referral by the public school, a court or hearing officer, may require the public school to reimburse you for the cost of that enrollment if the court or hearing officer finds that the public school did not make a free and appropriate education available to your child in a timely manner prior to the enrollment, and that private school placement is appropriate. The private school placement may be found to be appropriate by the court or a hearing officer even if it does not meet the State standards that apply to education provided by public schools.

2. What must I do if I plan to ask the school district to reimburse me for the costs of a private school?

- At the case conference committee meeting prior to removing your child from school, you must inform the school that you reject the proposed placement, state your concerns about the proposed placement, and indicate your intent to enroll your child in a private school at the public school's expense.
- At least 10 business days (including holidays that occur on a business day) prior to removing your child from public school, you must provide written notice to the school that you disagree with the proposed placement, identify your concerns about the proposed placement, and that you are going to enroll your child in a private school.
- If, before you remove your child from school, the school provides you with written notice of its intent to evaluate your child, and the notice includes a statement of the purpose of the evaluation that is appropriate and reasonable, you must make your child available for the evaluation.

If you fail to do any of these three things, the hearing officer or the court may reduce or deny your request for reimbursement from the public school. Reimbursement may also be reduced or denied if the court finds that your actions were unreasonable. However, the amount of reimbursement may not be reduced or denied for failing to give notice to the school if:

- you cannot read or write in English;
- continued placement in public school would likely result in physical or serious emotional harm to your child;
- the school prevented you from giving notice; or
- you had not received written notice of your responsibility to give notice to the school before removing your child from public school and enrolling your child in private school.

STUDENTS WITH DISABILITIES AND DISCIPLINARY ACTION

A student with a disability is subject to the same disciplinary action for violating school rules as any other student. However, there are additional protections and options for students with disabilities provided by federal and state special education laws. For purposes of the IDEA and Article 7, a change of placement for disciplinary reasons occurs when the student is suspended for more than 10 consecutive school days, expelled, placed in an interim alternative educational setting, or subjected to a series of suspensions that cumulates to more than 10 instructional days in a school year and that constitutes a pattern based on the length of the suspension, the cumulative number of days of suspension, and how close in time the suspensions are to each other.

Suspension

A student with a disability may be suspended for up to 10 consecutive school days for misconduct. The school does not have to provide any educational services during the first 10 days of suspension in a school year. The school may suspend a student for up to 10 consecutive school days for each separate incident of misconduct. However, when the number of days of suspension in a school year reaches the eleventh day, the school must do the following:

- For each day of suspension after the first 10 days, the school must provide educational services to the student to the extent necessary to enable the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP. The principal and the student's special education teacher decide what services will be provided.
- It must convene the case conference committee within 10 business days of the eleventh day of suspension to develop a plan for an assessment of the student's functional behavior (if no assessment has been conducted), or it must review and, as determined necessary, revise the student's existing behavioral intervention plan to address the behavior. If a functional behavior assessment is conducted, the case conference committee must convene as soon as possible after the assessment to develop a behavioral intervention plan.

If a student with a disability is subjected to a series of suspensions that you believe effectively results in a change of placement for the student because of the number of days of each suspension, the total number of days of suspension, and the fact that the periods of suspension are occurring close to each other, you may request a due process hearing. The independent hearing officer will determine if the series of suspensions constitutes such a pattern and whether the student is entitled to additional protections such as a manifestation determination and a functional behavioral assessment or behavioral intervention plan.

Expulsion

A student with a disability may be expelled in accordance with school policy. Before the expulsion can occur, however, the school must:

- notify you of the decision to take this action on the day the decision is made and provide you with a copy of this *Notice*.
- convene the case conference committee within 10 school days of the decision to expel the student and conduct a manifestation determination. (See section on **Manifestation Determination** below).
- convene a case conference committee within 10 business days of the decision to expel the student to develop a plan for an assessment of the student's functional behavior (if no assessment has been conducted), or review and, as determined necessary, revise the student's existing behavioral intervention plan to address the behavior. If a functional behavior assessment is conducted, the case conference committee must convene as soon as possible after the assessment to develop a behavioral intervention plan. A single case conference committee meeting can be conducted to address the manifestation determination and determine if a functional behavioral assessment is needed or review an existing behavioral intervention plan.

