

Part 8: PARENT/STUDENT RIGHTS

The full **Notice of Parent Rights** must be given and verbally explained to a student's parent (parent as defined by Article 7) in the native language or other mode of communication used by the parent, when a referral for evaluation is initiated, and at least one time per year after the initial placement. It is also given the first time in a school year when:

- a request for a complaint is filed;**
- a request for a due process hearing is filed;**
- a removal is made that results in a disciplinary change of placement, including removals to interim alternative educational settings for weapons, drugs, and serious bodily injury, and a parent requests a copy of the notice of procedural safeguards.**

ROD appoints a trained educational surrogate parent to represent a student who does not have parents to do so.

Parents have the right to review and obtain copies of any and all of their student's educational records. Schools may charge the cost of paper/ink for copying each page but not for the cost of the employee who completes the copying.

The school must safeguard the confidentiality of all student educational records. Signed parental consent must be obtained on the **Permission to Release Information Form** before any personally identifiable information is disclosed to others except the parent or authorized employee of the school or ROD.

Parents have the right to request changes to the student's educational record and ask for information to be changed. School procedures provide for consideration by administrators. Any written amendments become part of the student's educational record.

Students receiving special education services can be suspended for violations of school rules, standards, or policies for up to ten (10) consecutive days. Students have additional protections and rights related to suspension and expulsion when separation is imposed from school attendance or related service for more than ten (10) cumulative school days per year. **It is required that the parent is provided the *Notice of Parent Rights* on the date the school requests a manifestation determination. If the parent does not come to the school, send the *Notice of Parent Rights* home with the student and maintain documentation of having done so.**

Whenever there is a disagreement between the parents and ROD pertaining to a student's identification, educational evaluation, placement, or the provision of a free appropriate public education, the student remains in their current placement until the issue is formally resolved, unless the student is in an interim alternative educational placement.

Methods of conflict resolution which can be exercised by a parent or ROD include:

- convene a case conference;
- request mediation through the Indiana Department of Education;

request a complaint investigation from the Indiana Department of Education and/or Office of Civil Rights; due process hearing; appeal of due process hearing decision; or civil rights action/civil court.

A copy of Article 7 is available in English and Spanish at <http://www.doe.in.gov/sites/default/files/specialed/art-7-english-august-2014-update.pdf>

Navigating the Course of Article 7, a parent-friendly version of Article 7, is also available at this site.

NOTICE OF PARENT/STUDENT RIGHTS

The parent receives a copy of the *Notice of Parent Rights* at least once per year, and always at the annual review conference. It is the responsibility of the chairperson of the case conference committee to give the *Notice of Parent Rights* in both written and verbal form in the parent's native language or preferred mode of communication.

If you are in doubt regarding whether the *Notice of Parent Rights* must be given, it is advisable to give it in written form with a verbal explanation.

INDEPENDENT EVALUATIONS

If the student's parents disagree with the evaluation or re-evaluation conducted by ROD and feel that outside expertise is required, they may request an independent evaluation. The following procedures are followed:

A parent request for information on **where** an independent evaluation may be obtained must be referred to ROD for response.

If a parent requests an independent evaluation, the principal must contact ROD for assistance.

Parents are entitled to one (1) independent educational evaluation at public expense each time the public agency conducts an educational evaluation with which the parent disagrees.

ROD may initiate a due process hearing to defend its evaluation.

If the final hearing decision determines the ROD evaluation to be appropriate, the parent may still obtain the desired evaluation, but at their own expense. ROD and the school **must** consider the results of the independent evaluation in the case conference and include it in the student's educational records.

Parents may provide ROD and the school with copies of any independent evaluations they have secured at their own expense. ROD **must** consider the results of the independent evaluation in

the case conference and include it in the student's educational record.

If a parent has requested that ROD conduct an educational evaluation of their student, ROD does not comply, and the parent obtains an outside evaluation, ROD may be required to reimburse the parents for the cost of the independent evaluation. The school and ROD cannot ignore parents' request for an independent educational evaluation.

CONFIDENTIALITY

The principal of each school is responsible for insuring the confidentiality of student records and making sure that everyone collecting or using the information receives training or instruction regarding policies and procedures concerning confidentiality of information.

