

# SPECIAL EDUCATION IN NORTH DAKOTA

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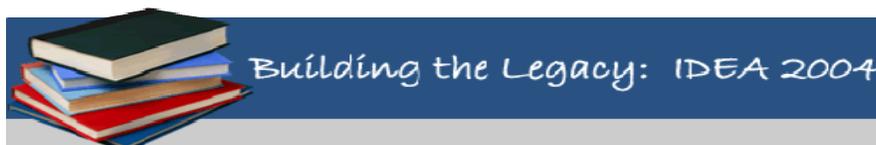
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## *Parent Guide to Special Education*



*Dan Pangbourne/Getty Images*



United States Department of Education, Office of Special Education Programs (OSEP)

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## ***First Contact***

You have recently learned that your child may have a disability. You may be experiencing a variety of feelings ranging from fear and confusion to anger or even relief. Many parents who have been involved in special education with their own children have shared some valuable advice to make this guide helpful to you.

These parents have told us how valuable it was for them, and will be for you, to begin this process with as much information as possible at the point of “first contact.” It is the responsibility of the school to explain and make sure that you fully understand the special education process, including your rights. At any time, feel free to ask questions. Your knowledge and input will benefit your child, and help all of us work together more effectively.

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## ***Introduction***

In the past parents of children with disabilities didn't have many educational options for their children. In fact, many children with disabilities received little or no education. In response to the concerns voiced by parents and many educators, the United States enacted a law designed to ensure that local schools would serve the educational needs of students with disabilities. Public law 108-446 is known as the Individuals with Disabilities Education Improvement Act. This law is known more commonly across the nation as IDEA.

An updating of this law took place in 2004, and the U.S. Department of Education issued final regulations for the IDEA in 2006. The North Dakota Department of Public Instruction Office of Special Education carefully reviewed the reauthorized the IDEA and the final regulations. This *Parent Guide to Special Education* was revised to reflect the changes in our nation's special education law and regulations. It was prepared to help parents have a solid understanding about how the special education process works in the schools of our state. It was also written so that parents can have an additional source of information about their procedural safeguards, sometimes referred to as parent rights.

The primary themes of the reauthorized the IDEA 2004 include: early intervention, access to the general education curriculum, scientifically based instruction, paperwork reduction, school-wide approaches, focus on homeless children, streamlined IEP process, highly qualified staff, over identification and disproportionality, and expanded opportunities for parents and schools to resolve differences.

Importantly, the IDEA 2004 supports parents' participation in their children's education. With a clear understanding of the IDEA and your rights, you will be better prepared to take an active role in your child's education. This role involves close collaboration with your school district as you develop an appropriate educational program for your child.

The ND Department of Public Instruction (NDDPI) has written this guide for parents to answer questions you may have as you begin to take part in the special education process in North Dakota. Your knowledge and understanding will help your child benefit from a cooperative support system that includes a positive partnership between home and school.

This guide has three sections, each with a different purpose:

- Section one describes the “big picture” regarding the entire special education process.
- Section two presents a detailed explanation of your procedural safeguards, more commonly referred to as rights.
- Section three provides a glossary of the many terms unique to special education that you may need to understand. This final section begins on page 20 and will also give you the names of other agencies you can contact for additional information about your role and responsibilities. You may want to contact some of the agencies for suggestions about how to be an effective member of your child’s educational team.

#### **Explanatory Note**

The terms *evaluation* and *assessment* are used interchangeably by the United States Department of Education. However, in North Dakota *assessment* is defined as formal tests, interviews and observations of your child. The term *evaluation* includes assessment procedures used to determine whether your child has a disability and needs special education and related services. The term *evaluation* describes the overall decision-making process in special education. Further information regarding evaluation and assessment is included in the Department of Public Instruction document, *Guidelines: Evaluation Process*.

**If any terms used in this table are unfamiliar to you, refer to the glossary beginning on page 21.**

#### **Intervention process**

For school-age children, follow-up services may be provided through an intervention process. This could be through the Response to Intervention (RTI) or ND Multi-Tier System of Supports (NDMTSS) process or a Building Level Team (BLT) process. The BLT process is a general education activity that is used to provide support to the classroom teacher. A structured problem-solving process is used by educators and parents to develop interventions for a student who is experiencing difficulty in classroom achievement or behavior.

*What happens if my child is not succeeding in school?*

<p><b>STEP IN THE PROCESS</b></p> <p><b>Before A Request for Assistance Is Made</b></p>	<p><b>PARENT ROLE</b></p> <ul style="list-style-type: none"> <li>• Contacts teachers to discuss any concerns</li> <li>• Provides any information that might be helpful</li> <li>• Carries out teacher’s suggestions for helping child at home</li> <li>• Asks for intervention process such as BLT, RTI, or NDMTSS</li> <li>• Actively participates in the intervention process</li> <li>• Makes written request for evaluation of a suspected disability, if needed</li> </ul>	<p><b>SCHOOL DISTRICT ROLE</b></p> <ul style="list-style-type: none"> <li>• Contacts parent for information</li> <li>• Attempts different strategies and documents results</li> <li>• Uses intervention process to generate additional ideas, if needed</li> <li>• Reviews data from the intervention process (BLT, RTI, or NDMTSS)</li> <li>• Implements new interventions and documents results in writing, if needed</li> <li>• Makes a referral for evaluation if the child is suspected of having a disability</li> </ul>
<p><b>Referral</b></p>	<ul style="list-style-type: none"> <li>• Receives copy of procedural safeguards information</li> <li>• Asks questions about procedural safeguards as appropriate</li> <li>• Asks for information about parent support resources, if desired</li> <li>• Gives informed written consent for evaluation</li> </ul>	<ul style="list-style-type: none"> <li>• Contacts parent, explains referral process and provides a copy of <i>Parent Guide to Special Education</i></li> <li>• Explains procedural safeguards to parent and answers questions</li> <li>• Asks parent for consent to evaluate</li> </ul>
<p><b>Evaluation</b></p>	<ul style="list-style-type: none"> <li>• Provides evaluation data and other relevant information about your child</li> <li>• Actively participates in the evaluation planning process</li> <li>• Actively participates in the decision-making process regarding whether child has a disability under IDEA</li> </ul>	<ul style="list-style-type: none"> <li>• Initiates the evaluation planning process with the multidisciplinary team (MDT), including the parent</li> <li>• Conducts and completes the team evaluation within 60 days from the date the parental consent to evaluate is received</li> <li>• Summarizes and interprets evaluation results with parents</li> <li>• Determines with parent whether the child has a disability under IDEA and the educational needs</li> <li>• Informs parents of the right to an independent evaluation if parent disagrees with the district’s evaluation</li> </ul>
<p><b>Before the Individualized Education Program (IEP) Meeting</b></p>	<ul style="list-style-type: none"> <li>• Reviews parent role and responsibilities as a team member</li> <li>• Gathers information from parent resources, if desired</li> <li>• Begins writing questions, suggestions, and concerns to bring to the IEP meeting</li> <li>• Discusses with case manager any requests for team member excusal and decides to either consent to team member excusal with written input (if needed) or asks to reschedule the IEP meeting</li> </ul>	<ul style="list-style-type: none"> <li>• Notifies parent of IEP meeting and who will participate</li> <li>• Determines mutually agreed upon time and place for the meeting</li> <li>• Gathers relevant information to share with team members</li> <li>• Identifies any required team members who will be unable to attend in part or whole and either reschedules the meeting or receives parent’s consent to proceed with the meeting</li> </ul>

<b>STEP IN THE PROCESS</b> <b>During the IEP meeting</b>	<b>PARENT ROLE</b> <ul style="list-style-type: none"> <li>• Shares information about child’s strengths and academic, developmental and functional needs</li> <li>• Participates in development of the IEP</li> <li>• Gives written Consent for Initial Placement in Special Education Services</li> </ul>	<b>SCHOOL DISTRICT ROLE</b> <ul style="list-style-type: none"> <li>• Responds to questions parent may have</li> <li>• If child is eligible and needs special education services, jointly develops IEP which includes:               <ul style="list-style-type: none"> <li>- The child’s strengths and academic, developmental and functional needs</li> <li>- Annual goals and, when appropriate, short term objectives</li> <li>- Appropriate special education and related services</li> </ul> </li> <li>• Asks parent for Consent for Initial Placement in Special Education Services</li> </ul> <p style="text-align: center;"><b>OR</b></p> <ul style="list-style-type: none"> <li>• If the child does not need special education services under IDEA:               <ul style="list-style-type: none"> <li>- Determines appropriate modifications and/or interventions</li> <li>- Considers eligibility for services under Section 504, Title I, or other support services</li> </ul> </li> </ul>
<b>Annual Review</b>	<ul style="list-style-type: none"> <li>• Reviews procedural safeguards information</li> <li>• Reviews child’s academic progress and progress on current IEP goals</li> <li>• Participates in the revision of the IEP</li> </ul>	<ul style="list-style-type: none"> <li>• Provides notice to parent of the IEP annual review</li> <li>• Gathers and reports information on child’s progress</li> <li>• Reviews and revises the IEP</li> </ul>
<b>Reevaluation</b>	<ul style="list-style-type: none"> <li>• Participates in the decision-making process when the team is determining whether additional information is needed to determine if the child continues to be a child with a disability</li> <li>• If the child’s team determines that no additional information is needed, an Integrated Written Assessment Report (IWAR) will be completed to verify agreement that all current and relevant data have been gathered to make disability determination decisions</li> </ul>	<ul style="list-style-type: none"> <li>• Parents and school discuss the advantages and disadvantages of conducting a reevaluation.</li> <li>• The parents and school agree that:               <ol style="list-style-type: none"> <li>1. No reevaluation is necessary.</li> <li>2. A reevaluation is necessary.</li> </ol> </li> <li>• If parents and school agree no evaluation is necessary, it is marked on the Student Profile and the discussion about the advantages and disadvantages is documented. Parents get a copy of the Student Profile.</li> <li>• If the parents and school agree an evaluation is necessary, the team reviews existing data in the Students Profile and determines if additional information is needed or not needed.</li> <li>• If the IEP team determines that no additional information is needed, an Integrated Written Assessment Report (IWAR) is completed to verify agreement that all current and relevant data have been gathered to make disability determination decisions.</li> </ul>

STEP IN THE PROCESS	PARENT ROLE	SCHOOL DISTRICT ROLE
<p><b>Independent Educational Evaluation (IEE)</b></p>	<ul style="list-style-type: none"> <li>• If parent disagrees with the school district’s evaluation, the parent may request an independent educational evaluation (IEE) at public expense</li> <li>• Assists in the identification of the independent evaluator(s)</li> <li>• Obtains IEE (Can request one IEE per evaluation conducted by the school district)</li> </ul>	<p><b>SCHOOL DISTRICT ROLE</b></p> <ul style="list-style-type: none"> <li>• Team decision is documented that no additional information is needed and that the parents were notified of their right to request additional assessments on IWAR</li> <li>• A copy of the IWAR must be given to the parents</li> <li>• If the team determines additional information is needed, an Assessment Plan is created listing the types of assessments that will be given to the student.</li> <li>• Once the evaluation has been completed, an IWAR is completed to verify agreement that all current and relevant data have been gathered to make disability determination decisions</li> <li>• A copy of the IWAR must be given to the parents</li> </ul>

**For information related to children transitioning into educational services at age 3 refer to the NDDPI-Special Education website for Early Childhood Transition Guidelines or call (701) 328-2277.**

## **Answers to Questions You Might Have About the Special Education Process**

### ***What are procedural safeguards?***

Procedural safeguards for children and parents are legal protections to ensure that an individual's rights are not denied.

### ***What is a free appropriate public education?***

Under the law, a free appropriate public education (FAPE) means special education and related services that:

- are provided to children and youth with disabilities at public expense, under public supervision and direction, and without charge to the parents;
- meet the standards of the state education agency, including the requirements of the IDEA;
- include an appropriate preschool, elementary, and secondary school education in North Dakota; and
- are provided according to requirements for the individualized education program.

### ***Who is eligible for services under the IDEA?***

The regulations for the IDEA defines a child with a disability as including a child: (a) who has been evaluated in accordance with IDEA requirements; (b) who has been determined through this evaluation to have one or more of the disabilities included in IDEA; and (c) who, because of a disability, needs special education and related services.

### ***If my child is not eligible for or in need of special education services under IDEA, is other help available from the school?***

If your child is not eligible under the IDEA, but has a disability, your child may be eligible for assistance under Section 504. Section 504 is a civil rights act that protects the rights of people with disabilities. If you have additional questions, contact your local school and ask to speak with the Section 504 Coordinator. Other options at your child's school may include Title I services or other support services. School districts must make their programs and activities accessible as well as usable to all individuals with disabilities.

### ***What are the disability categories as defined in IDEA?***

In IDEA 2004 (Sect. 300.8), children who have one or more of the following disability categories may be eligible for special education services:

**AUTISM** means a developmental disability significantly affecting verbal and non-verbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. The term does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined below.

**DEAF-BLINDNESS** means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.

**DEAFNESS** means a hearing impairment so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.

**EMOTIONAL DISTURBANCE** is a term that means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, that adversely affects a child's educational performance:

- an inability to learn that cannot be explained by intellectual, sensory, or health factors;
- an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- inappropriate types of behavior or feelings under normal circumstances;
- a general pervasive mood of unhappiness or depression; or
- a tendency to develop physical symptoms or fears associated with personal or school problems.

The term includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance.

**HEARING IMPAIRMENT** means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

**INTELLECTUAL DISABILITY** means significantly sub-average general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.

**ORTHOPEDIC IMPAIRMENT** means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).

**OTHER HEALTH IMPAIRMENT** means having limited strength, vitality or alertness including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that

- is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and

- adversely affects a child's educational performance.

**SPECIFIC LEARNING DISABILITY** means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not apply to children who have learning problems that are primarily the result of visual, hearing, or motor disabilities, of intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

**SPEECH OR LANGUAGE IMPAIRMENT** means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

**TRAUMATIC BRAIN INJURY** means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical function; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.