If the student is expelled, the school must provide educational services to the student during the period of expulsion. The case conference committee determines the type and amount of services to be provided to the student during this time.

Interim Alternative Educational Setting for weapons or drugs

A student with a disability may be moved to an "interim alternative educational setting" for up to 45 calendar days if the student:

- Carries a weapon to school or to a school function;
- Knowingly possesses or uses illegal drugs at school or at a school function; or
- Sells or solicits the sale of a controlled substance while at school or a school function.

"**Weapon**" includes all of the following:

- A dangerous weapon, defined by federal law, is "any weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that this term does not include a pocket knife with a blade of less than 2.5 inches in length."

- A deadly weapon, defined by state law, is “(1) A loaded or unloaded firearm. (2) A weapon, device, taser (as defined in IC 35-47-8-3) or electronic stun weapon (as defined in IC 35-47-8-1), equipment, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury. (3) An animal (as defined in IC 35-46-3-3) that is: (A) readily capable of causing serious bodily injury; and (B) used in the commission or attempted commission of a crime. (4) A biological disease, virus, or organism that is capable of causing serious bodily injury.”
- A firearm, defined by state law, is “any weapon that is capable of or designed to or that may readily be converted to expel a projectile by means of an explosion.”

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

“**Controlled substance**” means a drug or other substance identified under schedules I, II, III, IV or V in section 202(c) of the Controlled Substances Act (21 U.S.C. §12(c)). This is a federal law.

If the school decides to place your child in an interim alternative educational setting for weapons or drugs, the school must notify you of this decision on the date the decision is made and provide you with a copy of this *Notice*. The school must also convene the case conference committee:

- to determine what the actual interim alternative setting will be (where your child will be placed for up to 45 calendar days).
- to conduct a manifestation determination within 10 school days of the decision to place your child in an interim alternative educational setting. (See section on **Manifestation Determination** below). The manifestation determination may be conducted at the same case conference committee in which the interim alternative educational setting is determined.
- to develop a plan for assessing your child’s functional behavior (if no assessment has been conducted), or review and, as determined necessary, revise your child’s existing behavioral intervention plan to address the behavior. This must be done within 10 business days of the school’s decision to place your child in an interim alternative educational setting. If a functional behavior assessment is conducted, the case conference committee must convene as soon as possible after the assessment to develop a behavioral intervention plan. A single case conference committee meeting can be conducted to address the placement, manifestation determination, and determine if a functional behavioral assessment is needed or review an existing behavioral intervention plan.

Any interim alternative educational setting in which a student is placed must:

- be selected so as to enable the student to continue to progress in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the student’s current IEP, that will enable the student to meet the goals set out in that IEP; and
- include services and modifications to address the behavior that resulted in removal of the student from his or her current placement that are designed to prevent the behavior from recurring.

If you disagree with the placement the school proposes as the interim alternative educational setting, you may request mediation or a due process hearing to resolve the disagreement. (See section on **Expedited due process hearings and appeals** below).

Interim Alternative Educational Setting for student who poses a risk of harm to self or others

A student with a disability may also be moved to an interim alternative educational setting if an independent hearing officer determines that there is a substantial likelihood that returning the student to his or her current placement (the placement before the student was suspended, expelled, or placed in an interim alternative educational setting for weapons or drugs) will result in harm to the student or to others.

The school may request a student be placed in an interim alternative educational setting if the school believes that returning the student to his or her current placement (the placement prior to suspension, expulsion, or placement in an interim alternative educational setting) is substantially likely to result in harm to the student or to others. School officials propose the alternative setting, but the hearing officer makes the final decision on whether an interim alternative educational setting is needed and what that setting will be. If, at the end of 45 calendar days, the school believes there continues to be a danger that the student or other students may be injured if he or she is returned to his or her previous placement, the process may be repeated.

