

A series of blue silhouettes of people in various stages of growth and learning are positioned along a green, upward-curving line that represents a hill. From left to right, there is a small child sitting on the ground, a child walking, a person walking with a backpack, a person walking with a backpack, and a person in a graduation cap and gown.

**Indiana  
Department of Education**

**Glenda Ritz, NBCT**  
Indiana Superintendent of Public Instruction

# ***Special Education Overview for Charter Schools: Due Process***

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# Session Presenter

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# Article 7

Indiana's special education rules are promulgated in the Indiana Administrative Code at 511 IAC 7-32 through 7-49. Collectively, these rules are commonly referred to as "Article 7."

# Article 7 Applies to Charter Schools

This article applies to all programs and services subject to the supervision of the state educational agency, including those programs conducted by or through the following:

- (1) Public school corporations.
- (2) Charter schools.**
- (3) Special education planning districts.
- (4) State agencies.
- (5) Other public agencies.

511 IAC 7-33-1(c)

# Complaints, Mediation, Due Process

Article 7 outlines three dispute resolution processes in which charter schools may participate when there is a disagreement with a parent or other party about the provision of special education services. These processes are:

- Complaints;
- Mediation; and
- Due Process Hearings.

# Complaints, Mediation, Due Process

## A complaint . . .

- May be filed by anyone (not just a parent)
- Alleges that the School is not complying with:
  - State/federal special education or related requirements
  - A signed mediation agreement
  - A signed resolution agreement
  - A hearing officer's orders
- May involve one student or group of students (systemic)

# Complaint Process

- Notification (Director will receive by fax on first day)
- Opportunity to resolve within first ten days
- If no response or resolution, investigation begins on the 11<sup>th</sup> day with issuance of notification letter
- Notification identifies issues and requests documents
- School submits documentation in response to allegations
- Complaint report is issued by the 40<sup>th</sup> day after receipt
- Opportunity for reconsideration by State Director

# Complaint Process: Preliminary Response

- The School has the opportunity to respond to the preliminary letter in one of three ways:
  - Notifying the Complaint Investigator to begin the investigation;
  - Requesting a mediation to resolve the complaint;  
or
  - Entering into a written agreement with the Complainant.

# Complaint Process: Mediation in Conjunction with Complaint

- Mediation can be used to resolve complaint where the Complainant is the parent (cannot be used with 3<sup>rd</sup> party complainants)
- No cost to School or parent
- Completely voluntary
- Requires signature from both parties
- 20 day timeline to complete mediation
  - unless parties agree in writing to toll timeline to allow more time for mediation

# Complaint Process: Written Agreement

- The School and the Complainant may enter into a written agreement to resolve the complaint; or
- School may unilaterally draft a proposed agreement or may draft it collaboratively with the Complainant
- Include: complaint #, date of agreement; specific terms, resolution language, & both parties signatures

# Complaint Investigation Report

## Issue(s) identified

- *Did the School implement the Student's IEP as written ? Specifically, did the School provide speech therapy as required by the IEP? 511 IAC 7-42-8(b)*

## Findings of Fact

- *The IEP required 20 minutes of therapy weekly.*
- *The School provided 15 minutes of weekly therapy.*

## Conclusion(s)

- *The School did not provide therapy as required and a violation of 511 IAC 7-42-8(b) is found.*

## Corrective Action

- *The School will provide compensatory therapy services.*

# Common Issues in Charter School Complaints

- Failing to implement the IEP (BIP) as written
- Failing to comply with evaluation requirements
- Imposing impermissible conditions on enrollment or placement processes
- Unilateral decision-making (not using CCC)
- Discipline / Manifestation Determination Process

# Avoiding Complaints

- Implement IEPs as written!
  - TORS should advise all general education teachers, in writing, of the accommodations and services to be provided to students (IEP at a Glance)
  - Use service logs for resource room visits / services
  - ALL TEACHERS should know students' accommodations / services & should document provision (keep a well-papered file)
    - Example: photocopy of test with date and notation of accommodations. “Student provided time and a half; student offered access to resource room.”

# Avoiding Complaints

- Follow CCC meeting procedures!
  - CCC meetings must be scheduled at a mutually agreed upon date, time, and place;
  - If the parent says they can't attend, offer another time and document communication / attempts to schedule;
  - The parent must be given adequate notice in the parent's native language early enough to ensure one or both parents have the opportunity to attend.
  - Make sure all required participants attend
    - Teachers/staff who are on the list of expected attendees must be excused from meeting by parent if unable to attend.

# Avoiding Complaints

- Conduct timely evaluations!
  - A parent's request for an evaluation may be made verbally or in writing;
  - A request must be made to licensed personnel (and this includes TEACHERS);
  - After a parent makes a request, the school must respond in writing within ten (10) instructional days that it is either proposing or refusing to evaluate;

# Avoiding Complaints

- Conduct timely evaluations (continued)
  - After sending the parent written notice, the parent must consent to the evaluation;
  - The School has fifty instructional days to complete the evaluation and convene the case conference committee.
  - Parents may request: a meeting to have the results of the evaluation explained to them prior to the CCC meeting; and / or a copy of the evaluation report.
    - Teachers: if you get these requests...inform special ed staff!