**VISUAL IMPAIRMENT** means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.

**NOTE:** For younger children in North Dakota, the Non-Categorical Delay (NCD) eligibility option may be used for a child who is at least three years of age but less than ten years of age if the child exhibits a developmental profile in which cognitive, fine motor, vision, hearing, communication, preacademic, socialization, or adaptive skill acquisitions are significantly below that of same-age peers, and if the child needs special education and related services, the school district may determine that the child is a student with a disability as a result of a non-categorical delay. This option may be used in situations where the determination of a disability is not clear but delays are well documented.

### ***What is special education?***

Special education is defined as specially designed instruction, at no cost to you, to meet your child's unique needs. Special education can include classroom instruction, home instruction, instruction in hospitals and institutions or other settings. Special education services may be supplemented by related services.

***What are related services?***

Related services are defined as transportation and such developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education. Related services include, but not limited to:

- speech-language pathology and audiology services;
- interpreting services;
- psychological services;
- physical and occupational therapy;
- recreation, including therapeutic recreation;
- early identification and assessment of disabilities in children;
- counseling services, including rehabilitation counseling;
- orientation and mobility services; and
- medical services for diagnostic or evaluation purposes.

The term also includes school health services and school nurse services, social work services in schools, and parent counseling and training.

Related services do not include a medical device that is surgically implanted, including cochlear implants, the optimization of that device's functioning (e.g., mapping), maintenance of that device, or the replacement of that device. External components of a surgically-implanted device should be routinely checked by the school to ensure proper functioning.

***Referral******Who can make a referral?***

The parent of a child or the school district may initiate the initial evaluation procedures. Persons such as employees of the school district or other public agencies may identify children who might need to be referred for an evaluation. However, it is the parent of a child and the public agency that have the responsibility to initiate the evaluation procedures. District policy and procedures must identify the individual(s) who will serve as the school district representative to initiate the evaluation procedures.

After a referral is made and before the evaluation process begins:

- you must be given prior written notice regarding the proposed evaluation; and
- the school district must have your consent in writing before it can evaluate your child.
- If you refuse to give your consent to evaluate, the school district may request mediation and/or a due process hearing.

***Prior Written Notice to Parents***

The district must inform you in writing of important decisions regarding your child's special education, and you must be notified before those decisions are put into place. As an active participant in the decision-making process, you have the right to prior written notice from the school district whenever:

- the school proposes to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child; or

- the school refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of free appropriate public education to your child.

Prior notice must also be provided to a student and the parents at the time the student reaches age of majority. This written notice must be provided at the time the student reaches the age of majority, age 18, which may or may not be at the time of the annual review.

Prior written notice must include:

- a description of the action proposed or refused by the school;
- an explanation of why the school proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the school used as a basis for their decision;
- a statement that the parents of a child with a disability have protection under the procedural safeguards and, how the parents can obtain a copy of them;
- sources for parents to obtain assistance in understanding these provisions;
- a description of other options that the IEP Team considered and the reasons why those options were rejected; and
- a description of other factors relevant to the school's proposal or refusal.

Prior written notice must also include resources you can contact for help in understanding these procedural safeguards, and a description of how you can file a complaint. Prior written notice must be provided in your native language unless doing so is clearly not feasible. If the parents' native language or other mode of communication is not a written language, the school must take steps to ensure:

- that the prior written notice is translated orally (or by other means) to the parent in his or her native language or other mode of communication; and
- that the parent understands the content of the notice.

## **Consent**

### ***What does consent mean?***

Consent means:

- you have been given all the necessary information to make an informed decision about the proposed activity. This information must be given in your native language or other mode of communication, for example, sign language;
- you understand and agree in writing to the proposed activity; and
- you understand that consent is voluntary and may be revoked at any time.

***When must the school district obtain my consent?***

Your school district must have your informed written consent before:

- evaluating your child for the first time;
- reevaluating your child if more information is needed;
- providing any initial special education and related services for the first time;
- excusing a required IEP team member from attending an IEP meeting; or
- inviting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services.

The school does not need to obtain your consent before reviewing existing data as part of an evaluation or reevaluation.

***What if I refuse to give consent for an evaluation for my child?***

If you do not give your consent for evaluation, or if you withdraw your consent for evaluation, the school district may request a due process hearing to obtain permission to evaluate.

***What if I refuse to give consent for initial special education services for my child?***

The school district may not initiate a due process hearing to obtain your consent if you refuse special education services for your child.

***What if I want to revoke consent for special education services for my child?***

Later, if for some reason you no longer want your child to receive the special education and other services, you may revoke or cancel your consent. Once you do this, the school is no longer allowed to give your child the special education services.

**Evaluation*****When does my child need an evaluation?***

If the follow-up services and interventions tried by the parent and school or agency personnel do not assist the student in addressing the difficulty experienced, the process of collecting additional information should be initiated. This is done in a timely manner through a referral for a comprehensive evaluation. The evaluation process is used to determine whether your child has a disability and what are the educational needs of your child. This process is individualized for each child by a multidisciplinary team with you as one of its important members. You may request an evaluation, preferably in writing, with copies to the principal and the school district's director or coordinator of special education.

The initial evaluation and eligibility determination process for your child must:

- be completed within 60 calendar days from the time your consent to evaluate is provided;
- include information about your child's academic, developmental and functional performance;
- be performed by a multidisciplinary team, which includes you;
- be administered in your child's native language or other mode of communication; and
- be unbiased, or given in such a way so as not to discriminate against your child, regardless of his/her cultural background, race or disability.

If your child is already receiving special education services, a reevaluation must be conducted at least every three years to ensure that your child is still eligible to receive special education services and to determine if the services are appropriate.

You still have the right to request an evaluation to determine whether your child continues to be eligible or additional information is needed.

An evaluation is required before your child is dismissed from special education services.

***When my child graduates with a diploma or exceeds the age of eligibility, will he/she be given an evaluation?***

An evaluation is not required before your child graduates with a diploma or before the termination of his/her eligibility for special education services when your child exceeds the age of eligibility. However, before your child's eligibility terminates, the school must provide a summary of your child's academic achievement and functional performance, which must include recommendations on how to assist your child in meeting his or her postsecondary goals. This is referred to as your child's Summary of Performance (SOP).

## ***Independent Educational Evaluation***

***What if I disagree with the school district's evaluation?***

You may obtain an independent educational evaluation if you disagree with the school district's evaluation results.

***What is an independent educational evaluation?***

An independent educational evaluation is conducted by a qualified examiner who is not an employee of the school district responsible for educating your child.

***Under what circumstances can an independent educational evaluation be obtained?***

If you disagree with your school district's evaluation, you have the right to request an independent educational evaluation at public expense. Public expense means that the school district either pays for the full cost of the educational evaluation, or ensures that the evaluation is provided at no cost to you. You are entitled to only one independent educational evaluation at public expense each time the school conducts an evaluation with which you disagree. Whenever an independent educational evaluation is at public expense, the standards under which the evaluation is obtained must meet the same standards used by the school district. This means the qualifications of the examiner and the location of the evaluation must meet the standards of the school. The results of independent educational evaluations must be considered by the school district before taking any action regarding your child.

In addition, an independent educational evaluation may be presented by any party as evidence in a due process hearing complaint. A hearing officer may also request an independent educational evaluation. In this case, the independent educational evaluation must be at public expense. A hearing officer is an impartial person who has been trained to resolve special education conflicts. In our state, hearing officers are employed by the North Dakota Office of Administrative Hearings.

***What if the school district believes its evaluation is valid?***

It is the school district's responsibility to request a due process hearing to show that its evaluation is valid. However, if the final decision is that the district's assessment is appropriate, you still have the right to an independent educational evaluation at your expense.

***Where can I get an independent educational evaluation?***

You may request a list of qualified examiners from your school district. Each school district is required to maintain a list of public and private agencies qualified to conduct independent educational evaluations. However, the location of the evaluation and the qualifications of the examiner must meet the criteria of the school. If you have an independent educational evaluation completed at your expense, the IEP team must consider the outside evaluation, but is not required to give deference to it.

## **Individualized Education Program (IEP)**

### ***What is an individualized education program?***

An individualized education program (IEP) is a written plan for a child with a disability that is developed according to federal and state regulations. This document includes:

- a description of your child’s strengths and academic, developmental and functional needs (present levels of academic achievement and functional performance);
- annual goals and, when appropriate, short-term objectives;
- criteria and evaluation procedures to determine if goals are effective or successful;
- characteristics of services that will be provided;
- statements of specific special education and related services that will be provided, and to what extent your child will participate in general education classes;
- when these services will start, how long the services will last, and the amount of services; and
- transition planning for your child beginning no later than the first IEP to be in effect when your child turns 16 year of age. Transition planning will include the consideration of post secondary goals and the transition services needed to assist your child in achieving those goals.

### ***When should the IEP meeting be scheduled?***

The IEP meeting should be held at a mutually agreed upon time and place. School districts must invite you to attend this meeting, and must document all attempts to contact you. If you choose not to attend, an IEP meeting may be held without you.

### ***Who should attend an IEP meeting?***

The following individuals are required members of the team who attend the IEP meeting as equal, valued members of the decision-making process:

- parents;
- not less than one of your child’s regular education teachers;
- not less than one special education teacher, or where appropriate, not less than one special education provider of the child;
- a representative of the school district who is able to provide or supervise the provision of special education services; and
- an individual who can interpret your child’s evaluation results.

Other participants may include:

- your child, when appropriate, but required at age 16 and older;
- additional individuals at the invitation of you or the school district; and
- transition services personnel, including any representative from agencies who are likely to be responsible for providing or paying for transition services (with your consent or your child’s consent if your child has reached age 18)

For a child transitioning from Part C (IFSP) to Part B (IEP), an invitation to the IEP meeting must, at your request, be sent to the Part C representative. Part C representation will assist in a smooth transition of services.

***Can an IEP team member be excused from attending my child's IEP meeting?***

The IDEA 2004 states that the attendance of specific IEP team members is required unless parents and the local education agency (LEA) agree or consent in writing to the absence of a required team member. The required members of the IEP team that would necessitate excusal if they were unable to attend are:

- General Education Teacher;
- Special Education Teacher;
- LEA Representative; and
- Individual who can interpret the instructional implications of evaluation results.

The IDEA 2004 defines the two situations regarding excusal as the following:

1. The parent and school district may agree in writing to excuse an IEP team member whose area of curriculum or related service *is not* being modified or discussed at the meeting.
2. The parent and the school district may consent in writing to excuse an IEP team member whose area of curriculum or related service *is* being modified or discussed at the meeting, if the member submits input in writing to the IEP team before the meeting.

***What is the responsibility of the IEP team?***

During an IEP meeting, team members typically follow this sequence:

- introduce members;
- review the results of the evaluation, or the current IEP if the meeting is an annual review;
- determine your child's areas of strengths and academic, developmental and functional needs;
- write annual goals and, when appropriate, short-term instructional objectives in the areas of need
- determine how progress will be measured and reported, including when and by whom;
- determine the special education and related services needed to implement each goal and objective; and
- determine where special education services will be provided (least restrictive environment).

Areas that should be discussed during the IEP meeting include, but are not limited to:

- participation in state and district-wide assessments;
- consideration of extended school year services;
- post secondary goals and transition services, beginning no later than age 16, or earlier if appropriate;

- a positive behavior support plan if your child's behavior significantly interferes with his or her opportunity to learn;
- physical education programs that address your child's individual needs;
- language needs if your child has limited English proficiency;
- language and communication needs if your child is deaf or hard of hearing;
- assistive technology devices and services if needed by your child; and
- the need for Braille instruction if your child has a visual impairment.

***Will my child participate with other children in the state or district-wide assessments?***

The IDEA requires that all students participate in state and district-wide assessments. This includes students with disabilities. These assessments measure academic achievement of all students and are one way that schools can verify how well and how much students are learning.

The North Dakota State Assessment (NDSA) includes four options for participation in the state-wide assessment for students with disabilities. These options include: The NDSA as it is administered to students in North Dakota; the NDSA with accommodations (which are both determined by the IEP Team and documented in your student's IEP annually); the ND Alternate Assessment (NDAA); or parental directive to withhold administration of a student assessment. The custodial parent must complete a separate Parental Directive form for each child and individual assessment that applies. The assessment must be clearly identified by name so that the school district has an accurate record of the assessment to which this parental directive applies. This parental directive is valid only until the conclusion of the school year. This parental directive must be retained as part of the student's educational record. The school district is not liable for any consequences incurred by a student as a result of the parental directive. The school district is not required to provide instruction or activities for the student during assessment administration. Your child's IEP must include documentation of all accommodations that your child needs to participate in state or district-wide assessments; which assessment option your child will participate in whether or not there is a Parental Directive form completed.

***How can I prepare for my child's IEP meeting?***

You are a vital member of your child's IEP team and your input is important to the successful development of your child's education program. Steps you can take prior to, during and after an IEP meeting that can significantly improve the outcome of the IEP meeting include the following:

- Collect all educational, medical and other relevant information about your child;
- Review the results of your child's evaluation and/ or speak with individuals who evaluated or have previously worked with your child regarding your child's performance or progress;
- Make a list of goals you have for your child;

- Write down any information about your child that you would like to share with the IEP team. Also, make note of any questions or concerns you may have about your child's education.
- During the meeting, share your thoughts and ideas;
- Ask questions for clarification;
- Stay focused on the needs of your child;
- After the meeting, discuss the IEP with your child and prepare your child for any responsibilities he or she will have.

**(Refer to Appendix A for the *IEP Meeting Checklist*.)**

***How often is my child's IEP reviewed?***

Your child's IEP must be reviewed at least annually. However, it may be reviewed at any time during the school year at your request, or at the school district's request.

***Must the IEP team meet every time there are changes to my child's IEP?***

When changes to your child's IEP are needed after the annual IEP team meeting for the school year has been held, you and the school may agree to forego a meeting to develop a written document to amend or modify your child's current IEP. The IDEA 2004 states that changes to your child's IEP may be made by either: the entire IEP team (which includes you) at an IEP team meeting; or, by amending it without an IEP team meeting when you and the school agree. This allows you and the school to agree not to convene an IEP team meeting to make changes to the child's IEP and to develop a written document to amend or modify your child's current IEP instead. The IDEA 2004 does not place any restrictions on the types of changes that may be made so long as the parent and the public agency agree.