The due process hearing is expedited, and the independent hearing officer may order placement in an interim alternative educational setting for up to 45 calendar days if he or she does the following:

- determines that the school has demonstrated by substantial evidence that returning the student to his or her current placement is substantially likely to result in injury to the student or to others;
- considers the appropriateness of the student’s current placement;
- considers whether the school has made a reasonable effort to minimize the risk of harm in the student’s current placement; and
- determines that the proposed interim alternative educational setting will enable the student to progress in the general curriculum, receive the modifications and services identified in the student’s IEP, and includes services and modifications to address and prevent a recurrence of the behavior that poses the risk of injury.

Manifestation Determination

A manifestation determination is a decision by the case conference committee about whether a student's behavior resulting in disciplinary action is caused by any of the following:

- the student's disability;
- an inappropriate IEP;
- an inappropriate placement; or
- the school's failure to implement the student's IEP as written.

The case conference committee and other qualified personnel may determine that the student's behavior was not a manifestation of (caused by) the student's disability, IEP, or placement only if they:

- first consider, in terms of the student's behavior subject to disciplinary action, all relevant information, including:
 - evaluation and diagnostic results, including the results or other relevant information supplied by the parent;
 - observations of the student;
 - the student's IEP and placement; and
- then determine that—
 - in relationship to his or her behavior subject to disciplinary action, the student's IEP and placement were appropriate, and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;
 - the student's disability did not impair his or her ability to understand the impact and consequences of the behavior subject to disciplinary action; and
 - the student's disability did not impair his or her ability to control the behavior subject to disciplinary action.

If the case conference committee and other qualified personnel determine that any of these standards were not met, the behavior must be considered a manifestation of the student's disability, and the proposed disciplinary action may not be imposed. If the case conference committee identifies deficiencies in the student's IEP or placement or in their implementation, the school must take immediate steps to remedy those deficiencies.

If the case conference committee determines that your child's behavior is **not** a manifestation of his or her disability, IEP, or placement—

- The relevant disciplinary procedures applicable to children without disabilities may be applied to your child with a disability in the same manner in which they are applied to children without disabilities, as long as your child continues to be provided services as determined by the case conference committee, to the extent necessary to enable him or her to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in his or her IEP.
- If the school initiates disciplinary procedures applicable to all children, the school must ensure that the special education and disciplinary records of your child are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action.

If you disagree with the case conference committee's position that your child's behavior is not caused by any of the identified factors, you may request mediation or an expedited due process hearing to resolve the issue. (See section on **Expedited due process hearings and appeals** below).

PROTECTIONS FOR STUDENTS NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES

A student who has not yet been determined eligible for special education and who is subject to disciplinary action may be covered by the protections and safeguards of Article 7 **IF** the school has knowledge or is considered to have knowledge that the student is a student with a disability before the behavior resulting in disciplinary action occurred. If the school has knowledge that the student may have a disability, the school must provide the student the same protections as a student with a disability who is subjected to disciplinary action. (See **STUDENTS WITH DISABILITIES AND DISCIPLINARY ACTION** above).

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

- you expressed concern in writing to the school that the student needs special education services;
- the student's behavior or performance demonstrates the need for special education services;
- you requested an evaluation of the student; or
- the student's teacher or other certified personnel has expressed concern to the local director of special education about the student's performance.

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

- the school conducted an evaluation, the case conference committee determined the student not to be eligible, and the school provided notice to you that the student was not eligible; or
- the school determined that an evaluation was not necessary and provided the appropriate notice to you that it declined to conduct the evaluation.

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

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

TRANSFER OF RIGHTS TO THE STUDENT AT AGE 18

When a student reaches the age of 18 and if no one has been appointed the student's guardian, all of the special education rights that belonged to the parent transfer to the 18-year-old student. If a guardian has been appointed by the court, the educational rights transfer to the guardian, unless the court order specifies differently.

At the case conference committee meeting before the student turns 17, the school must provide you and the student with written notice that the rights will transfer at age 18. The school must also provide written notice to you and the student at the time the student turns 18. Although you, as the parent, will continue to receive notification of case conference committee meetings, the student makes all of the decisions related to his or her special education services, unless a guardian has been appointed.