Confidentiality of personally identifiable information must be maintained at collection, storage, disclosure and destruction stages. Consider shredding all papers with personally identifiable information on them when they are no longer needed.

Location of Records

Records for students receiving special education services are as follows:

Special education records contain all IEP's, evaluation and other related information
Location: ROD or school
Access through the director of special education or building principal.

The cumulative folder is maintained at the student's school
Access through the building principal

The intervention team record contains all pre-referral information.
Location: student's school
Access through the building principal

The school maintains speech therapy protocols and reports. Copies are sent to ROD.
Access through speech pathologist or the ROD office.

School staff may not keep separate private records on a student apart from the above records.

Parent Access:

A parent (custodial or noncustodial), may inspect and review any and all student educational records which are collected, maintained or used by ROD. This includes all school building records, special education records, and psychological services records, including test protocols. The only exception to this rule is when ROD has received written notice that a court order has terminated or restricted the parent's access to the records under applicable state law governing matters such as guardianship, separation or divorce. (This right passes to the student and becomes concurrent with the parent's rights when the student reaches age 18, unless he/she has had a guardian appointed by the court.). The right to review and inspect educational records includes the right to an explanation and interpretation of the record by school personnel. The parent has the right to receive a copy of the records for use in a pending due process hearing. The school and ROD must comply with a request to review the student's educational record

without unnecessary delay, before any meeting regarding an IEP or due process hearing, before a resolution session or due process hearing (including an expedited due process hearing), and in no case more than 45 days after the request has been made.

The request to inspect or review the records must be made to the building principal or director of special education in writing. Upon request of the parent, ROD will provide a list of the types and locations of all educational records collected, maintained, or used by the school.

Following a written request to inspect and review records, when the parent cannot come to the building (for example, one parent is stationed overseas), the school provides copies of records. Following a written request, ROD provides a copy of the student's educational record after a parent has filed a request for a due process hearing.

Each copied page is provided at the actual cost of paper, ink, and printing unless the parent/guardian is unable to pay the cost and failure to provide copies at the school's expense would prevent parental access to the school records. There is no charge for searching for or retrieving information.

ROD and the school keep a record of each access to, and disclosure of, personally identifiable information from the educational record of each student. The record of access is kept with the educational record. The access and disclosure record includes:

- The name of the person gaining access to the record or receiving personally identifiable information from the record;

- The date of access or disclosure; and

- The reason the person is gaining access to the record.

When an educational record includes information on more than one student, the parent has the right to inspect and review only the information relating to the parent's child, or to be informed of that specific information.

A current listing of the names and positions of school employees authorized to access a student's educational records is posted clearly. Written and dated parental consent must be obtained on the **Authorization to Release Information** before personally identifiable information is disclosed to anyone other than the parent or authorized employees, or before the information is used for any purpose other than meeting the requirement of federal and state special education regulations.

Written consent from the parent is not required in order for the school to send records upon request to a school in which a student seeks or intends to enroll. If a student receives services from more than one school, written parental consent is not required in order for the schools to share information from the student's records. If a student transfers from one school to another, the school must forward the student's current IEP, psychological evaluation, reviews of data, and any disciplinary records pertaining to a suspension or expulsion.

When a student transfers from one school to another, the file and cumulative folder must be transferred to the new school using established procedures. This includes the most recent IEP, psychological evaluation, and review of data/re-evaluation.

When requesting student records from another school corporation, an **Authorization to Release Information** signed by the parent may be helpful. This form may be obtained by the building principal or special education administrator. The principal or special education office can call to expedite appropriate placement. Immunization records must be secured from the sending school corporation. School personnel may explain that FERPA allows the exchange of records for educational purposes without signed consent.

A record of each access to, and disclosure of, personally identifiable information from a student's educational records is documented and kept in the front of the file, except when access has been by the parents or authorized employees. Parental consent is not required for ROD or the school to comply with a judicial order or subpoena. Parental consent is not required for ROD or the school to transmit records to facilities within the Department of Corrections for educational purposes.

When the school reports a crime committed by a student with a disability, the school must ensure that copies of the education and disciplinary record of the student are transmitted only to the extent permitted by the Family Educational Rights and Privacy Act. The receiving authorities must certify in writing that the records will not be disclosed to any others without prior written consent of the parent or the student of legal age.