### ***What are extended school year services?***

Some children with disabilities may not receive a free appropriate public education (FAPE) unless they receive needed services during time periods when other children, whether they have a disability or not, normally would not be served. As part of the individualized education program (IEP) process, a multidisciplinary team must determine if a child needs a program of special education and related services extending beyond the normal school year. For such a child, restricting services to a standard number of school days per year does not allow development of an education program that is truly individualized. A child may require extended school year (ESY) services in order to receive FAPE.

Reasons why ESY services may be needed vary from child to child, but the end result is that some children may suffer severe losses of social, behavioral, communication, academic or self-sufficiency skills during interruptions in instruction. This is particularly true during long breaks such as summer vacations. Losses suffered by a child may be so extensive that when school resumes, unreasonable amounts of time are needed to recover (recoup) lost skills. Other children may experience losses because they reach critical learning stages at the end of a school year and need ESY services to avoid irreparable loss of learning opportunity. For some children, skills that support continued placement in the least restrictive environment (LRE) can be maintained only by ESY services.

The determination of whether a child with a disability needs ESY services must be made on an individual basis following the IEP process. The critical question that each IEP team must ask regarding ESY services is whether the learning that occurred during the regular school year will be significantly jeopardized if ESY services are not provided.

The intent of extended school year (ESY) is to prevent regression of previously learned skills that cannot be recouped in a reasonable length of time. An extended school year provides services for your child to maintain his/her IEP goals. It is not intended to introduce new skills; it means specialized instruction that assists in preventing serious regression of previously learned skills. ESY services are not provided for the purpose of helping children with disabilities advance in relation to their peers.

### ***Can the length of my child's school day be adjusted?***

Under certain specific circumstances, an IEP team can agree to shorten or lengthen the school day of a student with a disability where it is required to meet that particular child's unique needs. A school day could also be lengthened to provide support services beyond the regular school day.

## Records

### *Can I see my child's education records?*

Your school district must permit you to inspect and review any education records relating to your child. This includes records regarding identification, evaluation, and educational placement of your child as well as the provision of free appropriate public education. You have the right to see all records that are collected, maintained, or used by the school. The school district must comply with your request without unnecessary delay. If you request your child's records, they must be provided before any IEP meeting or hearing related to your child's identification, evaluation, or educational placement.

### *Who can see my child's education records?*

Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, Family Educational Rights and Privacy Act (FERPA) allows schools to disclose those records, without consent, to the following parties or under the following conditions:

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific State law.

The following people have access to your child's records:

- you, the parents;
- authorized employees of the school district who have a legitimate interest; and
- representatives of any participating agency providing the school program.

The school must keep a record of any other people obtaining access to educational records. This record must include the name of the person, the access date, and the purpose for which the person is authorized to use the records.

### *How do I get my child's records changed?*

If you believe that any information in your child's record is inaccurate, misleading, or violates the privacy or other rights of your child, you may ask the school district to change the information. The school district must make a decision regarding your request within a reasonable amount of time.

If the school district refuses to change the information as you requested, you must be informed of the refusal, and of your right to a hearing, conducted by the school district. The hearing gives you an opportunity to challenge the information in the educational record to ensure that it is not inaccurate, misleading, or in violation of the privacy or other rights of your child.

After the hearing, if the school district agrees with you, it must change the information and let you know in writing. If the school district disagrees with you, you will be able to write a statement about your concerns. This statement will be placed in your child's records, and must be kept by the school district as long as the records are kept. Your statement must be included any time your child's records are shared.

***How long will my child's educational records be kept?***

Each school district determines its own policy regarding how long educational records must be kept before they are destroyed. For more information about how long records are kept in your school, contact your local administrator.

***Are there any costs to review my child's record?***

You may be charged a fee for copies of records as long as the fee does not prevent you from inspecting your child's records. The school district may not charge a fee to search for or retrieve information.

***What if I have concerns?***

Sometimes you might disagree with the special education testing, services or placement for your child. When a problem first arises, act immediately so steps can be taken as soon as possible to support the working relationship among the staff, your child and you. You should first inform those individuals at the local level who are directly involved with your child. If needed, you may discuss your concerns with your building principal, district superintendent or special education director.

There are several dispute resolution options available to you under the Individuals with Disabilities Education Improvement Act of 2004: mediation, complaint investigation and due process hearing and resolution meeting. The NDDPI also offers early conflict resolution options such as IEP facilitation, which are free services conducted by a trained, impartial professional not employed by the school district. For additional information about these dispute resolution options, please refer to **Appendix B** for the document, *Parental Rights for Students Receiving Special Education Services: Notice of Procedural Safeguards*. This document contains information concerning your educational rights under the IDEA 2004.

The dispute resolution options can be viewed on a chart in **Appendix C** titled Quick Guide to Special Education Dispute Resolution Processes for Parents of Children & Youth (Ages 3-21).

You may obtain dispute resolution forms as well as assistance in accessing any of the dispute resolution options, by contacting the NDDPI Office of Special Education at (701) 328-2277.

## ***Glossary and Additional Resources***

### ***Glossary of Terms Special Education Terms/Legal Terms***

**Adaptive Physical Education**--Involves modifications and/or accommodations to the regular physical education class. Supplemental instruction may take place in a separate class based on individual needs of the student. The goal is to allow students with special needs to remain in the regular physical education class.

**Annual Goals**--These describe the educational performance to be achieved by a student within one year.

**Annual Review**--The law requires that students with disabilities have an educational program to be reviewed each year. A review involves an updating of the student's progress and planning his/her educational program.

**Assistive Technology**--Services and equipment that enhance the ability of students to be more efficient and successful through improved access to the general education curriculum. This term does not include a medical device that is surgically implanted or the replacement of that device.

**Audiologist**--A person with an advanced degree who specializes in the evaluation, identification and habilitation or rehabilitation of hearing loss. An audiologist may also fit and provide information about hearing aids and assistive listening devices.

**Behavior Modification**--A technique of changing human behavior, based on a system of positive and negative reinforcement. Emphasis is on observable behaviors and what events precede and follow them.

**Benchmark**--Means a major milestone that will enable parents, students, and educators to monitor progress during the year.

**Building Level Teams (BLT)**-- The BLT process is a general education activity that is used to provide support to the classroom teacher. A structured problem-solving process is used by educators and parents to develop interventions for a student who is experiencing difficulty in classroom achievement or behavior.

**Cerebral Palsy**--A group of conditions caused by brain damage usually occurring before or during birth or during the developmental years. Marked especially by defective muscle control, language, speech, psychological, or learning problems. There are many types of cerebral palsy and it expresses itself differently in each person.

**Confidentiality**--Refers to precautions an individual other than the student's parent must take in not revealing information, without consent, about a specific student, to someone who is not directly involved with that student.

**Consent**--(1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication, (2) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom, and (3) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

**Day**--(1) *Business Day* means Monday through Friday, except for Federal and State holidays (unless holidays are specifically included in the designation of business day). (2) *School Day* means any day, including a partial day, that children are in attendance at school for instructional purposes. The term "school day" has the same meaning for all children in school, including children with and without disabilities. (3) *Calendar Day* means any consecutive days, including holidays and school breaks.

**Down Syndrome**--A condition caused by chromosomal abnormality with a number of physical characteristics and varying degrees of intellectual disability.

**Due Process Hearing**--Formal procedure for reviewing disagreements so as to insure that an individual is given an opportunity to present his/her side of an issue to an independent due process hearing officer.

**Extended School Year** --The purpose of extended school year service is not to learn or to enhance new skills, but to prevent serious regression of previously learned skills on the IEP. Extended school year services are not intended to replace or be synonymous with those services typically referred to as summer school. The IEP is the guiding document for extended school year/day services.

**Free Appropriate Public Education (FAPE)**--Special education and related services are provided at public expense, under public supervision and direction, without charge. The free appropriate public education meets the standards of the state educational agency including preschool, elementary, or secondary school education and is provided in conformity with an individualized education program requirement of IDEA.

**Guardian**--A person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

**Homeless – IDEA follows the meaning given in the McKinney-Vento Act:**

1. Children and youths who are sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason; are living in motels, hotels, trailer parks, or camping grounds due to the lack of alternative adequate accommodations; are living in emergency or transitional shelters; are abandoned in hospitals; or are awaiting foster care placement;
2. Children and youths who have a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings

3. Children and youths who are living in cars, parks, public spaces, abandoned buildings, substandard housing, bus or train stations, or similar settings; and
4. Migratory children who qualify as homeless because the children are living in circumstances described in clauses 1 through 3.

**Individualized Education Program (IEP)**--A written document for a student with disabilities (ages 3-21) that is developed and implemented to meet unique educational needs.

**Individualized Family Services Plan (IFSP)**—A written plan developed for a child with disabilities being served in an infant-toddler program (Part C) for ages birth-3.

**Least Restrictive Environment (LRE)**--A term used to describe procedures to insure that, to the maximum extent appropriate, students with disabilities are educated with students who are not disabled.

**Length of School Day**—The IEP team may dictate a school day that deviates from the normal school day, depending on a student's needs.

**NDMTSS** -- North Dakota's Multi-tiered System of Supports (NDMTSS) is a framework that provides all students with the best opportunity to succeed academically, socially, emotionally and behaviorally in school. It focuses on providing high quality instruction and interventions that address individual student needs, and it includes frequent progress monitoring to inform decisions about changes in instruction or goals. NDMTSS is data-driven, promoting the allocation of resources to improve student learning and support staff in the implementation of effective, evidence-based practices.

**Occupational Therapy**--The use of purposeful activity with individuals who are limited by physical injury or illness, psychosocial dysfunction, developmental or learning disabilities, poverty and cultural differences, or the aging process in order to maximize independence, prevent disability, and maintain health. The therapy encompasses evaluation, treatment, and consultation.

**Orientation and Mobility (O & M) Services**--Means services provided to students who are blind or visually impaired to enable them to attain systematic orientation to and safe movement within their environments.

**Parent**--Means a biological or adoptive parent; a foster parent, unless state law prohibits a foster parent from acting as a parent; a guardian, generally authorized to act as a child's parent, or authorized to make educational decisions for a child (but not the State if the child is a ward of the State); a person acting in the place of a parent (e.g., a grandparent, stepparent, or other relative with whom the child lives, or a person legally responsible for the child's welfare); or, an educational surrogate parent.

**Physical Therapy**--The art and science of a health specialty concerned with the prevention of disability and the physical rehabilitation for congenital or acquired disabilities resulting from, or secondary to, injury or disease. The practice of physical therapy means the practice of the health specialty, and encompasses physical therapy evaluation, treatment planning, instruction, and consultative services.

**Prior Written Notice**--Written notice that must be provided to parents, in their native language, before the school's proposal or refusal to initiate or change the student's identification, evaluation, or educational placement.

**Procedural Safeguards**--Precautions taken to insure that an individual's rights are not denied without due process of law.

**Psychologist**--A person with an advanced degree who specializes in administering and evaluating psychological tests including intelligence, aptitude, and interest tests. A psychologist could also provide counseling and apply principles of human behavior.

**Reevaluations**--Reevaluation required at least every three years for each special education student unless the parent and the school agree otherwise.

**Referral**--Initial step in the special education process; referrals for evaluation can be made by anyone associated with the student.

**Related Services**--Transportation and such developmental, corrective, and other supportive services as are required to assist a student with disabilities to benefit from education, and includes speech-language pathology and audiology, interpreting services, psychological services, physical and occupational therapies, recreation, early identification and assessment for diagnostic or evaluation purposes. Also includes school health services and school nurse services, social work services in schools and parent counseling and training.

**Resource Room**—An area within a school where individual students may spend part of the day for supplemental help with academics.

**Response to Intervention (RTI)**—The practice of providing high-quality instruction and interventions matched to student need, monitoring progress frequently to make decisions about changes in instruction or goals, and applying student response data to important educational decisions.

**Short Term Objective** - Required for students who are participating in the alternate assessment aligned with alternate achievement standards. Short term objectives are measurable, intermediate steps between the student's present levels of educational performance and the student's goals.

**Special Education**--Means specially designed instruction, at no cost to the parent, to meet the unique needs of a student with disabilities.

**Speech-Language Therapy**--The process for remediation of speech and language disorders, such as stuttering, impaired articulation, a language impairment, or a voice impairment, conducted by a qualified speech-language pathologist.

**Summary of Performance**—A document that an IEP team develops before a student exits special education services due to graduation with a regular diploma or due to exceeding the age of eligibility. The document is a summary of the student's academic achievement and functional performance which includes recommendations on how to assist the student in meeting his/her post-secondary goals.

**Supplementary Aids and Services**--Means aids, services, and other supports that are provided in regular education classes or other educational settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate.

**Surrogate Parent**--Person assigned to act in place of parents or guardians when: a student's parents or guardians are not known or are unavailable; a student is a ward of the state; or, a child is considered an unaccompanied homeless youth. This person functions in the same way a parent or guardian would for purposes of making educational decisions in the special education process.