COMPLAINTS

You may file a complaint if you believe the school is not complying with the requirements of federal or state special education laws or regulations or when the school is not complying with orders issued by an independent hearing officer or the Board of Special Education Appeals. The Division of Exceptional Learners (Division) will conduct an investigation of the allegations of non-compliance.

1. *Who may file a complaint?*

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

2. *What must be included in the complaint?*

To file a complaint and request an investigation, you need to send a signed, written request with the following information to the Division:

COMPLAINT INVESTIGATION	
<i>What information is needed</i>	<i>Where to send the request</i>
<ul style="list-style-type: none"> ▪ Your name, address, and telephone number; ▪ The child's name; ▪ The name of the school corporation and the school the child attends; ▪ A statement of the violations of federal or state special education laws or regulations that you believe have occurred; and ▪ A description of the facts that support your allegation(s). 	Department of Education Division of Exceptional Learners Room 229, State House Indianapolis, Indiana 46204-2798 Phone: (317) 232-0570 Fax: (317) 232-0589

The complaint must also state that the alleged violation occurred not more than one year prior to the date of the complaint. If you file a complaint and request compensatory services, the violation must have occurred within three years of the date of your complaint. However, a complaint involving a continuing or systemic violation may be filed at any time.

3. *What happens after I file a complaint?*

The Division assigns a complaint investigator who will contact you and the school to obtain information needed to make an independent determination as to whether a violation has occurred. You will have the opportunity to submit additional information to the investigator, either orally or in writing, regarding the complaint issues. The school also has the opportunity to submit information in response to the complaint. The investigator will decide if an on-site investigation is necessary.

The investigator will review all of the relevant information and make an independent determination of whether or not the school has complied with the regulations. A report containing the investigator's findings of fact, conclusions, and the reasons for the decision will be provided to you and the school.

If the investigator concludes that the school has not complied with requirements of the state or federal special education regulations, the report will include corrective action that the school must take to correct the violation. The investigator will monitor the school's compliance with the corrective action, and provide technical assistance activities and negotiations as appropriate. Corrective action may include how to remediate the denial of services, monetary reimbursement, other action appropriate to the needs of your child, and future provision of services for all students with disabilities.

4. How long does the investigation take?

The complaint investigation report, including findings of fact, conclusions, and reasons for the decision, will be mailed to you and the school within 30 calendar days after the complaint was received by the Division. The Division director may allow the investigator additional time to complete the report if there are exceptional circumstances that require additional time. You will be notified in writing if additional time is granted for the complaint investigation report.

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

If you disagree with the complaint investigation report, you may request reconsideration by writing to the Division Director within 15 calendar days of your receipt of the report. Your written request for reconsideration must state the specific portions of the report that you want reconsidered, with specific facts to support your request for a change in the report. The school also has the right to ask for reconsideration, following the same procedure. If you request reconsideration, the response from the Division Director is due within 60 calendar days after the original complaint was received by the Division. However, if additional time was granted for the complaint investigation report, the deadline is also extended by the same number of days. The Division Director will mail the response to the request for reconsideration to you and the school.

Also . . .

- If a complaint contains issues that are also the subject of a due process hearing, the Division will ask the hearing officer to decide if he or she will include those issues as part of the due process hearing, or if the Division should pursue an investigation.
- If the complaint contains issues that are not being addressed through the due process hearing, complaint procedures will be followed.
- If you file a complaint containing an issue that was previously decided through a due process hearing, the Division will inform you that the decision of the hearing officer or the Board of Special Education Appeals is binding.

MEDIATION

Sometimes, you may disagree with the school about your child's special education. Mediation is a process that may help you and the school resolve the disagreement about your child's disability identification or eligibility, evaluation, the level of services or placement, the provision of FAPE, or payment for services that you have obtained.

1. What is mediation?

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

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

2. When is mediation available?

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

3. How do I request mediation?

In order to initiate the process, you and the school must both sign a *Request for Mediation* form that is then sent to Division. A *Request for Mediation* form may be obtained from the school or from the Division. The Division will assign a mediator who will contact both you and the school to schedule a timely meeting in a convenient location.

