

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

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

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

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

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

Special Education Terms

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

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

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

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

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

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

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

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

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

WRITTEN NOTICE

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

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

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

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

Notices¹ and Timelines

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

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

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

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

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

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

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

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

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

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

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

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

PARENTAL CONSENT

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

Consent means:

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

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

1. Before your child is evaluated for the first time

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Your consent is not required --

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

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

Can I decline to consent?

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

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

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

What are the limitations on my consent?

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

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

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

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

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

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

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

EVALUATIONS

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

Initial Educational Evaluation

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

How do I request an initial educational evaluation?

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

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

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

What are the timelines for an initial evaluation?

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

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

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

Reevaluation

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

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

Independent Educational Evaluation

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

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

What is an independent educational evaluation?

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

What does "at public expense" mean?

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

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

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

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

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

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

How many independent educational evaluations may I request?

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

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

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

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

What are the criteria for an independent educational evaluation?

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

CASE CONFERENCE COMMITTEE MEETINGS

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

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

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

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

When must the CCC meet?

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

CONFIDENTIALITY OF AND ACCESS TO EDUCATIONAL RECORDS

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

Terms

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

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

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

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

Access To Your Child's Educational Record

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Destruction of Records

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

TRANSFER OF RIGHTS AT THE AGE OF 18

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

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

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

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