**Ward of the State**--A "ward" is the person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.

**SPECIAL  
EDUCATION  
ABBREVIATIONS**

**ADA**--Americans with Disabilities Act

**ADD/ADHD**--Attention Deficit Disorder, Attention Deficit Hyperactivity Disorder

**APE**--Adaptive Physical Education

**BLT**--Building Level Team

**CEC**--Council for Exceptional Children

**CP**--Cerebral Palsy

**ED**--Emotional Disturbance

**ELL**--English Language Learners

**ESY**--Extended School Year

**FAPE**--Free Appropriate Public Education

**FERPA**--The Family Educational Rights and Privacy Act of 1974

**FIIEP**--Facilitated IEP

**ID** --Intellectual Disability

**IDEA**--Individuals with Disabilities Education Act

**IEP**--Individualized Education Program

**IFSP**--Individualized Family Services Plan

**IQ**--Intelligence Quotient

**IHO**--Impartial Hearing Officer

**LEA**--Local Education Agency

**LRE**--Least Restrictive Environment

**OCR**--Office of Civil Rights

**OHI**--Other Health Impaired

**OI**--Orthopedically Impaired

**OM**--Orientation and Mobility

**OT**--Occupational Therapy or Occupational Therapist

**P&A**--Protection and Advocacy Project

**PE**--Physical Education

**PL**--Public Law

**PT**--Physical Therapist or Physical Therapy

**RS**--Resolution Session

**RTI**--Response to Intervention

**SEA**--State Education Agency

**SLD**--Specific Learning Disability

**SOP**--Summary of Performance

**TBI**--Traumatic Brain Injury

**VI**--Visually Impaired

**VR**--Vocational Rehabilitation

**RESOURCES**

***Office of Special Education***  
 Director of Special Education  
 Department of Public Instruction  
 600 East Blvd. Ave., Dept. 201  
 Bismarck, ND 58505-0440  
 (701) 328-2277

**STATE RESOURCES**

***Section 619 Coordinator***  
 Office of Special Education, Dept. of Public Instruction  
 600 East Blvd. Ave., Dept. 201  
 Bismarck, ND 58505-0440  
 (701) 328-2277

***Children and Family Services***  
 N.D. Foster Care Program  
 N.D. Department of Human Services  
 600 E. Boulevard Ave., Dept. 325  
 Bismarck, N.D. 58505  
 Phone: (701) 328-2316

IDEA Part C Coordinator  
***Developmental Disabilities Division***  
 Department of Human Services  
 1237 West Divide Avenue, Suite 1A  
 Bismarck, ND 58501-1208  
 (701) 328-8930

***Vocational Rehabilitation***  
 Department of Human Services  
 1237 West Divide Avenue, Suite 1B  
 Bismarck, ND 58501-1208  
 (701) 328-8950

***ND Department of Career and Technical Education***  
 600 East Blvd. Ave., 15<sup>th</sup> Floor, Dept. 270  
 Bismarck, ND 58505-0610  
 (701) 328-3180

***Division of Behavioral Health***  
 Department of Human Services  
 1237 West Divide Avenue, Suite 1C  
 Bismarck, ND 58501-1208  
 (701) 328-8940

***Developmental Disabilities Division***  
 1237 West Divide Avenue, Suite 1A  
 Bismarck, ND 58501-1208  
 (701) 328-8930

***ND Developmental Disabilities Council***

Department of Human Services  
1237 West Divide Avenue, Suite 1B  
Bismarck, ND 58501-1208  
(701) 328-8953

***Protection & Advocacy Project***

400 East Broadway, Suite 409  
Bismarck, ND 58501  
(701) 328-2950; (800) 472-2670 (In ND)

***Special Health Services***

Department of Health  
600 East Blvd. Ave., Dept. 301  
Bismarck, ND 58505-0269  
(701) 328-2436; (800) 755-2714 (In ND)

**Additional  
Resources*****ND Head Injury Association of North Dakota***

Open Door Center  
209 2<sup>nd</sup> Street SE  
Valley City, ND 58072  
Phone: (701) 845-1124  
Fax: (701)-845-1175

***North Dakota Partnerships Project***

PO Box 1674  
Bismarck, ND 58502-1674  
(701) 223-5707 (701) 223-5932 (FAX)

***North Dakota Federation of Families for Children's Mental Health***

523 N. 4<sup>th</sup> Street  
Bismarck, ND 58501  
(701) 258-1921 (701) 255-2907 (FAX)

***Family Voices of North Dakota***

P.O. Box 163  
Edgeley, ND 58433  
1-888-522-9654  
701-493-2634  
701-493-2635 Fax

***Pathfinder Parent Center (STATEWIDE SERVICES ON PARENT TRAINING & INFORMATION)***

Renaissance Center # 7  
3<sup>rd</sup> Street Suite 101  
Minot, ND 58701  
(701) 837-7500  
(800) 245-5840 (In ND)  
<http://pathfinder-nd.org>

***The Arc of ND***

2500 DeMers Avenue  
PO Box 12420  
Grand Forks, ND 58208-2420  
(701) 772-6191 (877) 250-2022 (toll free)

## ***Appendices***

**APPENDIX A-IEP Meeting Checklist**

**APPENDIX B -Parental Rights for Public School Students Receiving  
Special Education Services: Notice of Procedural  
Safeguards**

**APPENDIX C-IDEA Dispute Resolution Processes Comparison Chart**

**APPENDIX D -Written Notification of Parental Rights Regarding Use of  
Public Benefits or Insurance**

## **Appendix A**

### IEP Meeting Checklist

## **What to Bring to an IEP Meeting**

- IEP Binder/Folder.
- Notepad/Paper/Pen/Pencil/Highlighter.
- Partner, advocate or a friend to take notes and support you. Let the IEP team know in advance that you are bringing this person.
- Current IEP (ask for a copy).
- Current progress notes.
- Work samples that illustrate progress or concerns.
- Notes about strategies that do or don't seem to be working at home.
- Private evaluation(s) you want to share.
- Evaluation reports for your child's most recent school evaluation(s).
- Prepare notes about what you want to learn/find out at the meeting.
- Prepare notes about what you want your child to learn in school.
- Ask for additional time to consider important decisions if you're uncomfortable making them on the spot at the meeting or want to get additional input.
- Parent-school communication relevant to meeting.
- Look for opportunities to express gratitude to teachers and related staff.
- Saying "I don't know what you mean" is a demonstration of confidence and competence.

## **Appendix B**

### **Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards**

**SPECIAL EDUCATION IN NORTH DAKOTA**  
**North Dakota Department of Public Instruction**  
Kirsten Baesler, State Superintendent  
Office of Special Education  
600 E. Boulevard Ave., Dept. 201  
Bismarck ND 58505-0440

701-328-2277 (voice)  
701-328-4920 (TDD)  
701-328-4149 (Fax)

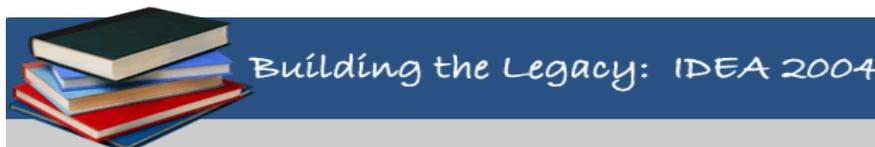


## ***Parental Rights for Public School Students Receiving Special Education Services***

### ***Notice of Procedural Safeguards***



*Dan Pangbourne/Getty Images*



*United States Department of Education, Office of Special Education Programs (OSEP)*

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NORTH DAKOTA DEPARTMENT OF PUBLIC INSTRUCTION

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“Unless otherwise specified, citations to “section” or “sec.” are citations to federal regulations implementing IDEA found in the Code of Federal Regulations at 34 CFR Part 300, which consists of 34 CFR secs. 300.1 through 300.818 and appendices A through E.”

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**Acronyms:**

- NDDPI = North Dakota Department of Public Instruction
- FAPE = Free Appropriate Public Education
- FERPA = Family Educational Rights and Privacy Act
- IDEA = Individuals with Disabilities Education Act
- IEP = Individualized Education Program
- PART B = Section of the Individuals with Disabilities Education Act

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## ***Introduction***

Children with disabilities and their parents are guaranteed certain educational rights, known as procedural safeguards, from ages 3 through 21. This document helps parents or guardians of these children make appropriate educational decisions on their behalf.

The Individuals with Disabilities Education Improvement Act (IDEA 2004) is the federal special education law that requires school districts to provide a free appropriate public education (FAPE) to eligible children with disabilities. This free appropriate public education refers to special education and related services, described in an Individualized Education Program (IEP) and provided to the child in the least restrictive environment.

## ***For More Information***

Whenever you need assistance, your first step is to contact your local school district. Talk to your child's classroom or special education teacher, the school principal, or the special education director for your school district. Other resources are listed at the end of this document.

## ***Notice of Procedural Safeguards***

**This document is your notice of procedural safeguards and must be given to you once a year and also:**

- the first time your child is referred for a special education evaluation;
- the first time a complaint is filed or a due process hearing is requested;
- if the school notifies you that a disciplinary action has or will be taken that would constitute a change in placement;
- whenever you request a copy.

You may also access a current copy of the procedural safeguards on your school district's website, if such a site exists, or from the NDDPI website at: <https://www.nd.gov/dpi/students-parents/SpecialEducation/SpecialEducationStateGuidelines/>

***In Other Words...*** you have certain procedural rights that must be given to you at least once a year and in other specific circumstances within the special education process.

## ***Parent Participation***

Your participation is essential. You will be given opportunities to become actively involved in meetings about identification, evaluation, and the educational placement of your child, as well as other matters related to your child's free and appropriate public education (FAPE). This includes the right to participate in meetings to develop your child's IEP.

***In Other Words...*** To ensure that your child receives a free appropriate public education, you have the right to be fully involved in decisions regarding your child.

## ***Notice of Meeting***

The Notice of Meeting form serves as an invitation to the meeting and is designed to ensure your participation. The Notice of Meeting form must be provided before the IEP meeting is held. This written notice contains the elements such as, purpose, time, location and attendees.

***Prior Written Notice of Special Education Action***

Prior Written Notice of Special Education Action is provided whenever:

- the school proposes to initiate or change the identification, evaluation, or educational placement of your child or the provision of a free appropriate public education to your child; or
- the school refuses to initiate or change the identification, evaluation, or educational placement of your child or the provision of free appropriate public education to your child.

The district must inform you in writing of important decisions regarding your child's special education, and you must be notified before those decisions are put into place.

Prior Written Notice of Special Education Action must include:

- a description of the action proposed or refused by the school;
- an explanation of why the school proposes or refuses to take the action;
- a description of each evaluation procedure, assessment, record, or report the school used as a basis for their decision;
- a statement that the parents of a child with a disability have protection under the procedural safeguards and, how the parents can obtain a copy of them;
- sources for parents to obtain assistance in understanding these provisions;
- a description of other options that the IEP Team considered and the reasons why those options were rejected; and
- a description of other factors relevant to the school's proposal or refusal.

Prior written notice of special education action must also include resources you can contact for help in understanding these procedural safeguards and a description of how you can file a complaint.

Prior written notice of special education action must be provided in your native language unless doing so is clearly not feasible.

If you revoke consent for special education services, the school must discontinue the provision of special education and related services and send you a prior written notice of special education action.

You may also receive a prior written notice of special education action by email upon your request.

***In Other Words...*** The school will notify you by letter, or email if requested, if it proposes or refuses to initiate or change your child's services. The notice must be simple and easy to understand, and information about upcoming meetings must be sent to you sufficiently in advance to allow you to attend.

***Parental Consent***

Consent means that you have been fully informed, in your native language, of all information relevant to the activity for which your written permission is sought. Consent is voluntary and may be revoked at any time. The school district must obtain your consent:

- before conducting an initial evaluation of your child and the initial provision of special education or related services to your child;
- before conducting a reevaluation of your child, unless the district has taken reasonable steps to get your consent and you have failed to respond. In that case, the reevaluation may occur without your consent;

- before disclosing personally identifiable information about you or sharing data with anyone other than officials of participating agencies collecting or using the information under the IDEA;
- before accessing your private insurance to pay for services to ensure FAPE;
- before a required IEP team member may be excused from an IEP team meeting;
- before inviting to the IEP meeting a representative of any participating agency that is likely to be responsible for providing or paying for secondary transition services.

**EXCEPTIONS:**

Your consent is not required before your school district may:

1. Review existing data as part of your child's evaluation or a reevaluation; or
2. Give your child a test or other evaluation that is given to all children unless, before that test or evaluation, consent is required from all parents of all children.

Consent need not be obtained to reevaluate a child with a disability if the school can demonstrate that it made reasonable efforts to obtain parental consent and the parent failed to respond.

**Consent Refusal**

You may refuse consent for an evaluation, a reevaluation, or the initial placement of your child in special education. If the school district believes it is necessary to evaluate your child, it may pursue dispute resolution options, including a due process hearing. The school may not pursue a due process hearing to place your child in special education services if you have refused a special education placement. You and the school district may agree to try mediation to resolve your disagreements. For more information on mediation, see page 11.

If you fail to respond to a request for, or refuse to consent to, the initial provision of special education and related services, the school district may not use dispute resolution procedures (including mediation) in order to obtain agreement or a ruling that the services may be provided to your child. Should you fail to respond or refuse your consent for the initial provision of services, the school will not be required to provide FAPE and is not obligated to convene an IEP meeting or develop an IEP for your student.

**Revocation of Consent**

If, at any time after the initial provision of special education and related services, you decide to revoke consent for special education and related services, you must do so in writing. Once you revoke consent, the school district may not continue to provide special education and related services to your child and it may not use dispute resolution procedures (including mediation) in order to obtain agreement or a ruling that the services may be provided to your child. In this case, the school will not be required to provide FAPE and is not obligated to convene an IEP meeting or develop an IEP for your student. The school is not required to amend your student's education records to remove any references to your child's receipt of special education and related services because of the revocation of consent.

<p><b><i>In Other Words...</i></b> Your written consent is required in specific instances that occur within the special education process. You may revoke your consent for services at any time.</p>
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## ***Confidentiality of Information***

### **Definitions**

*Destruction* means physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.

*Education records* means the type of records covered under the definition of “education records” in the regulations implementing the Family Educational Rights and Privacy Act of 1974. The term “**education records**” is **defined** as those **records** that are: (1) directly related to a student; and (2) maintained by an **educational** agency or institution, or by a party acting for the agency or institution.

*Participating agency* means any school district, agency or institution that collects, maintains, or uses personally identifiable information, or from which information is obtained, under Part B of the IDEA.

*Personally identifiable* means information that has your child's name, your name as the parent, or the name of another family member; your child's address; a personal identifier, such as your child's social security number or student number; or a list of personal characteristics or other information that would make it possible to identify your child with reasonable certainty.