Written and dated consent of the parent or student of legal age must be obtained before personally identifiable information is disclosed to anyone other than the parent, student of legal age, or authorized school officials, or before the information is used for any purpose other than those specified in Article 7. The consent must detail the record that may be disclosed, the purpose of the disclosure, and the person or class of persons to whom the record may be disclosed.

If a parent believes that information contained in the student's educational records is inaccurate or misleading or violates the privacy or other rights of the student, the parent may request in writing that the school amend the information. This request is directed to the ROD director of special education for response within ten (10) business days of the date the request was received. If the request is denied, the ROD director of special education or principal will inform the parent of the right to a FERPA (Family Educational Rights and Privacy Act) hearing. The director of special education is responsible for this process. Even if the information in the file is not permitted to be changed or corrected, the parent has the right to place in the student's record a statement regarding the contested information and their disagreement with the information. These statements then must be kept in the educational record and included whenever student information is disclosed by ROD or the school to another party.

ROD maintains a student's record for at least three (3) years after the student exits special education services. The parent is notified when personally identifiable information is no longer needed and that recorded information is then destroyed. A permanent record of the student's name, address, telephone number, grade, attendance record, classes attended, grade level completed, and the year completed may be maintained without time limitation. Administrators and special education teachers are provided information and training annually regarding the student and parent procedural safeguards with respect to the provision of a free appropriate public education and the confidentiality provisions of Article 7 and the Family Educational Rights and Privacy Act, 20 U.S.C. 1232g.

DUE PROCESS

When the parents and school disagree on the evaluation, IEP, placement or some other aspect of the provision of a free appropriate public education, they have a variety of alternatives for arriving at a solution. IDEA and Article 7 outline timelines and options for resolving differences of opinions on student specific issues. **While resolution efforts are undertaken, the student remains in their current placement unless the parent and school agree otherwise.**

Convene a case conference to resolve disagreements. It is preferable to solve disagreements by working in a spirit of cooperation. This may be accomplished via an informal meeting of the parents, teachers and other appropriate personnel or convening a case conference. The parents may wish to meet with the superintendent or the superintendent's designee in an effort to arrive at an acceptable solution to the situation.

Due process hearings involve allegations of a violation of federal or state rules and regulations, that relate to questions of interpretation. A hearing request may also include technical or procedural violations of federal or state rules and regulations. Hearable issues include disagreement between the school and parent regarding identification, evaluation, educational placement, or the provision of a free appropriate public education for a student.

The parents, school, or ROD may request a due process hearing. The ROD Director of Special Education must be contacted immediately for technical assistance whenever potential for a hearing arises. The purpose of a hearing is to present evidence to a trained, impartial hearing officer concerning the kind of educational and related services the parties feel the student should or should not be receiving, and to allow the independent hearing officer to consider the facts, the information presented by both parties and the related laws, rules and regulations. To request a hearing, either party must send to the school superintendent and the Indiana Superintendent of Public Instruction a written request which explains the specific reasons for the request. The hearing process and written decision by the hearing officer must be completed within 45 calendar days after the request unless an extension is requested by either party and is granted by the impartial hearing officer. The school pays the hearing officer's fees and expenses. Each party pays their own attorney's fees, unless the parents ultimately prevail at the administrative or judicial level, in which case the school must pay the parents' attorney's fees.

The hearing officer issues a decision and sends the written decision to the school superintendent. The decision is either:

binding on all parties and must be carried out within 30 calendar days of the date of the written decision; or appealed to a court.

A Resolution Session will convene within fifteen days of the date of the filing of the hearing request to determine whether issues can be resolved locally. If the parent is represented by an attorney, the school will likewise have counsel present at the resolution session.