# Avoiding Complaints

- Follow Discipline Procedures
  - CCC should address behavior and discipline concerns long before the student's behavior leads to a disciplinary change of placement.
  - Inappropriate behavior, interference with the education of the student or others, should lead to consideration of an FBA and BIP.

# Avoiding Complaints

- All Teachers & Staff: Keep track of days of removal and communicate these to administrators!
  - Special education students may be subject to disciplinary removals for up to ten (10) instructional days without the school providing services.
  - Half day removals, bus removals, in-school suspensions, and calling parents to “just pick up the student” are considered full day removals when counting days.
  - Be prepared to provide services at day 11 and conduct Manifestation Determination.

# **Avoiding Complaints**

**All teachers should be familiar with Rule 44, which contains guidelines for discipline for special education students.**

# Student Discipline Issues

Discipline is more than suspension and expulsion.

- Training that is expected to produce a specified character or pattern of behavior, especially that which is expected to produce moral or mental improvement.
- Controlled behavior resulting from such training.

The American Heritage Dictionary of the English Language

# Student Discipline Issues

- CCC should address behavior and discipline concerns long before the student's behavior leads to a disciplinary change of placement.
- **Inappropriate behavior, interference with the education of the student or others, should lead to consideration of an FBA and BIP.**

# Student Discipline Issues

## **FBA**

- Process that uses data to identify patterns in the student's behavior and the purpose or function of the behavior of the student.
- Parental consent is required.
- Part of the evaluation required for a student suspected of having an emotional disability.
- Integral in the development of a BIP.

# Student Discipline Issues

## FBA

- Required if the student may be suspended for more than 10 days in a school year, expelled, or if the behavior involved possession of weapons or drugs, or resulted in serious bodily injury.
- No requirement that student be facing disciplinary action before an FBA can be conducted. Parent or school can request FBA just as any other evaluation.

# Student Discipline Issues

## **BIP:**

A plan agreed upon by the CCC and incorporated into the IEP that describes:

- The pattern of behavior that impedes the student's learning or the learning of others.
- The purpose or function of the behavior as identified in a functional behavioral assessment.

# Student Discipline Issues

## **BIP:**

- The *positive interventions and supports, and other strategies*, to address the behavior and maximize consistency of implementation across people and settings in which the student is involved.
- If applicable, the skills that will be taught and monitored in an effort to change a specific pattern of behavior of the student. The behavioral intervention plan seeks to maximize consistency of implementation across people and settings in which the student is involved.

# Student Discipline Issues

## REMOVALS

- The school is not required to provide services to a student with a disability during any of the first ten (10) cumulative instructional days of removal in a school year for violating a code of student conduct if services are not provided to a nondisabled student who has been similarly removed.
- Removal for any part of a day constitutes a day of removal.
- A short-term removal of a student pursuant to the student's IEP is not a removal under 511 IAC 7-44.

# Student Discipline Issues

## REMOVALS

If a student is removed for more than ten (10) cumulative instructional days in a school year, the school must determine if a change of placement has occurred.

(511 IAC 7-44-1(h))

# Student Discipline Issues

## **DISCIPLINARY CHANGE OF PLACEMENT**

- The removal is for more than ten (10) consecutive instructional days.
- The student is subjected to a series of removals that constitute a pattern because:
  - The series of removals cumulate to more than ten (10) instructional days in a school year.
  - The student's behavior is substantially similar to the student's behavior in previous incidents.
  - Additional factors such as: length of each removal, cumulative amount of time removed, and proximity.

(511 IAC 7-44-2(a))

# Student Discipline Issues

## IF THE REMOVAL IS NOT A CHANGE OF PLACEMENT

When a student has been removed for more than 10 cumulative days, but the removals do not constitute a change of placement, school personnel, in consultation with at least one of the student's teachers, determine the extent to which services are needed to enable the student to:

- Continue to participate in the general education curriculum, although in another setting.

- Progress toward meeting the goals in the IEP.

(511 IAC 7-44-3)

# Student Discipline Issues

## IF THE REMOVAL IS A CHANGE OF PLACEMENT

When a decision is made to make a removal that does constitute a change of placement, the school must notify the parent and provide the parent with the notice of procedural safeguards.

The notice must be provided on the date the school decides to make a removal that results in a change of placement.

(511 IAC 7-44-4)

# Student Discipline Issues

## **Manifestation Determination**

- Within 10 instructional days of any decision to change the placement of a student with a disability for violating the disciplinary rules of the school, the student's CCC must meet to determine whether the student's behavior is a manifestation of the student's disability.
- Suspension that will result in suspension for more than 10 consecutive days; series of suspensions constituting a pattern; expulsion; or behavior involving possession of weapons or drugs or resulting in serious bodily injury.