### **Access Rights**

The Family Educational Rights and Privacy Act (FERPA) and the IDEA 2004 ensure that you have access to your child's educational records. You have the right to inspect and review all of your child's education records:

- before any meeting about your child's IEP;
- before any due process hearing related to your child; and
- within 45 calendar days of your request.

If any record includes information on more than one child, the parents of those children have the right to inspect and review only the information relating to their child or to be informed of that specific information.

At your request, each participating agency must provide you with a list of the types and locations of educational records collected, maintained, or used by the school.

The school (or other participating agency) may charge you a fee for copies of records that are made for you if the fee does not effectively prevent you from exercising your right to inspect and review those records. The school (or other participating agency) may not charge a fee to search for or to retrieve education records.

### **Record of Access**

The school (or other participating agency) must keep a record of anyone obtaining access to education records collected, maintained, or used (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

**Amendment of Records at Parent Request**

If you believe that information in the education records regarding your child collected, maintained, or used under Part B of the IDEA 2004 is inaccurate, misleading, or violates the privacy or other rights of your child, you may request the school (or other participating agency) that maintains the information to change the information.

The school (or other participating agency) must decide whether to change the information in accordance with your request within a reasonable period of time of receipt of your request.

If the school (or other participating agency) refuses to change the information in accordance with your request, the school must inform you of the refusal and advise you of the right to a hearing for this purpose.

**Hearing Procedures**

A hearing to challenge information in education records must be conducted according to the procedures for such hearings under the Family Educational Rights and Privacy Act (FERPA).

If, as a result of the hearing, the school (or other participating agency) decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, it must change the information accordingly and inform you in writing.

If, as a result of the hearing, the school (or other participating agency) decides that the information is *not* inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child, it must inform you of your right to place in the records a statement regarding the reasons you disagree with the decision of the participating agency.

This explanation is placed in the records of your child and must:

1. Be maintained by the school (or other participating agency) as part of the records of your child as long as the record or contested portion is maintained; and
2. If the school (or other participating agency) discloses the records of your child or the challenged portion to any party, the explanation must also be disclosed to that party.

**Consent for Disclosure of Personally Identifiable Information**

Except under the circumstances specified below, your consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of Part B of the IDEA 2004.

- Your consent, or consent of your child if he or she has reached the age of majority (age 18), must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.
- If your child is in, or is going to go to, a private school that is not located in the same school district you reside in, your consent must be obtained before any personally identifiable information about your child is released between officials in the school district where the private school is located and officials in the school district where you reside.

**Safeguards**

Your child's school (or other participating agency) must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

You must be informed when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to your child. The information must be destroyed at your request. However, a permanent record of your child's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and the year completed may be maintained without time limitation.

***In Other Words...*** You have the right to see or request copies of your child's school records. Your school district has a more detailed written policy about school records, and any parent can request to see this policy. If you disagree with items in your child's records, you can ask that they be changed or removed. If the school decides to refuse to amend the information, the school must inform you of this refusal and advise you of your right to a hearing. There are certain instances when your consent will be required to release personally identifiable information and you must be informed when this information is no longer needed to provide educational services to your child.

### ***Evaluation Procedures***

A full, individual, appropriate evaluation of your child must be completed before any special education services begin or before your child is dismissed from services, with the exception of graduation with a regular diploma or your child exceeds the age of eligibility. You must be included in the team that conducts the evaluation. You may request an evaluation, preferably in writing, with copies to the principal and the school district's director or coordinator of special education.

Initial evaluation must occur within 60 calendar days from the time the school receives your consent, unless your child transfers to a new school district or you fail to bring your child to the evaluation.

Your child must be reevaluated at least once every three years unless you and the school agree that a reevaluation is unnecessary. A reevaluation may not occur more than once per year, unless you and the school agree otherwise. The team may decide no additional data are needed to determine whether your child continues to be eligible for special education. If so, the school district must notify you of that decision and the corresponding reasons. You still have the right to request an evaluation to determine whether your child continues to be eligible.

Your child does not need to be reevaluated if eligibility is being ended due to graduation with a regular diploma or your child exceeds the age of eligibility. If services are ended for one of these reasons, the school must provide your child with a summary of performance along with recommendations of how to assist your child in meeting his or her goals after high school.

An independent educational evaluation is an evaluation by a qualified examiner who is not an employee of the school district responsible for educating your child. You may ask for an independent educational evaluation at school district expense if you disagree with an evaluation completed by the school district. You are entitled to only one independent educational evaluation at public expense each time you disagree with a specific evaluation or reevaluation that is conducted or obtained by the school district.

If the school district does not agree with you that an independent evaluation is necessary, it may either initiate a due process hearing to show that its evaluation was sufficient or pay for the independent evaluation. The school district will not have to pay for an independent evaluation if the hearing is concluded in the district's favor. You may still get an independent educational evaluation at your own expense.

School districts must maintain a list of public and private agencies that meet the district's criteria to conduct independent educational evaluations. The district's criteria will indicate acceptable qualifications of an examiner and location. This list is available to you, and you can request it from your school district's special education director.

The results of independent educational evaluations must be considered by the school district before taking further action regarding your child. These evaluations may be considered evidence in a due process hearing. A hearing officer may also require an independent educational evaluation of your child at school district expense during due process hearing procedures.

***In Other Words...*** You are a part of the team that evaluates your child. At least every three years, this team must consider whether any additional evaluation is needed. If you disagree with the school's evaluation of your child, you may request one independent evaluation at the school district's expense.

### ***Least Restrictive Environment***

Every effort must be made to provide the necessary supports that will allow your child to be educated in your neighborhood school. Access to the general education curriculum must be given to your child. As much as possible, your child must be educated with children who do not have disabilities.

***In Other Words...*** The least restrictive environment is the setting where your child can receive an appropriate education as close as possible to your home and with children who do not have disabilities.

### ***Surrogate Parents***

When a parent or guardian of a child is unknown or unavailable, or if the child is a ward of the state, the school district must assign an individual to act as this child's surrogate parent. For a child who is a ward of the state, the school or a judge may appoint a surrogate parent to oversee the child's case. The surrogate has all the procedural rights of a parent and is responsible for representing the child's interests in all matters related to the provision of free appropriate public education.

In the case of an unaccompanied homeless youth, the school will appoint a surrogate.

Each school must make reasonable efforts to ensure the assignment of a surrogate not more than 30 days after the school determines the child needs a surrogate.

***In Other Words...*** Sometimes a parent or guardian of a child is unknown or unavailable. When that happens, in order to represent the child at school meetings, a surrogate parent is appointed by the school. In the case of a child who is a ward of the state, a surrogate parent is appointed by the school or a judge.

### ***Transfer of parental rights at age 18 (age of majority)***

Prior to your child's 18<sup>th</sup> birthday, the school must notify you and your child in writing that all rights accorded to parents under the IDEA 2004 will transfer to your child, unless your child is determined not to be competent under state law.

### ***If You Have Concerns***

The IDEA 2004 recognizes that parents and schools occasionally disagree and provides several options to help solve these disagreements.

If you have concerns about your child's special education services, first talk to your child's general or special education teacher, the building principal, superintendent, or the district's special education director. When a problem first arises, act immediately so steps can be taken as soon as possible to support the working relationship among the staff, your child and you.

If your concerns are not resolved, you may want to consider a request for an IEP facilitation, mediation, or a complaint investigation by contacting the North Dakota Department of Public Instruction (NDDPI) Office of Special Education and/or request a due process hearing.

### **Facilitated Individualized Education Program**

If you have concerns and they are directly related to decisions made relative to your child's IEP, you may request the assistance of an external neutral facilitator. The primary purpose of the facilitator is to assist the team in the development of an appropriate IEP and to maintain the focus of the meeting on the specific needs of your child. The facilitated IEP is offered at no cost to you or the school district. You may obtain a *Request for a Facilitated IEP* form by calling (701) 328-2277, or from the NDDPI website at <https://www.nd.gov/dpi/uploads/documents/284/sfn58305.pdf>

### **Mediation**

You may ask the school district to participate in mediation at any time. Mediation is voluntary and confidential, and both parents and school staff must agree to proceed before a mediator is appointed. Mediators, who are not employees of the school district, are trained in strategies to help people reach agreement over difficult issues. If agreement is reached, the parties sign a legally-binding written agreement. The NDDPI pays for costs related to special education mediation. You may obtain a *Request for Mediation* form by calling (701) 328-2277 or from the NDDPI website at <https://www.nd.gov/dpi/uploads/documents/1529/SFN58601.pdf>

### **Complaint Investigation**

Under the IDEA 2004, any individual or organization may file a written state complaint alleging a violation of any Part B requirement by a school district, the state education agency, or any other public agency. If you believe a school district has violated any part under the IDEA 2004, you may file a written complaint with the NDDPI. You may submit your concerns in a letter or complete the *Request for a Complaint Investigation* form, which you may obtain through the Special Education Office by calling (701) 328-2277 or from the NDDPI website at <https://www.nd.gov/dpi/uploads/documents/286/SFN58618.pdf>

The incident related to the complaint must have occurred within one year from the date that the complaint is filed.

A complaint must include: a statement that the school has violated Part B of the IDEA; the facts on which the statement is based; your signature and contact information; the name and address of your child; the name of the school your child is attending; or, in the case of a homeless child, available contact information for the child and the name of the school the child is attending; a description of the nature of the problem of your child, including facts relating to the problem; and a proposed resolution of the problem. Your complaint should be sent to:

Director of Special Education  
ND Department of Public Instruction  
600 East Boulevard Avenue, Dept 201  
Bismarck ND 58505-0440

A copy of your complaint must be forwarded to the school involved in your complaint *at the same time your complaint is submitted to the NDDPI*. The school is given the opportunity to draft a formal response to the allegations and propose a resolution to the issues.

If your complaint does meet the requirements, it will be investigated and a decision given to you within 60 calendar days from the date your complaint is received by both the school and the NDDPI. This timeline may be extended under certain circumstances.

***In Other Words...*** Sometimes you might disagree with the special education testing, services or placement for your child. Try to resolve your disagreements by requesting IEP facilitation or mediation, which are free services conducted by a trained, impartial professional not employed by the school district. However, at any time you may file a written formal complaint and/or request a due process hearing. To receive information regarding any dispute resolution option available to you, call the NDDPI at (701) 328-2277 or from the NDDPI website at: <https://www.nd.gov/dpi/students-parents/SpecialEducation/SpecialEducationDisputeResolution/>

### ***Due Process Hearing***

A due process hearing is a formal legal proceeding that can be requested by parents or by the school district. The request must be made within two years from the date the alleged action occurred. Exceptions to this timeline are if the school misled or withheld information from the parent.

The school district may request a hearing:

- if you refuse consent for an initial evaluation;
- if the school believes that maintaining the current placement is substantially likely to result in injury to your child or to other children; or
- to demonstrate that the district has conducted an appropriate evaluation and/or offered a free appropriate public education (FAPE).

If you disagree with the identification, evaluation, educational placement or other aspects relating to your child's FAPE, you can request a due process hearing by contacting the Director of Special Education at the NDDPI. You may file a complaint through a letter, request that the NDDPI send you the *Due Process Complaint Notice* form or from the NDDPI website at <https://www.nd.gov/dpi/uploads/documents/275/SFN9461.pdf>

Your hearing request must include:

- your child's name and address and the name of the school that your child is attending; or, in the case of a homeless child, available contact information for the child and the name of the school the child is attending; and
- a description of the problem, including specific facts about the problem; and any suggestions you have for resolving the problem.

If the school has not already sent you a prior written notice of special education action regarding the subject matter contained in your complaint, the school must, within 10 days, send you a response that includes:

- an explanation of why the school proposed or refused to take action on the issues raised in your due process hearing request;
- a description of other options the IEP team considered and the reasons why those options were rejected;
- a description of each evaluation procedure, assessment, record, or report the school used as the basis for their decision; and
- a description of other factors relevant to the school's proposed or refused action.

If the school requests a due process hearing from the NDDPI and you receive a copy of the due process complaint notice, you (or your legal counsel) would also be required to send the school a response that addresses the issues raised in the due process complaint within 10 calendar days of receiving the complaint notice.

You and the school have certain rights under due process hearings, including:

- the right to bring an attorney who can give you advice, except that ND state law does not authorize non-attorneys to represent parties at a due process hearing;
- the right to bring one or more individuals who have knowledge or training about children with disabilities;
- the right to present evidence and confront, cross-examine, and require relevant witnesses to be present;
- the right to a written, or, at your option, an electronic verbatim record of the hearing; and,
- the right to written, or, at your option, electronic findings of fact and decisions.

An impartial hearing officer will issue a decision not later than 45 calendar days after the expiration of the 30 calendar day period for resolution meetings or, not later than 45 calendar days after the expiration of an adjusted time period as determined by the hearing officer.

### ***Resolution Session***

The school district will convene a meeting with the parents and relevant members of the IEP team within 15 days of when the school district receives the parent's due process complaint to discuss the facts on which your complaint is based. "Relevant members" of the IEP team means those individuals who have specific knowledge of the issues contained in your complaint. The purpose of this meeting is to allow you the opportunity to discuss with the school the issues outlined in your complaint and to provide the school an opportunity to resolve those issues. The school district has 30 days from the time the complaint is filed to resolve the complaint to the satisfaction of the parents, after which a due process hearing can occur.

The NDDPI will provide you and the school a neutral facilitator who will facilitate the resolution meeting to assist you and the school in reaching an agreement. If an agreement is reached, you and the school will sign a legally binding agreement and the due process hearing will not be initiated. If you and the school do not reach an agreement, the due process hearing and associated timelines will be initiated. The written agreement is enforceable in court.

The due process hearing may occur if the school has not resolved the issues within 30 days from the date your due process complaint was received, except where the parties have jointly agreed to waive the resolution process or to use mediation.

The school must document reasonable efforts to meet with you in a resolution meeting. If you do not participate in the resolution meeting, the school may request that the hearing officer dismiss your due process complaint request at the conclusion of the 30 day period.