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

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

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

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

DUE PROCESS HEARINGS, APPEALS, COURT ACTIONS, and ATTORNEY FEES

A due process hearing is a formal proceeding in which evidence is presented to an independent hearing officer to resolve a dispute between you and the school regarding your child's disability identification, evaluation, eligibility, placement, services, or reimbursement of services you have obtained privately.

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

1. How do I request a due process hearing?

To request a due process hearing, you need to send a signed, written request with the identified information to the addresses below:

DUE PROCESS HEARING	
What information is needed	Where to send the request
<ul style="list-style-type: none">▪ Your name, address, and telephone number;▪ Your child's name and address (if different);▪ The name of the school corporation and the school the child attends;▪ A statement of the reason for the hearing request, including a description of the problem and a statement of the facts relating to the problem; and▪ A proposal for resolution of the problem, to the extent known to you.	<p>Indiana Department of Education Division of Exceptional Learners Room 229, State House Indianapolis, IN 46204-2798 Phone: (317) 232-0570 Fax: (317) 232-0589</p> <p>Dr. Suellen K. Reed, Superintendent of Public Instruction Room 229, State House Indianapolis, Indiana 46204-2798 Fax: 317-232-8004</p> <p>Superintendent of the school corporation or public agency that serves your child.</p>

A model form to assist you with your request is available from the Division. **You will not be able to have a due process hearing unless your written request for a hearing contains all of the information listed above.**

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

Once a request for hearing is received, an independent hearing officer is appointed, and he or she is provided with a copy of your hearing request. Otherwise your request remains confidential. The Division will send you and the school a letter notifying you of the hearing officer's appointment. In addition, the school must abide by certain requirements within specific time periods after it receives your request for a due process hearing (see item #3 below for more details). The school must also inform you of the availability of mediation and of any free or low-cost legal and other relevant services in the area.

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

A. Within 10 days of receiving your request for a due process hearing, the school must do two things:

1. Send you written notice regarding the subject matter of your request for a due process hearing including:
 - a. An explanation of why the school proposed or refused to take the action that is the subject of the due process hearing;
 - b. A description of the options the case conference committee considered, and the reasons they were rejected;
 - c. A description of each evaluation procedure, assessment, record, or report the school used as the basis for its decision; and
 - d. A description of the factors the school believes are relevant to its proposal or refusal.

NOTE: The school is not required to send you this written notice after it receives your request for a due process hearing IF the school previously sent you prior written notice on the same matter.

2. Send you a written response that specifically addresses the issues you raise in your request for a due process hearing.

B. If the school believes your letter requesting a due process hearing does not contain all of the required information listed above, it may send a letter to you and the hearing officer indicating that your request does not comply with the requirements. If the school is going to send this letter, it must do so within 15 days of receiving your request for a due process hearing. The hearing officer then has 5 days to determine if your request is sufficient and will immediately inform both you and the school in writing of the decision. If the hearing officer agrees with the school, you must resubmit the request for a due process hearing that meets all of the requirements. If the school does not challenge the contents of your request for a due process hearing, it is considered to meet all of the requirements.

C. Within 15 days of receiving your request for a due process hearing, the school must provide you with the opportunity for a resolution meeting to see if the matter can be resolved. See item #4 for more information on the resolution meeting.

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

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

5. Do I have to attend the resolution session?

You do not have to attend a resolution session if you and the school agree in writing to waive it, or if you both agree to use the mediation process.

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

If you and the school come to an agreement during this meeting, you will both sign a legally binding written agreement that will be enforceable in a court of appropriate jurisdiction. After it is signed, both you and the school have three business days to change your minds, and either of you may void the agreement during that time.

7. *What if we waive the resolution session or if we don't reach agreement?*

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

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

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

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

If you are permitted to make changes or add issues to your request for a hearing, it *may* be treated as the first request for a due process hearing, and all of the timelines and events described in item #3 above could begin again.