# Student Discipline Issues

## Manifestation Determination

CCC must:

- Review all relevant information including the IEP, teacher observations, and information provided by the parent.
- Determine whether the behavior was caused by or had a direct and substantial relationship to the disability.
- Determine whether the behavior was a direct result of the school's failure to implement the IEP.

# Student Discipline Issues

## **Manifestation Determination**

- If the conduct was a direct result of the school's failure to implement the student's IEP, the school must take immediate steps to remedy the deficiencies.
- If the behavior was a manifestation of the disability, the student must be returned to the placement from which he was removed unless the student is placed in an IAES for conduct involving the possession of a weapon or drugs or for causing serious bodily injury.

# Student Discipline Issues

## Manifestation Determination

- If the behavior was a manifestation of the disability, the school must conduct an FBA and develop a BIP unless an FBA was conducted prior to the behavior.
- If a BIP had previously been developed, the CCC must review the BIP and modify it as necessary to address the behavior.

# Student Discipline Issues

## Manifestation Determination

If the conduct is not a manifestation of the student's disability, the CCC determines the appropriate educational services to:

- Enable the student to continue to participate in the general education curriculum;
- Progress toward meeting the goals in the IEP; and
- Receive an FBA and behavior intervention services that are designed to address the behavior violation so that it does not recur.

# Student Discipline Issues

## Manifestation Determination

If the student's parent disagrees that the student's conduct was not a manifestation of the student's disability, the parent may request:

- Mediation (511 IAC 7-45-2).
- Due process hearing (511 IAC 7-45-3 or 10).
- Both.

(511 IAC 7-44-5(h)).

# Student Discipline Issues

## **Interim Alternative Educational Setting**

- Principal may place student in IAES for up to 45 instructional days regardless of whether the behavior is a manifestation of the disability.
- Carries a weapon to school or possesses a weapon; uses illegal drugs or sells or solicits a controlled substance; or inflicts serious bodily injury upon another person.

# Student Discipline Issues

## **Suspension/Expulsion**

- School must have written discipline rules which include a graduated system of discipline.
- Suspensions or removals under Article 7 must also comply with the requirements of I.C. 20-33-8.
- A removal for any part of a day constitutes a day of removal
- Short-term removal pursuant to the IEP is not a removal.

# Student Discipline Issues

## **Suspension/Expulsion**

- An in-school suspension is not considered a removal if the student has the opportunity to :
  - progress in the general curriculum;
  - receive the special education services specified in the IEP; and
  - participate with nondisabled students to the extent the student would have in the student's current placement.

# Avoiding Complaints

- **COMMUNICATE WITH PARENTS!**
  - The best line of defense against a complaint is maintaining good communication with parents;
  - Teachers should regularly remind parents to contact them if there is a problem or concern;
  - When in doubt, communicate with special education staff/ Director;
  - Mediation can be used to resolve ANY dispute related to special education
    - Schools may proactively request a mediation before the dispute turns into a parent complaint

# Mediation

- Can be used to resolve both complaints and disagreements
- Both parties have to agree to participate in mediation
- Trained mediator provided and paid for by DOE
- Discussions in mediation are confidential
- Mediation agreement is legally binding

# Mediation

- Less adversarial, less time consuming, less costly
- Voluntary
- Successful when parties approach process with good faith intent to resolve issues
- Allows opportunity for creative resolution

# Due Process Hearings

## Issues

- Evaluation, identification, eligibility, services, placement, reimbursement
- Provision of FAPE – procedural issues
- Administrative proceeding similar to court
- Independent hearing officer
- Parties may be represented by counsel or non-attorney advocate

# Request for a Due Process Hearing . . .

- Written request
- Made by:
  - The parent
  - 18 year old student
  - The school
- Include specific information about the nature of the disagreement and the proposed resolution
- Generally limited to events that occurred within previous two years

# Due Process Hearing “Process”

- Request filed
- Hearing officer assigned
- School’s response/answer
- Resolution session (and/or mediation)
- Hearing conducted (if not resolved or settled)
- Written decision
- Opportunity for appeal

# How Do We Get To Due Process?

- Differences in educational philosophies, methodologies, and opinions about what student needs
- Breakdown in effective communication
- Sometimes it's just personalities
- Disagreements generally arise during the course of or as result of CCC meeting.

# CONTACT INFORMATION

- Traci Tetrick, Complaint Investigator
  - [ttetrick@doe.in.gov](mailto:ttetrick@doe.in.gov)
  - 317-232-9062
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- It is usually better to make a phone call and PROACTIVELY ask for technical assistance, rather than to wait and respond to a complaint or due process hearing REACTIVELY.

# QUESTIONS