If the school fails to hold the resolution meeting within 15 days of receiving your due process complaint or fails to participate in the resolution meeting, you may seek the intervention of the hearing officer to begin the due process hearing timeline.

### ***Disclosure of Evidence Before Hearing***

At least five business days before a hearing, school districts and parents must disclose to each other all evaluations of the student completed by that date as well as recommendations based on those evaluations that they intend to use at the hearing.

A hearing officer may bar any party that fails to comply with this rule from introducing the undisclosed evaluations or recommendations at the hearing without the consent of the other party.

### ***Civil Action***

A decision made in a due process hearing (including a hearing relating to disciplinary procedures) is final, except that any party involved in the hearing (you or the school district) may appeal the finding and decision by bringing a civil action. If you disagree with the decision, you may bring a civil action within 90 days from the date of the hearing officer's decision.

### ***Attorneys' Fees***

Reasonable attorneys' fees may be awarded to:

- a parent of a child with a disability;
- the school district against the attorney of a parent who:
  - files a complaint or subsequent cause of action that is frivolous, unreasonable, or without foundation; or
  - who continues to litigate after the litigation clearly became frivolous, unreasonable or without foundation; or
- the school district against the attorney of a parent or against a parent if the parent's request for a due process hearing or subsequent cause of action was presented for any improper purpose such as to harass, to cause unnecessary delay or to needlessly increase the cost of litigation.

Attorneys' fees may not be awarded for resolution meetings. Attorneys' fees may not be awarded relating to any meeting of the IEP team, unless the meeting is convened as a result of an administrative proceeding or judicial action.

### ***Child's Placement During Proceedings***

During the due process hearing, your child will remain in the current educational placement. The "stay put" rule applies unless:

- you and the school district agree to another placement;
- your complaint involves an application for initial admission to public school, then your child, with your consent, must be placed in the public school until the completion of all proceedings;

- your complaint involves a request for initial services under the IDEA Part B, whereby your child is transitioning from the IDEA Part C (for children Birth-3) to Part B (children ages 3-21) and is no longer eligible for Part C services. The school is then not required to provide the Part C services that your child had been receiving. However, if your child is found eligible for special education and related services under Part B, then the school must provide those services that are not in the dispute; or,
- the hearing officer determines that a change of placement is appropriate, then that change must be treated as an agreement between the state and the parents regarding your child's placement during proceedings.

A *Due Process Complaint Notice* form is available from the NDDPI Office of Special Education by calling (701) 328-2277.

***In Other Words...*** If you cannot resolve a conflict with your school district, you have the right to a due process hearing conducted by an impartial person. You will be informed of specific timelines and requirements that are associated with a due process hearing.

### ***Disciplinary Action***

Depending on the nature of your child's behavior, you have the right to be a part of team decisions about disciplinary action.

### **Short Term Removals**

For the purposes of removal of your child from your child's current educational placement, a change of placement occurs if:

1. The removal is for more than 10 consecutive school days; or
2. Your child has been subjected to a series of removals that constitute a pattern:
  - a. because the series of removals total more than 10 school days in a school year;
  - b. because your child's behavior is substantially similar to behavior in previous incidents that resulted in the series of removals; and
  - c. because of additional factors such as the length of each removal, the total amount of time your child has been removed and the proximity of the removals to one another.

The school determines on a case-by-case basis whether a pattern of removals constitutes a change of placement and this determination is subject to review through due process and judicial proceedings. Additional removals for separate incidents of misconduct are permitted as long as those removals do not constitute a change of placement.

### **Longer Removals**

Longer removals include expulsion and suspensions that would constitute a change in placement. If a longer removal is being considered, the district must have a manifestation determination meeting, with you and other qualified personnel included in that meeting. This meeting must be held within 10 school days of any decision to change the placement of a child.

For disciplinary changes in placement: if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities.

After the manifestation determination meeting, the school district must provide services that will enable your child to continue to participate in the general education curriculum. Services may occur in another setting to support your child's progress in meeting the goals set out in your child's IEP.

### **Protections for Children Not Yet Eligible for Special Education and Related Services**

If your child has not been determined to be eligible for special education and related services, but has engaged in behavior that violated a code of student conduct, your child is entitled to the procedural safeguards afforded under the IDEA 2004 *if the school had knowledge that your child was a child with a disability before the behavior that precipitated the disciplinary action occurred*. A school is considered to have knowledge that a child is a child with a disability if:

- You expressed concern in writing to supervisory or administrative personnel of the school, or a teacher of your child, that your child is in need of special education and related services;
- You requested an evaluation of your child; or
- The teacher of your child or other school personnel expressed specific concerns directly to the director of special education of the agency or to other supervisory personnel of the school about a pattern of behavior demonstrated by your child.

### ***Manifestation Determination Meeting***

You will be invited to participate as a member of the team, which will determine whether the misconduct has a direct and substantial relationship to your child's disability. The team reviews all relevant information including:

- test results and any independent educational evaluations;
- information provided by the parents;
- observations of the child; and
- your child's IEP and placement.

After the review of information, the team then determines if:

- the conduct in question was caused by or had a direct and substantial relationship to your child's disability; or
- the conduct in question was the direct result of the school's failure to implement the IEP.

### **If the team concludes that the misconduct was neither a manifestation of your child's disability nor a result of the school's failure to implement the IEP:**

- the school district may take disciplinary action in the same manner as it would for children without disabilities;
- the school district must continue to provide educational services in another setting, to enable your child to continue to participate in the general education curriculum and progress toward meeting your child's IEP goals; and
- the school district, as appropriate, must conduct a functional behavioral assessment (FBA) and provide behavioral intervention services and modifications that are designed to address the behavior so that it does not reoccur.

### **If the team concludes that the misconduct was a manifestation of your child's disability or a result of the school's failure to implement the IEP, the school must:**

- conduct a functional behavioral assessment (FBA), unless the school had already conducted an FBA before the behavior occurred, and implement a behavior intervention plan; *or*

- review the behavior intervention plan, if a behavior intervention plan already has been developed, and modify it as necessary to address the behavior; *and*
- return your child to the placement from which your child was removed, unless you and the school agree to a change of placement as part of the modification of the behavior intervention plan, or your child's misbehavior was related to drugs, weapons or serious bodily injury.

### ***Drugs, Weapons, and Serious Bodily Injury***

School personnel may remove your child to an interim alternative educational setting for not more than 45 school days if:

- your child carries a weapon to school or to a school function;
- your child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; or
- your child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function.

### ***Referral to Law Enforcement /Transmission of Records***

A school may report a crime committed by any child with a disability to appropriate authorities. In doing so, the school must ensure that copies of the special education and disciplinary records of your child are transmitted for consideration by appropriate authorities to whom the crime is reported, but must also obtain your consent to send those records, consistent with the requirements of the Family Educational Rights and Privacy Act (FERPA).

### ***Interim Alternative Educational Setting***

An interim alternative educational setting is a different setting that must allow your child to continue to receive educational services that will enable your child to continue to participate in the general education curriculum and to progress toward meeting the goals set out in his or her IEP. You must be a part of the IEP team that determines the specific interim alternative educational setting. If you disagree with the interim alternative educational placement of your child, you may request an expedited due process hearing.

### ***Placement by a Hearing Officer***

A hearing officer may order a change in placement of your child to an interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of your child is substantially likely to result in injury to your child or other children.

Extensions of 45 school day removals by a hearing officer may be repeated, if necessary, when returning the child to the current placement would be substantially likely to result in injury to your child or other children.

### ***Appeals***

If you disagree with any decision regarding the placement of your child as a result of a disciplinary action, the manifestation determination decision, or if the school believes that maintaining the current placement of your child is substantially likely to result in injury to your child or others, then you or the school district may appeal the decision by requesting a due process hearing. The hearing officer may:

- return your child to the placement from which your child was removed; or

- order a change in placement of your child to an appropriate interim alternative educational setting for not more than 45 school days, if the hearing officer believes that maintaining the current placement of your child is substantially likely to result in injury to your child or others.

### ***Child's Placement During Appeals***

When an appeal has been made by either you or the school, your child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the timeline determined by the district's disciplinary procedures, whichever occurs first, unless you and the district agree otherwise.

### ***Expedited Due Process Hearing***

Whenever a due process hearing is requested regarding a dispute over placement, a manifestation determination decision, or because the school believes that maintaining the current placement is substantially likely to result in injury to your child or to others, then you and the school must have the opportunity to an expedited due process hearing.

The expedited due process hearing timelines differ from the standard due process hearing timelines in that:

- the hearing must occur within 20 school days of the date the due process complaint is received and;
- the hearing officer must make a determination (final decision) within 10 school days after the conclusion of the hearing.

### **Resolution Session and Expedited Due Process Hearings**

Unless you and the school agree in writing to waive the resolution meeting or agree to use the mediation process to resolve the issues in dispute:

- the resolution meeting must occur within 7 calendar days of receiving the due process complaint notice; and
- the due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 calendar days of the receipt of the due process complaint.

### **Civil Action**

The decisions on expedited due process hearing are appealable through civil action within 90 calendar days from the date of the decision of the hearing officer.

***In Other Words...*** The IEP team, which includes you, needs to determine appropriate disciplinary actions for your child. Depending on the nature of your child's behavior, there are certain instances when you or the school may request an expedited due process hearing to resolve a dispute.

### ***Private School Placement and Unilateral Placements***

If you enroll your child in a private school, your child may receive some publicly funded special education services. If you place your child in a private school without the school's agreement, you could be awarded reimbursement for private school educational costs *only* if a court or hearing officer determines that the local school was not providing a free appropriate public education. The school is not required to pay for the cost of education, including special education and related services for your child at a private school or facility, if the public school has made a free appropriate public education available to your child and you unilaterally choose to place your child in the private school.

If you believe a free appropriate public education is not available at your public school, you may seek reimbursement for the cost of the enrollment through a due process hearing.

If the hearing officer or court finds that the public school did not make a free appropriate public education available to your child in a timely manner prior to your child's enrollment in the private school, the hearing officer or court may order the public school to reimburse you.

The court or hearing officer may reduce or deny reimbursement if:

- you did not make your child available for an evaluation upon notice from the school district before removing your child from public school; or
- you did not inform the school district that you were rejecting the special education placement proposed by the school district, including your intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- at the most recent IEP meeting you attended before removing your child from the public school; or
- in writing to the school district at least 10 business days (including holidays) before removing your child from the public school.

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the school district for any of the following reasons:

- illiteracy and inability to write in English;
- giving notice would likely result in physical or serious emotional harm to the child;
- the school prevented you from giving notice; or
- you had not received a copy of *Parental Rights for Public School Students Receiving Special Education Services: Notice of Procedural Safeguards* or otherwise been informed of this notice requirement.

***In Other Words...*** If you place your child in a private school without the school's agreement, you could be awarded reimbursement for private school educational costs *only* if a court or hearing officer determines that the local school was not providing a free appropriate public education.

### ***Home Education***

If you elect to home educate your child, you must contact your school district superintendent.

Information regarding the rights and responsibilities of parents home educating their children can be found in the ND Century Codes: 15.1-23 and 25-01.2-01. The NDDPI website includes: *Informational Paper-Home Education and Children with Disabilities*.

### ***A Final Note***

The Individuals with Disabilities Education Improvement Act (IDEA 2004) recognizes that decisions about the education of children who have disabilities are best made by a team. It is expected that parents be essential partners on those teams with school personnel. The North Dakota Department of Public Instruction strongly encourages you to work closely with your school to ensure that a free appropriate public education is provided to your child.

**Summary of Procedures Regarding Procedural Safeguards**

Procedure	Notice of Meeting	Prior Written Notice of Special Education Action	Procedural Safeguards	Parent Consent*
<b>Universal screening:</b> procedures used with all enrolled students to identify possible areas of difficulties that could interfere with learning. Examples include screening for vision or hearing, or review of records of all students to identify students at-risk academically.	Not required, but suggested parents be informed	Not required	Not required	Not required
<b>Selective screening:</b> procedures used with selected children who are referred due to identified risk factors. It is done to determine the significance of the risk factors impacting the child’s growth and development or academic performance. The result determines whether there is need for referral to BLT or for evaluation.	Not required, but suggested parents be informed	Not required	Not required	Not required
<b>BLT:</b> Building Level Team, is a team of school partners - teachers, parents, staff, and administrators - who work together as a team to help the school address the educational needs of students. All BLT members are considered equal partners in the process of school improvement.	Not required	Not required	Not required	Not required but involvement urged
<b>Response to Intervention:</b> RTI provides high-quality instruction and interventions matched to the student’s need in general education.	Not required	Not required	Not required	Not required but involvement urged
<b>Initial evaluation:</b> the first multidisciplinary evaluation of a student who is referred when BLT intervention fails to adequately address the student’s difficulties. If a student has received special education services, has been dismissed, and then is referred a second time, the procedures associated with initial evaluation must be followed.	Required	Required	Required	Required
<b>Reevaluation:</b> periodic reassessment (conducted every three years as required, or more frequently as requested) of students receiving special education services.	Required	Required	Not required	Required
<b>Initial Individualized Education Program (IEP) development:</b> preparation of an individual education program by a team of participants as required by regulations following an initial assessment.	Required	Required	Required	Not required
<b>Initial placement:</b> the first time a multidisciplinary team uses assessment data, analyzes and plans for a student’s unique educational needs, and concludes that specially designed instruction is required to meet those needs. Typically, the placement decision is made as part of the IEP meeting. If a student has received special education services and has been dismissed, the initial placement procedures must be followed if the student is subsequently assessed and determined to be in need of special education services again.	Required	Required	Required	Required
<b>Annual IEP review:</b> review of current IEP and preparation of a new or revised IEP at least every 12 months by a team of participants as required by regulations. Review of placement as well as plans for programming and services are included.	Required	Required	Required	Not required
<b>Dismissal from program:</b> termination of special education services because the student no longer needs them, or the parent or student requests termination of services.	Required	Required	Required	Not required
<b>Registration of a due process complaint:</b> If a parent disagrees with the identification, evaluation, educational placement or other aspects relating to their child’s free appropriate public education they may file a written complaint or request a due process hearing.	Required (see page 12)	Not required	Required (sent by NDDPI)	Not required

Procedure	Notice of Meeting	Prior Written Notice of Special Education Action	Procedural Safeguards	Parent Consent*
<b>Filing of a state complaint:</b> If a parent believes that the school has violated a requirement of IDEA 2004 they may file a complaint with the state.	Not required	Not required	Required (sent by NDDPI)	Not required
<b>Other agency invitation to Secondary Transition Meeting:</b> If another agency is participating in the Secondary Transition Services needed by a student, parent consent must be given to invite them to the meeting.	Not required	Not required	Not required	Required

\*Parent consent is required when information is collected on an individual child that is not being obtained for all individuals in the same school, grade, or class (Hatch Act, 1974, amended to General Education Provisions Act, 1984, 34 CFR 98).