9. *When and where will the due process hearing take place?*

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

10. *Who conducts the due process hearing?*

An independent hearing officer conducts the due process hearing. The Division maintains a list of individuals who serve as independent hearing officers, along with a list of each individual's qualifications. Individuals who serve as independent hearing officers cannot be employees of the state Department of Education or the school corporation that is involved in the student's care or education, and they cannot have any professional or personal interest that would conflict with his or her objectivity in conducting the hearing. In addition, the hearing officer must possess knowledge of the federal statute and regulations governing special education services, as well as "legal interpretations" made by federal and state courts; possess the knowledge and ability to conduct hearings in accordance with standard legal practice, be able to render and write decisions in accordance with standard legal practice. An individual who otherwise qualifies to conduct a hearing is not an employee of the school or agency solely because he or she is paid by the school or agency to serve as the independent hearing officer.

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

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

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

You and the school have the right to:

- be accompanied and advised by legal counsel and by individuals with knowledge and training with respect to special education or the problems of students with disabilities;
- present evidence, confront, cross-examine, and compel the attendance of any witnesses;
- prohibit the introduction of any evidence at the hearing that has not been disclosed at least 5 business days prior to the hearing;
- separate the witnesses so that they do not hear other witnesses' testimony; and
- be provided with an interpreter.

As a parent, you also have the right to:

- decide whether your child (who is the subject of the hearing) will attend the hearing;
- have the hearing opened or closed to the public; and
- obtain a written or an electronic (on diskette) verbatim transcript of the proceedings, as well as a written or electronic copy of the independent hearing officer's written decision, including findings of fact, conclusions, and orders without cost to you.

Before the hearing, you are entitled to a copy of your child's educational record, including all tests and reports upon which the school's proposed action is based. In addition, at least 5 business days before the date of the hearing, you and the school must disclose to each other the evaluations each intends to use in the hearing. Specifically, copies of all evaluations and recommendations based on those evaluations must be exchanged by that deadline. If either you or the school fails to make these disclosures on time, the hearing officer may bar the evidence from the hearing. If an evaluation is underway and has not been completed, it is necessary to inform each other and the independent hearing officer.

13. How does the hearing officer make the decision?

The decision of the hearing officer is made on substantive grounds based on a determination whether the school provided your child with a free appropriate public education (FAPE). If your request for a hearing includes or is based on alleged procedural violations, the hearing officer may find that your child did not receive a FAPE only if he or she finds that the procedural violations occurred AND that they: (1) impeded your child's right to a FAPE, (2) significantly impeded your opportunity to participate in the decision making process regarding the provision of FAPE, or (3) deprived your child of educational benefits. As part of his or her decision and order, the hearing officer may order the school to comply with the procedural requirements.

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

The independent hearing officer must conduct the hearing and mail you and the school a written decision within 45 calendar days from either: (1) the date that you and the school agreed in writing to waive the resolution meeting, or (2) the 30th day following the Department of Education's receipt of your request for a hearing if you and the school did not resolve the issues in mediation or a resolution meeting during the 30 day period. However, it may be longer than 45 days if the independent hearing officer grants a request for an extension of time from you or the school. The independent hearing officer's decision is final and the orders must be implemented **UNLESS** you or the school appeal the decision by requesting review by the Board of Special Education Appeals. (See questions 15 and 16 below).

15. Who pays for the due process hearing?

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

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

If you disagree with the independent hearing officer's written decision, you may request a review of the decision by the Board of Special Education Appeals. A request for review must be submitted within 30 calendar days of the date you receive the written decision. Your signed, written request for review should include the following information:

REQUEST FOR REVIEW BY THE BOARD OF SPECIAL EDUCATION APPEALS	
What information is needed	Where to send the request
<ul style="list-style-type: none"> ▪ Your name, address, and telephone number; ▪ The file number assigned to the hearing ▪ A description of the errors you believe the hearing officer made, either in the conduct of the hearing or in the findings of fact, conclusions of law, or orders, including why you believe parts of the written decision are incorrect and the information you have in support of your position. 	<p>Superintendent of Public Instruction Attention: Legal Section Room 229, State House Indianapolis, IN 46204-2798 Phone: (317) 232-6676 Fax: (317) 232-0744</p> <p>Opposing party's (school corporation of public agency) address</p>

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

The Board will review the entire record of the hearing to ensure the procedures of the hearing were consistent with the requirements of special education due process procedures. The Board may ask you and the school to make an oral presentation. The Board may also decide to conduct a hearing to gather additional information. If the Board asks for oral argument or wants to conduct a hearing, it must be at a time and place reasonably convenient to you, your child, and the school. Both you and the school have the same rights as in the due

process hearing. The Board will make an independent decision at the completion of its review. The Board's written decision will contain findings of fact, conclusions of law, and, if necessary, orders. The written decision will be mailed to you and the school. You have the option of receiving the Board's decision in an electronic (on diskette), rather than written format, either of which is free of charge.