MEDIATION

Mediation may be requested by either the parent or the school district when differences of opinion regarding eligibility, evaluation, placement or provision of free, appropriate public education for an individual student cannot be resolved through the case conference committee

process or other discussions. Mediation is **voluntary** for both parties, and if they both agree to attempt mediation, a **Request for Mediation** form signed by both parties is sent to the Indiana Division of Individualized Learners. The **Request for Mediation** form can be obtained from the Indiana Department of Education website. A trained mediator is assigned by the Indiana Division of Individualized Learning and mediation is scheduled, usually to occur within ten calendar days. The mediator acts as a neutral facilitator trying to bring the parties to some written agreement. If agreement is reached, it is submitted to the case conference committee for approval. The mediation agreement is not binding and is not a necessary step prior to a hearing. It may, however, occur before or during a request for a due process hearing. The Indiana Division of Individualized Learning incurs all costs involved in mediation.

COMPLAINTS

Any person or organization has the right to file a complaint with the Indiana Department of Education, Division of Individualized Learning if it is believed that federal or state laws that apply to special education have been violated. A "complainable issue" is **an allegation of technical violation of federal or state rules or regulations and involves a question of fact**. Complainable issues include allegations that the IEP is not being implemented, the case conference membership was not adequate, or that the parents were not provided their *Notice of Parent Rights*. The Division of Individualized Learning investigates and issues a written response within 30 calendar days of the date the complaint is received. The complaint orders are binding on the parties.

MONITORING AND ENFORCEMENT

The federal Office of Special Education and Rehabilitation Services (OSERS) monitors Indiana's compliance with IDEA.

The Indiana Department of Education, Division of Individualized Learning monitors local education agencies to assess their compliance with IDEA and Article 7 requirements. Program review involves:

- Offsite and prior to the visitation, a review of the district's written policies and procedures, student records, and collection of data obtained through questionnaires;

- Onsite interviews with school personnel, telephone interviews with parents. A draft report of findings is prepared and an exit interview with school personnel is conducted;

- Follow-up activities, including the formation and approval of necessary corrective action plans, and additional monitoring of the implementation of corrective actions; and

- Review of data regarding compliance, mediation requests, and due process hearings.

PARENT RIGHTS SUMMARY

STUDENTS: Students ages 3 through age 22 if not a graduate, may be eligible.

CHILDFIND: Schools locate, evaluate, and then provide services for eligible students. Teachers, parents, or other concerned parents may refer a student.

EVALUATION:

Evaluation follows a referral and written parent consent for the evaluation. The school conducts the evaluation at no cost to the parent, gathering information about the student's potential for achievement and current school performance. A re-evaluation of the student is conducted every 36 months. A parent who does not agree with the evaluation may obtain an independent evaluation by a qualified person not employed by the school. In some cases the school may reimburse the parent for the cost of an independent evaluation.

CCC: A case conference committee convenes within 50 instructional days of the date the signed consent is received by a licensed school employee. Parents and school personnel attend and the student and other individuals may attend. The committee determines eligibility and needed services. When RTI is implemented the CCC convenes within 20 instructional days of the date of signed consent for evaluation.

LRE: An eligible student receives special education services in the least restrictive environment. To the maximum extent possible, special education students are educated with non-disabled students in the school the student would attend if not disabled.

IEP: The IEP is written by the case conference committee. Parents receive a written case conference report and IEP. A parent or the school may request that a case conference committee convene at any time to discuss the IEP. A teacher of record is appropriately licensed to work with the student and may provide direct or indirect services, monitor the student's progress, communicate with the parent, etc.

RECORDS: School records are confidential. Parents have the right to review a student's records, have copies made, and request amendment. Parents are informed before personally identifiable information is disclosed.

Non-Public School: In the event of disagreement with the public school provision of a free appropriate public education, the parent, to obtain reimbursement, the parents must do one of the following. At the most recent case conference prior to the unilateral placement, inform the conference that they reject the schools plan and intend to make a placement at public expense, or Provide written notice to the school ten days before changing the placement.

DUE PROCESS:

MEDIATION: Parents and school officials make a written request for mediation. There is no cost to the parent. Parents and the school determine the outcome of a mediation. **COMPLAINT:** parents, schools, or other persons make a written request for a complaint investigation to the Indiana Department of Education. (IDOE). There is no cost to the parent. The IDOE investigates and determines whether the school made a procedural violation.

HEARINGS: Parents or schools make a written request for a due process hearing to the Indiana Department of Education. An independent hearing officer is assigned to the case and makes findings. Hearings may be appealed to a court. The parent may be responsible for legal fees in the event they seek or retain counsel or an

advocate.