***Other Resources***

The publicly funded organizations listed here may be able to assist you in understanding the procedural safeguards and other provisions of the IDEA.

Your local school district \_\_\_\_\_

***Pathfinder Parent Center***

Minot: (701) 837-7500  
Toll Free: 1-800-245-5840  
Website: <http://pathfinder-nd.org/>  
FAX: 1-701-837-7548

***North Dakota Protection & Advocacy (P & A) Project***

Bismarck: (701) 328-2950  
Toll Free: 1-800-472-2670

***North Dakota Department of Public Instruction - Office of Special Education***

Bismarck: (701) 328-2277  
Website:

<https://www.nd.gov/dpi/students-parents/SpecialEducation/SpecialEducationStateGuidelines/>

The IDEA Advisory Committee meets several times each school year. This representative group of parents, administrators, university personnel, general and special educators makes recommendations about special education in North Dakota. Information about the advisory committee and its meeting schedule are available from the NDDPI Office of Special Education by calling (701) 328-2277 or at <https://www.nd.gov/dpi/students-parents/IDEAAdvisoryCommittee/>

## **Appendix C**

### **Quick Guide to Special Education Dispute Resolution Processes for Parents of Children & Youth (Ages 3-21)**



# Quick Guide to Special Education Dispute Resolution Processes for Parents of Children & Youth (Ages 3-21)

*This guide is not intended to interpret, modify, or replace any IDEA Part B procedural safeguards or requirements of federal or state law. State regulations associated with these processes vary widely; Parents are encouraged to contact their state educational agency or parent center for more information.*

Processes	IEP Facilitation <i>Not required by the IDEA; availability varies by state</i>	Mediation	Resolution Meeting	Written State Complaint	Due Process Complaint/ Hearing Request	Expedited Hearing Request & Resolution Meeting
<b>How the Processes Differ</b>	An optional early resolution process where an impartial facilitator assists the IEP team with communication and problem solving.	A voluntary process that brings people together with a mediator, who helps them communicate with each other and resolve their disagreements.	A meeting that takes place after a parent files a due process complaint/hearing request but before a due process hearing takes place.	A written document used to communicate that a public agency (e.g., school district) has not followed the IDEA, and to request an investigation.	A process used to resolve a formal complaint made by a parent or public agency (e.g., school district), who are together referred to as "the parties."	A special type of due process complaint/hearing request available only in certain situations that relate to a student's discipline and placement.
<b>What Issues &amp; When Used</b>	Used when a parent and school district are unable to agree on important issues related to a child's IEP, or when a meeting is expected to address complex issues or be controversial.	Available anytime there is a disagreement between parents and educators about special education and/or related services.	Used to resolve issues listed in a due process complaint/hearing request. The meeting must occur unless the parent and school district agree in writing not to have the meeting, or to use the mediation process instead.	Available anytime there is a concern about a particular child or an issue that affects children system-wide.	Used to resolve disagreements relating to the identification, evaluation, educational placement or provision of a free, appropriate public education (FAPE) to a child who needs or is suspected of needing special education and related services.	Used when parents disagree with a school district's discipline-related decision that affects their child's placement, or whether the child's behavior is related to his or her disability.
<b>Who Initiates</b>	A parent or school district may request IEP facilitation. A state educational agency may also recommend this, as an alternative to a more formal process.	A parent or school district may request mediation. A state educational agency may also recommend this, as an alternative to a more formal process.	The school district must hold a resolution meeting within 15 calendar days of receiving notice of a parent's due process complaint/hearing request.	Any person or organization may file a written state complaint.	A parent or school district may file a due process complaint/hearing request.	A school district may use this process if it believes that a child's behavior could be dangerous to the child or others.
<b>Outcome or Desired Result</b>	An IEP that is supported by the team members and benefits the child.	A signed, legally enforceable, written agreement.	A signed, legally enforceable, written agreement that resolves issues listed in the due process complaint/hearing request.	A written decision that includes findings and conclusions, and lists reasons for the final decision. Must also include actions required to address the needs of the child or children related to the complaint.	A written decision with findings of fact and conclusions of law, which may order specific activities to be carried out.	A written decision with findings of fact and conclusions of law, which may order the child to be provided with a specific educational placement.
<b>Process Distinctions</b>	IEP facilitation is an early dispute resolution option that is not required by the IDEA.	Mediation discussions are confidential.	Resolution meetings only occur after a due process complaint/hearing request is filed.	This is the only dispute resolution option open to any person or organization, including those unrelated to the child.	A formal record of the hearing (a written or electronic transcript) must be made and provided to the parent.	See Due Process Complaint/Hearing Request
<b>Benefits</b>	IEP facilitation allows all members of the team the chance to participate fully, since the facilitator serves as the meeting leader.	Mediation is a flexible process – participants may influence the process, and ultimately determine the outcome.	The resolution meeting occurs unless the parent and school district both agree in writing not to have the meeting, or go to mediation instead.	The final decision may include corrective actions that are child-specific or relate to system-wide issues.	The decision is appealable in state or federal court.	From the date that the complaint is filed until the decision is final, your child stays in his or her current educational placement, unless you and the school district agree otherwise – this is called "pendency" or "stay-put."
<b>Considerations</b>	May build and improve relationships among IEP team members.	Discussions are confidential – what is said in mediation can't be used as evidence in a due process hearing or civil lawsuit.	Provides a chance for the parent and school district to work together to resolve issues prior to a due process hearing.	A written decision must be issued no later than 60 calendar days after the complaint was received, unless the timeline is extended.	The prevailing party may attempt to recover attorneys' fees in a separate court action.	This process is intended to quickly address decisions concerning a student's discipline and placement.
	Sometimes, team members feel better heard when a facilitator is involved.	A more flexible, less adversarial alternative to other dispute resolution options, like due process complaints/hearing requests.	Keeps decision-making with the parent and school district who know the child.	A written state complaint is relatively easy to file.	The decision is legally binding on the parties.	It is important to keep timeline differences in mind, especially during or close to three vacations and extended breaks.
	Can help resolve disagreements more quickly than other options.	Sometimes, participants work with the mediator to design the process, in some cases, they may be allowed to select the mediator together.	The school district may only bring an attorney to the resolution meeting if the parent chooses to bring an attorney.	The person or organization filing the complaint must provide facts to support the problems listed in their complaint.	The state educational agency is responsible for ensuring the decision is followed, unless it is appealed.	The decision timeline cannot be extended.
	Keeps decision-making with team members who know the child best.	Can help resolve disagreements more quickly than other options.	The parent or school district may cancel a resolution agreement within 3 business days of the agreement being signed.	The process does not require those involved to try resolving the dispute collaboratively. Mediation remains available anytime.	The decision is made by a hearing officer or administrative law judge who is not involved in the child's education.	
	The IEP team may work together more effectively and efficiently.	Mediation is voluntary, so the parent and school district must both agree to participate.	Discussions at the resolution meeting are not confidential, and you cannot be required to sign a confidentiality form to participate in the meeting.	The IDEA does not require states to offer an appeal process for the written decision—for options that may be available.	The decision is legally binding, even if you disagree with the outcome.	
	Parents and the school district must agree to use IEP facilitation.	Whether there is resolution of the issues, or an agreement is created, depends upon the participants.	Parents and the school district may choose to sign a confidentiality agreement or include it in a resolution agreement.	The process does not require states to offer an appeal process for the written decision—for options that may be available.	School districts are typically represented by attorneys. If a parent hires an attorney, it is at their own expense.	
	For the process to be successful, everyone at the meeting needs to respect the role of the facilitator and be willing to participate.	Complex situations may require multiple mediation sessions to come to agreement. There is no guarantee that a written agreement will be created.				
	The facilitator typically does not address issues unrelated to the IEP.					

Processes	IEP Facilitation Not required by the IDEA; availability varies by state	Mediation	Resolution Meeting	Written State Complaint	Due Process Complaint/Hearing Request	Expedited Hearing Request & Resolution Meeting
<b>Decision-maker</b>	The IEP team.	Participants work on solutions together and are in control of the outcome.	The parents and school district identify the terms of any agreement.	The state is responsible for ensuring that an investigation is done, if necessary, and a decision is made about the complaint.	A hearing officer or administrative law judge makes the decision. If the decision is appealed, a judge makes the decision.	See Due Process Complaint/Hearing Request
<b>Role of Third Party</b>	<b>Facilitator typically:</b> <ul style="list-style-type: none"> <li>Helps team members develop ground rules and an agenda for the meeting.</li> <li>Guides discussion by asking child-focused questions.</li> <li>Keeps the team on task and the meeting on schedule.</li> <li>Asks questions to clarify points of agreement and disagreement, and help identify workable solutions.</li> <li>Does not make decisions or determine if team members are right or wrong.</li> </ul> <b>No specific timeline.</b>	<b>A mediator typically:</b> <ul style="list-style-type: none"> <li>Helps participants develop ground rules for the session.</li> <li>Creates a safe environment and encourages participants to be respectful of other points of view.</li> <li>Guides discussion by listening, identifying interests, and clarifying concerns.</li> <li>Does not make decisions.</li> <li>Is knowledgeable of laws relating to special education and related services.</li> </ul> <b>Available at any time, even if a due process complaint/hearing request or written state complaint has already been filed.</b>	The IDEA does not include a third party for resolution meetings. Some states may provide facilitators for resolution meetings if requested by the parent and school district, although this is not required.	<b>An investigator:</b> <ul style="list-style-type: none"> <li>Reviews information related to the complaint.</li> <li>May interview or meet with people related to the complaint.</li> <li>Makes findings and a determination based on applicable law.</li> </ul> <b>Under the IDEA, written state complaints must be filed within 1 year of the date when the individual knew or should have known of the problem.</b>	<b>The hearing officer or administrative law judge:</b> <ul style="list-style-type: none"> <li>Oversees the hearing timeline, including all pre-hearing activities.</li> <li>Conducts the hearing and manages procedural matters.</li> <li>Uses applicable law to write a decision based on evidence and testimony presented at the hearing.</li> <li>May dismiss the complaint if the issues are resolved before the hearing.</li> </ul> <b>Under the IDEA, due process complaints must be filed within 2 years of the date when a party knew or should have known of the problem.</b>	See Due Process Complaint/Hearing Request
<b>Time Frame</b>	Meetings may be scheduled within a few days or weeks of a request being received.	Must be scheduled in a timely manner.	If the requirement is not waived, or mediation is not used, a resolution meeting must take place within 15 calendar days of the filing of a due process complaint/hearing request.	The written decision must be issued no later than 60 calendar days from the date the complaint was filed, unless the timeline is extended.	The written decision must be issued within 45 calendar days from the end of the resolution period, unless a party requests a specific extension of the timeline.	A resolution meeting must occur within 7 calendar days, unless the parties agree in writing not to have the meeting, or use mediation instead.
<b>Financial Cost/Who Pays</b>	Typically, there is no cost to the parent – the meeting is provided at public expense.	No cost to the parent – the mediator and facilities are provided at public expense.	No cost to the parent – the hearing officer or administrative law judge may extend this period at the request of the parties.	No cost to the parent – the meeting is provided at public expense.	The hearing, hearing officer or administrative law judge, facilities, and decision are provided at public expense. Each party pays its own expenses, which may include attorneys' fees and witnesses.	See Due Process Complaint/Hearing Request
<b>Impact on Relationships</b>	Having a facilitator present at IEP meetings can help team members problem-solve together more effectively. Better communication and improved relationships often result from facilitated IEP meetings.	A mediator may help participants problem-solve more effectively. A successful mediation can help improve the school/family relationship.	Resolution meetings give parents and school districts an opportunity to resolve issues without going to a hearing. Where available, using a facilitator to guide discussion and problem-solve may result in better communication.	This process does not focus on relationships.	Due process is considered the most adversarial dispute resolution process.	See Due Process Complaint/Hearing Request
<b>How to Prepare</b>	It may be helpful to: <ul style="list-style-type: none"> <li>Make a list of the issues you want to discuss and questions you want to ask.</li> <li>Think about what is most important to your child and his or her needs.</li> <li>Be willing to listen and carefully consider others' ideas.</li> <li>Organize documents, put dates and notes on them, and bring extra copies.</li> <li>Bring materials that may be helpful to explain or inform others.</li> <li>Think about how you plan to deal with emotions during the meeting.</li> <li>Arrive a little before the meeting so you have time to get ready to participate.</li> </ul> <b>Additional resources are available on the CADRE Website</b>	It may be helpful to: <ul style="list-style-type: none"> <li>Identify issues you want to discuss during the mediation.</li> <li>Make a list of your child's needs and questions you want to ask.</li> <li>Think of questions that others might ask and write down possible responses.</li> <li>Organize documents, put dates and notes on them, and bring extra copies.</li> <li>Bring materials that may be helpful to explain or inform others.</li> <li>Be willing to listen and carefully consider others' ideas, as well as possible solutions.</li> <li>Think about how you plan to deal with emotions during the meeting.</li> </ul> <b>Additional resources are available on the CADRE Website</b>	It may be helpful to: <ul style="list-style-type: none"> <li>Bring a copy of the due process complaint/hearing request and other materials that may be useful to you.</li> <li>Make a list of your child's needs.</li> <li>Organize materials, including dates and notes on documents.</li> <li>Consider all possible solutions to the problem.</li> <li>Think about how you plan to deal with emotions during the meeting, and try to stay optimistic.</li> <li>Consider asking someone to go to the meeting with you, to help you stay positively focused.</li> </ul> <b>Additional resources are available on the CADRE Website</b>	A complaint should: <ul style="list-style-type: none"> <li>Include information to support the problem identified when the complaint is filed.</li> <li>Follow state requirements for filing the complaint. (For example, some states require an original, signed complaint.)</li> <li>Provide the school district with a copy of the complaint.</li> <li>Respond to all requests for more information about the complaint in a timely manner.</li> <li>Review the school district's response to the complaint and, if appropriate, provide additional information according to the state's guidelines.</li> </ul> <b>Parties choose whether to live or consult with an attorney. A person who is not represented by an attorney may be referred to as appearing "pro se." This is a Latin term that means the person represents himself or herself in the legal proceeding.</b>	Considerable preparation is needed to present a case adequately. Parties should be prepared to do the following for a hearing: <ul style="list-style-type: none"> <li>Prepare and submit evidence.</li> <li>Prepare testimony, witness lists, and other hearing documents.</li> <li>Question and cross-examine witnesses.</li> </ul> <b>Parties choose whether to live or consult with an attorney. A person who is not represented by an attorney may be referred to as appearing "pro se." This is a Latin term that means the person represents himself or herself in the legal proceeding.</b>	See Due Process Complaint/Hearing Request

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Center for Appropriate Dispute Resolution in Special Education



Website: [www.directionservice.org/cadre](http://www.directionservice.org/cadre)



Email: [cadre@directionservice.org](mailto:cadre@directionservice.org)



Phone: (541) 686-5060

## **Appendix D**

### **Written Notification of Parental Rights Regarding Use of Public Benefits or Insurance**

## Written Notification Parental Rights Regarding Use of Public Benefits or Insurance

### INTRODUCTION

You can make an informed decision about whether you should give your written consent to allow your school district to use your or your child's public benefits or insurance to pay for special education and related services.