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

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

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

The Board's decision is final unless you or the school disagree with the decision and file a civil action in a state or a federal district court. An appeal to court must be filed within 30 calendar days of the date you received the decision of the Board. The records of the administrative proceedings are to be forwarded to the court for review. The court may hear additional evidence upon either party's request, make a decision based on a preponderance of the evidence, and order the relief it determines appropriate. The court's decision may be appealed to a court with appellate jurisdiction. Federal district courts of the United States have jurisdiction of actions brought under the IDEA without regard to the amount in controversy.

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

20. Where is my child placed during a due process hearing, appeal, or court proceeding?

Except when your child has violated a school rule or has done something that could have hurt himself or someone else, during any due process or court proceedings your child stays in the current educational placement, unless you and the school agree to another placement. If the hearing involves an application for initial admission to school, your child, with your consent, must be placed in public school until the proceedings are finished.

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

If an attorney represents you during a due process hearing (including an appeal and subsequent civil action), the court may award you reasonable attorney's fees if you ultimately prevail. You may also be eligible for an award of attorney fees if you are the prevailing party and were substantially justified in rejecting the school's settlement offer. The school may negotiate with you or your attorney regarding the amount of reimbursement and, if necessary, about who prevailed. If agreement is not reached through these negotiations, you may file an action in state or federal court for resolution of the disagreement. However, the school or the Division may seek attorney's fees against your attorney if your attorney requests a hearing or files a subsequent cause of action that is frivolous, unreasonable or without foundation or if your attorney continued to litigate after the litigation was obviously frivolous, unreasonable or without foundation. The school or the Division may also seek attorney's fees from you or your attorney if the hearing request was presented for any improper purpose, such as to harass, to unnecessarily delay, or to needlessly increase cost of litigation.

Mediation is not available to resolve a disagreement on attorney's fees. An action for attorney fees must be filed in a state or federal court within 30 calendar days after a final decision that is not appealed. Any fees awarded must be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under the IDEA and Article 7.

The court may **not** award attorneys' fees for:

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

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

- you or your attorney unreasonably protracted the final resolution of the controversy;
- the fees unreasonably exceed the hourly rate prevailing in the community for similar services by attorneys of comparable skills, reputation, and experience, without a bonus or multiplier used in calculating the fee;
- the time spent and legal services furnished were excessive, considering the nature of the action or proceeding; or
- your attorney or you did not provide the school with appropriate information in the due process hearing request.

The court may not reduce reimbursement for attorney fees if the court finds that the school (or in some cases, the Department of Education) unreasonably protracted the final resolution of the action or proceeding or there was a violation of 20 USC § 1415. The school may use its federal special education funds to pay for the costs of a due process hearing, but it cannot use those funds to pay a parent's attorney's fees **or its attorney fees**.

Expedited due process hearings and appeals

An **expedited** due process hearing means that the due process hearing is conducted and the decision rendered within ten business days from the date the request for a hearing is received by the Department of Education. An expedited due process hearing is only available in three situations:

- when you disagree with the school's determination that the student's behavior is not a manifestation of the student's disability, IEP, or placement;
- when you disagree with the actual placement proposed as the interim alternative educational setting; or
- When the school believes that returning the student to his or her current placement (the placement prior to suspension, expulsion, or placement in an interim alternative educational setting) is substantially likely to result in injury to the student or to others.