IDEA funds pay a portion of your child's special education and related services. Funds from a public benefits or insurance program (for example, Medicaid funds) also may be used by your school district to help pay for special education and related services, but only if you choose to provide your consent. Your school district cannot access your or your child's public benefits or insurance if it would result in a cost to you, such as a decrease in your benefits or an increase in your premiums.

Before your school district can ask you to provide your consent to access your or your child's public benefits or insurance for the first time, it must provide you with this notification of the rights and protections available to you under IDEA. If you choose not to provide your consent, or later decide to withdraw your consent, your school district has a continuing responsibility to ensure that your child is provided all required special education and related services under IDEA at no charge to you or your child.

### NOTIFICATION REQUIREMENTS

#### **34 CFR §300.154(d)(2)(v)**

#### When Notification Must be Provided

You must receive this notification:

- before your school district seeks to use your or your child's public benefits or insurance for the first time and before it obtains your consent to use those benefits or insurance for the first time (the consent requirement is described below); and
- annually thereafter.

#### Format of Notification

This notification must be:

- written;
- in language understandable to the general public; and
- in your native language or in another mode of communication you use, unless it is clearly not feasible to do so.

### PARENTAL CONSENT

#### **34 CFR §300.154(d)(2)(iv)(A)-(B)**

Before your school district can use your or your child's public benefits or insurance for the first time to pay for special education and related services under IDEA, it must obtain your signed and dated written consent.

### WITHDRAWAL OF CONSENT

#### **34 CFR §300.154(d)(2)(v)(C)**

If you provided your consent for your school district to disclose your child's personally identifiable information to the State agency that is responsible for administering your public benefits or insurance program, the Medical Services Division of the North Dakota Department of Human Services, you have the right under 34 CFR part 99 (FERPA regulations) and 34 CFR part 300 (IDEA regulations) to withdraw that consent at any time.

## **Appendix E**

Every Student Succeeds Act (ESSA) and Individuals with  
Disabilities Education Act (IDEA)

## Overview

The Every Student Succeeds Act (ESSA) and the Individuals with Disabilities Education Act (IDEA) are two of the nation's most important federal laws relating to the education of children. While ESSA seeks to improve the education of all children—with an emphasis on children from low income families and English learners—IDEA focuses on the individual child and seeks to ensure specialized services for children with disabilities so that they may benefit from education. These two laws have taken on new importance to parents of students with disabilities. ESSA provisions apply to all students including those whose disabilities require special education. So it's important that parents understand the requirements of ESSA.

It is equally important that parents become familiar with the ways the two laws have been positioned to work together to improve the academic achievement of students with disabilities.

## What is the Every Student Succeeds Act (ESSA)?

ESSA, signed into law on December 10, 2015, is the latest version of the Elementary and Secondary Education Act (ESEA), the nation's major federal law related to education in grades pre-kindergarten through high school. Congress first passed the ESEA in 1965 as part of the nation's war on poverty. The centerpiece of the ESEA, Title I, was designed to improve achievement among the nation's poor and disadvantaged students. The new law builds on key areas of progress in recent years and ongoing efforts to improve educational opportunities for all students in North Dakota.

## What Do Parents Need to Know about ESSA?

### *Parents Role in ESSA*

Parents need to be involved in their children's education on an ongoing basis. The successful implementation of ESSA and progress towards educational equity for all students depends on the meaningful inclusion of the parents and communities that represent students who are low income, of color, English learners, Native Americans, immigrants, or who have a disability. Throughout ESSA, it is emphasized that parents and communities have the right to engage and help drive financial, programmatic, and policy decisions.

### *Parent and Family Engagement*

To provide opportunities for meaningful parent and family engagement, ESSA requires schools that receive federal funding for underserved students, under Title I and other programs, to reserve funding for parental and family engagement as well as develop parent and family engagement policies.

- Districts are obligated to promote parent and family engagement if receiving Title I funding. The district must carry out at least one of the following strategies to engage families effectively:
  - professional development for school staff (which may include parents);
  - home-based programs;
  - information dissemination; collaboration with community organizations; or
  - other related activities.
- Districts must jointly develop with, agree on, and distribute to parents a written parental involvement policy outlining how it will support the involvement of parents.
- Schools must prepare and distribute a similar plan, distinct from the district policy, reflecting the needs of, and developed in partnership with, the student's families.
- Additionally, schools must develop and maintain school-parent compacts that set out the respective responsibilities of the school staff, parents, and students in striving to raise student achievement and explain how an effective home-school partnership will be developed.
  - Title I schools must conduct an annual evaluation (typically a parent survey) of parent and family engagement policies.
  - Title I schools must hold an annual meeting to inform parents of the Title I program, requirements, and how parents can get involved.

**What’s in ESSA for Parents**

*Testing and Parental Directives*

North Dakota is required to assess students in grades 3-8 and once in high school in reading/language arts and mathematics aligned to state standards. Parents have the right to provide a directive to the school to not administer the state assessment to their child.

*Standards*

The ESSA law requires states demonstrate they have adopted challenging academic content standards for students in math, reading/language arts, and science. These standards must be aligned to both the entrance requirements for credit bearing coursework at the college level and the states career and technical education standards.

*Accountability*

The state has defined its accountability system in the state ESSA plan. The NDDPI is committed to monitoring the effectiveness of the North Dakota system. If the NDDPI does not see continuous improvement in the spectrum of schools across the state, the NDDPI will engage stakeholders in adjusting the system as necessary.

*Dash Board/Report Card*

States must develop and provide to the public annual report cards that include information about the education provided in the state’s schools. State report cards must be developed in consultation with parents, and information must be provided in a language and format parents understand.

*Well Rounded Education*

ESSA encourages innovation, creativity, and flexibility when developing well-rounded educational experiences for all students. Student Support and Academic Enrichment grants in ESSA support districts in meeting the unique needs of their students and communities.

**Key Provision and Implications for Students with Disabilities**

<b>Standards</b>	
<b>ESSA Requirements:</b>	<b>Implications for Students with Disabilities</b>
<p><b>Challenging State Academic Standards.</b> ESSA requires the same academic content and achievement standards for all students (except alternate academic achievement standards for students with the most significant cognitive disabilities).</p> <p><b>Alternate Achievement Standards</b> must be:</p> <ul style="list-style-type: none"> <li>(I) aligned with the challenging State academic content standards);</li> <li>(II) promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act;</li> <li>(III) reflect professional judgment as to the highest possible standards achievable by the affected students;</li> <li>(IV) designated in the individualized education program developed for each such student as the academic achievement standards that will be used for the student; and</li> </ul>	<p>Individualized Education Programs (IEPs) must be aligned to state academic content standards for the grade level in which the child is enrolled. While this requirement is not new, the Office of Special Education and Rehabilitative Services (OSERS), in a November 2015 Dear Colleague Letter, clarified this requirement, which has important implications for both instruction and assessment.</p>

(V) aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or employment. (Section 1111(b)(1)(E) of the ESEA, as amended by the ESSA)

### Assessment

#### ESSA Requirements:

**Annual Assessments.** States must continue to test all students on statewide assessments in the following areas: reading/language arts and math every year in grades 3-8 and once in high school (9-12); and science once in each grade span (3-5, 6-9, 10-12). These assessments must be aligned to the state’s challenging academic standards.

**Disaggregation.** ESSA requires disaggregation of assessment results by student subgroups, including children with disabilities as defined under IDEA. Each state must determine, in consultation with stakeholders, the minimum number of students (the “n-size”) that it will use for accountability and reporting of the results for all students or a subgroup. The n-size must be statistically sound, the same for all students and all subgroups, and ensure the nondisclosure of personally identifiable information.

**Universal Design for Learning (UDL).** All assessments must be developed, to the extent practicable, using principles of UDL. (Section 1111(b)(2)(B)(xiii) of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by ESSA) The term “universal design for learning” means a scientifically valid framework for guiding educational practice that— (A) provides flexibility in the ways information is presented, in the ways students respond or demonstrate knowledge and skills, and in the ways students are engaged; and (B) reduces barriers in instruction, provides appropriate accommodations, supports, and challenges, and maintains high achievement expectations for all students, including students with disabilities and students who are limited English proficient. (Section 8101(51) of the ESEA; Section 103 of the Higher Education Act (20 U.S.C. 1003)

#### Implications for Students with Disabilities

All students must be included in North Dakota accountability systems. Increasing the participation of students with disabilities provides a measure of their progress in the general education curriculum as well as accurate data from which changes in instructional practices can be made to better meet their needs.

Due to the enactment of the Every Student Succeeds Act (ESSA), North Dakota (ND) has a new accountability system that replaces the AYP reports under No Child Left Behind. North Dakota will display the required ESSA annual accountability reports on the new Dashboard. The Dashboard allows schools and districts to showcase and highlight strengths in their buildings while providing transparency to the public. The Dashboard can be accessed from the North Dakota Department of Public Instruction (NDDPI) website.

The NDDPI website provides an Accessibility Guidelines Manual that can be found under Assessment and Testing.

<p><b>Accommodations.</b> Appropriate accommodations must be provided for students with disabilities identified under the Individuals with Disabilities Education Act (IDEA), as well as those who are provided accommodations under an act other than IDEA. (Section 1111(b)(2)(B)(vii)(II) of the ESEA)</p>	<p>Accommodations facilitate student access to high-quality assessments in order to measure a student’s achievement against challenging State academic content and achievement standards or alternate academic achievement standards for students with the most significant cognitive disabilities.</p> <p>Research suggests that providing new accommodations during an assessment (i.e., accommodations that have not been provided during instruction), has a negative impact on student performance.</p> <p>For additional information on accommodations, refer to the NDDPI website.</p>
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**Accountability**

<b>ESSA Requirements:</b>	<b>Implications for Students with Disabilities</b>
<p><b>Goals and Measures of interim progress.</b> States must establish ambitious long-term goals with measures of interim progress for all students and separately for each subgroup, including students with disabilities (SWD). Long-term goals, including measurements of interim progress toward meeting such goals, must be established for, at a minimum, improved –</p> <ul style="list-style-type: none"> <li>• Academic achievement (as measured by proficiency on the annual assessments)</li> <li>• High school graduation rates</li> </ul> <p>The term set for such goals is the same multi-year length of time for all students and for each subgroup of students.</p> <ul style="list-style-type: none"> <li>• For subgroups who are behind on the measures of academic achievement and high school graduation rates, –the state must take into account the improvement necessary on such measures to make significant progress in closing statewide proficiency and graduation rate gaps</li> </ul> <p>The regulations under ESSA:</p> <ul style="list-style-type: none"> <li>• Clarify that student proficiency goals and measures must be based on grade-level proficiency, and that a State must use the same definition of grade-level proficiency for all students;</li> <li>• Specify that “taking into account” the improvement necessary for lower performing students to make significant progress means setting interim measures that require greater rates of improvement for those subgroups.</li> </ul>	<p>These provisions afford an opportunity for special education staff and others with experience working with students with disabilities, to inform conversations and influence decisions around the establishment of ambitious long-term goals and measures of interim progress.</p> <p>For additional information on long-term goals in the North Dakota State ESSA Plan, refer to the NDDPI website.</p>

The regulations under ESSA:

- Reiterate that accountability indicators (with the exception of the ELP indicator), measure performance for all students and separately for each subgroup (meaning that “super-subgroups” may not be used)

ESSA provides a new definition of regular high school diploma. See section 8101(43).

(43) REGULAR HIGH SCHOOL DIPLOMA.—The term ‘regular high school diploma’— (A) means the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall not be aligned to the alternate academic achievement standards described in section 1111(b)(1)(E); and (B) does not include a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.

Under the Individuals with Disabilities Education Act (IDEA), a free appropriate public education (FAPE) must be available to all eligible children residing in the State between the ages of 3 and 21.

In North Dakota, a student with a disability is eligible for FAPE until the completion of the school year in which he or she reaches their 21<sup>st</sup> birthday or achieves a “regular high school diploma”.

**For additional information on the Every Student Succeeds Act (ESSA), please refer to the NDDPI website.**