A request for an expedited due process hearing is made in the same manner as a request for all other due process hearings. (See question #1 in **DUE PROCESS HEARINGS, APPEALS, COURT ACTIONS, AND ATTORNEY FEES** above). Each of the parties to an expedited due process hearing has the rights afforded to them under the IDEA and 511 IAC Article 7 except that the parties have the right to prohibit the presentation of any evidence at the expedited due process hearing that was not disclosed at least **two** business days before the hearing (compared to five business days in all other due process hearings). The independent hearing officer must meet the same qualifications as for an independent hearing officer in all other due process hearings.

1. *What is different about an expedited due process hearing and appeal?*

- The independent hearing officer must conduct the hearing and mail the decision in the matter to the parties within 10 business days of the date the Department received the request, regardless of whether the request is from you or the school.
- The independent hearing officer may not grant any extensions of time.
- Each party has the right to appeal the independent hearing officer's written decision, and the appeal procedures are the same, **except** the time period in which to appeal the decision is three business days from the date of receiving the independent hearing officer's decision rather than the 30 calendar days in all other due process hearings.
- When a request for review is made, the Board of Special Education Appeals:
 - cannot grant any extensions of time;
 - cannot hear oral argument;
 - may nominate a single member of the Board to review the hearing record and issue a decision without the participation of the other two Board members; and
 - must issue a written decision within 10 business days of the date of the Board's receipt of the request for review.

2. *How does the independent hearing officer review a decision with respect to the manifestation determination?*

The independent hearing officer applies the same standards as the case conference committee in determining whether the information collected and utilized by the case conference committee supports the school's position that the student's behavior resulting in disciplinary action is not a manifestation of his or her disability, IEP, or placement. (See section on **Manifestation Determination** above).

3. *What things must the independent hearing officer consider when he or she makes a decision regarding an interim alternative educational setting?*

- whether the school has demonstrated by substantial evidence that maintaining the student in his or her current placement is substantially likely to result in injury to the student or to others;
- the appropriateness of the student's current placement;
- whether the school has made a reasonable effort to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services; and
- whether the interim alternative educational setting proposed by the school will enable the student to:

- o progress in the general curriculum, although in another setting;
- o receive those services and modifications, including those described in the student's current IEP, that will enable the student to meet the goals set out in that IEP; and
- o include services and modifications to address and prevent the recurrence of the behavior resulting in the recommendation for an interim alternative educational setting.

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

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

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

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

- If the proceeding involves the student's initial admission to school, the student will be placed in school until the proceedings are completed, as long as you consent to such placement.
- If the proceeding involves a disagreement about the student's interim alternative educational setting, the student remains in the interim alternative educational setting chosen by the school for up to 45 calendar days, pending the independent hearing officer's decision, unless you and the school agree on a different placement.

If the independent hearing officer or the Board of Special Education Appeals agrees with you that a change of placement is appropriate, the placement is considered an agreed upon placement between you and the school or the Department.

RESOURCE AGENCIES AND ORGANIZATIONS

If you need help in understanding the *Notice of Procedural Safeguards and Parent Rights in Special Education* or you have any questions about them, you may contact any of the following resource agencies:

- **Indiana Department of Education**
 Division of Exceptional Learners
 Room 229, State House
 Indianapolis, IN 46204
 Telephone: 317-232-0570
 Fax: 317-232-0589
 Toll-free: 1-877-851-4106
- **About Special Kids (ASK) (formerly IPIN)**
 4755 Kingsway Drive, Suite 105A
 Indianapolis, IN 46205
 Telephone: 317-257-8683
 Fax: 317-251-7488
 Toll-free: 1-800-964-4746 (Voice)
 Toll-free: 1-800-831-1131 (TTY)
- **IN*SOURCE (Indiana Resource Center for Families with Special Needs)**
 809 North Michigan
 South Bend, IN 46601-1036
 Telephone: 574-234-7101
 Fax: 574-234-7279
 Toll-free 1-800-332-4433
- **Indiana Protection and Advocacy**
 4701 North Keystone Avenue, Suite 222
 Indianapolis, IN 46205
 Telephone: 317-772-5555
 Fax: 317-722-5564
 Toll-free: 1-800-622-4845 (Voice)
 Toll-free: 1-800-838-1131 (TTY)

ADDITIONAL LOCAL RESOURCES: