



Common Ground



Working Together to Support Our
Learners of Tomorrow



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PREFACE

Common Ground is a training program that addresses topics of interest for parents/family members, students, educators, and other professionals involved in providing care, education, and support to children and youth with disabilities. This training will provide the target audience with an overview of laws related to education, skills in conflict management, effective communication, and problem-solving.

In addition to this manual, Common Ground training includes presentations, activities, and exercises that are incorporated into each section of the curriculum. This approach provides the audience with an opportunity to practice the skills presented. Our objective is to “teach to reach” so the participants will have the knowledge and know-how to really make a difference.

The first curriculum was developed in 1997. Since then, a team of individuals from ND Protection & Advocacy and Pathfinder Services of ND collaboratively worked together to update the curriculum and information. Technical assistance was provided by special education staff within the state and staff from the ND Department of Public Instruction. A big thank you is well deserved for those who were involved in updating the curriculum.

CHAPTER 1

INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA)

The Individuals with Disabilities Education Act (IDEA, 2004) is a federal law that ensures free appropriate public education for all students with disabilities by providing specially designed instruction and related services to those students in need. The full Federal regulations IDEA (2004) contain both the public comments and the law itself. While reading the law, it is interesting to read the comments to better understand why the sections were written as they were. This background information provides meaningful clarity.

The six main principles establish the foundation for achieving student-centered plans. These are:

1. Free Appropriate Public Education (FAPE)
2. Evaluation
3. Placement
4. Least Restrictive Environment (LRE)
5. Parent and Student Participation in Decision Making
6. Procedural Safeguards

Key Legislation

Purposes §300.1

- To make sure that all children with disabilities have access to a free appropriate public education (FAPE) that develops special education and related services to meet their individual needs and prepare them for further education, employment, and independent living.
- To make sure that the rights of children with disabilities and their parents are protected.
- To assist school districts, educational service agencies, States, and Federal agencies to provide for the education of all children with disabilities; and
- To ensure the compliance of services to educate children with disabilities.

[\(Authority 20 U.S.C. 1400\(d\)\)](#)

Six Principles of Subpart "D" of IDEA

Principle 1: Free Appropriate Public Education (FAPE)

IDEA – FAPE

§300.101(a) "A FAPE must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in 300.530(d)."

§300.8(a)(1) - 13 Categories:

(a) General.

(1) Child with a disability means a child evaluated in accordance with §§300.304 through §§300.311 as having an intellectual disability, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.

[\(Authority: 20 U.S.C. 1412\(a\)\(1\)\(A\)\)](#)

NDCC – Special Education

15.1-32-01. Definitions - 11 categories *

1. An intellectual disability
2. A hearing impairment, including deafness
3. Deaf blindness
4. A speech or language impairment
5. A visual impairment, including blindness
6. An emotional disturbance
7. An orthopedic impairment
8. Autism
9. A traumatic brain injury
10. Other health impairments
11. A specific learning disability

*In ND non-categorical delay is used for children ages 3 through 9. There may also be other differences between the federal and North Dakota specific categories.

(Authority: NDCC 15.1-32-01)

Additional factors

§300.8(a)(1) "...by reason thereof, needs special education and related services."

IDEA defines "special education" at 300.39(a)(1) as "specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability..." and, at 300.39(b)(3) specially designed instruction is defined as "adapting, as appropriate to the needs of the eligible child under this part, the content, methodology, or delivery of instruction"

- (i) To address the unique needs of the child that result from the child's disability; and
- (ii) To ensure access of the child to the general curriculum, so that he or she can meet the educational standards within the jurisdiction of the public agency that apply to all children.

Principle 2: Eligibility Determination and Evaluations

To receive special education services, a child must be found eligible through the process of conducting an evaluation. This process is comprehensive in nature and may include a variety of different methods of obtaining helpful information regarding the child. These may include:

- The observations and opinions of professionals who have worked with the child
- The child's medical history when it is relevant to their performance in school
- Your ideas about experiences, abilities, needs, and behavior in school and outside of school, and their feelings about school.
- Response to intervention data
- Formal assessments

IDEA – §[300.301](#)

"...Each public agency shall conduct a full and individual initial evaluation..." that:

1. Is not racially or culturally discriminatory
2. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient (IQ)
3. Assessments are selected and administered to best ensure it is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure)
4. The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities
5. Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with that child's prior and subsequent schools to ensure prompt completion of full evaluations.
6. The evaluation is sufficiently comprehensive to identify all the child's special education and related service needs, whether commonly linked to the disability category in which the child has been classified.
7. Assessment tools and strategies that provide relevant information to directly assist...in determining the educational needs of the child.

(Authority: [20 U.S.C. 1414\(a\)\(1\)\(D\) and 1414\(c\)](#))

Four Steps in Evaluation

The first step in the evaluation process is to request an evaluation of the child. This can be done by sending a written letter or requesting a team meeting through the school administration. It is encouraged to do this in a manner that is acknowledged and documented so that there is a record that you have made the request and granted consent for the evaluation process. This will begin the timeline in which the district has to complete the evaluation and eligibility process.

Step 1: Using what's already known.

§[300.300](#) Parent consent for Initial Evaluation

A team of people (including you) will be involved in the evaluation of the child. This will include looking at what information is already available. A determination will then be made as to whether additional information is needed. If so, the team will conduct further evaluation or you may have the information available, which could then be shared with the school.

Step 2: Collecting more information.

If it is determined that more information is needed and the school intends to conduct additional evaluation, you may be asked to sign a formal consent to evaluate. The team of individuals will discuss and determine what information is still needed to make an eligibility determination and will then identify what evaluation is needed and who is qualified to administer or conduct the evaluation. NOTE: You may hear the words evaluation, assessment, or test as they often will be used interchangeably throughout this process. If you have any questions regarding what steps will be taken or how they will occur, seek clarification before the evaluation takes place.

(Authority: [20 U.S.C. 1414\(a\)\(1\)\(D\) and 1414\(c\)](#))

Step 3: Deciding your child's eligibility for Special Education Services

§[300.306](#) Determination of eligibility

A post-evaluation meeting will be held to review all information gathered by the team. If evaluation results identify that your child is eligible for special education and related services, this will be determined in the team meeting. If your child is found eligible, a formal IEP team will be created and will consist of key personnel as outlined in the regulations. The team must include the student, parent, school administrator or designee, a classroom teacher, a special education teacher (may also be referred to as the case manager), and a qualified person who can interpret and explain the evaluation results. If your child requires specialized instruction or related services, i.e. occupational, physical, or speech therapy, these professionals should also be team members for your child. If these professionals are not needed to provide direct services to your child, they may be listed in your child's IEP, as consultants.

(Authority: [20 U.S.C. 1414\(b\)\(4\) and \(5\)](#))

If your child is found not eligible for special education services, it is very important to ask for enough information so that you are comfortable with the determination made. If you are not in agreement with the decision, ensure that the team is aware of your concern at the time that the team is meeting and ask that your disagreement be noted in the minutes of the meeting. Ask that the team schedule another meeting so that you can take some time to process what took place and determine the full scope of your concerns. This is an excellent time to seek information from a parent or student advocacy organization as they may be of assistance in reviewing what has taken place, answering questions that you have, and providing guidance on the next steps.

[§300.502](#) Independent Evaluation

There are processes within IDEA that allow for an independent evaluation to be completed in instances when you are not in agreement. This may be an important consideration at this time.

(Authority: [20 U.S.C. 1415\(b\)\(1\) and \(d\)\(2\)\(A\)](#))

Step 4: Developing your child's Individualized Education Program (IEP)

§300.324 Development, review, and revision of the IEP

If your child is found eligible for special education services, the IEP team is the group of individuals who are responsible for planning, implementing, and monitoring all aspects of a student's educational services.

§300.324(a)(1), The IEP is reviewed annually. When the team writes the IEP, the following information should be considered:

- The strengths of the child and concerns for enhancing the child's education;
- Strengths and concerns of the parents, student, and school staff should all be discussed and considered;
- The results of the initial or most recent evaluation of the child;
- The results of the child's performance on any state or district-wide assessments; and
- The academic, developmental, and functional needs of the child.

(Authority: [20 U.S.C. 1412\(a\)\(1\), 1412\(a\)\(12\)\(A\)\(i\), 1414\(d\)\(3\), \(4\)\(B\), and \(7\); and 1414\(e\)](#))

§300.320(a) Contents of an IEP

1. Statement of Present Levels of Academic Achievement and Functional Performance (PLAAFP) including:
 - How disability affects involvement and progress in the general education curriculum
 - For preschool, how does the disability affect participation in appropriate activities
2. A statement of measurable annual goals, including academic and functional goals designed to:
 - Meet the child's needs which result from the disability to enable involvement and progress in the general curriculum,
 - Meet the child's other educational needs that result from the disability.
3. For children...who take alternate assessments aligned to alternate achievement standards, a description of benchmarks or short-term objectives.
3. Statement of how student's progress will be monitored and how frequently it will be reported; along with expectations of what will be included to ensure the student's progress can be tracked.
4. A statement of the special education, related services, and supplementary aids and services to be provided to the child, or on

- behalf of the child, and a statement of program modifications or supports for school personnel that will be provided for the child:
- To advance appropriately toward attaining the annual goals,
 - To be involved and progress in the general curriculum, and participate in extracurricular and nonacademic activities,
 - To be educated and participate with other children with disabilities and without disability.
5. Explanation of the extent, if any, the child will not participate with children who are not disabled in regular classes.
 6. Statement of modifications to the State or district-wide assessments.
 7. The projected date for the beginning of services and modifications.

(Authority: [20 U.S.C. 1414\(d\)\(1\)\(A\)](#))

§300.324 Development, Review, and Revision of the IEP: Special Factors

The team does need to address special considerations, which include:

- Positive behavioral interventions for a child whose behavior impedes his or her learning or that of other students,
- Language needs for a student with limited English proficiency,
- The use of Braille, if appropriate for a child who is blind or visually impaired,
- The communication needs that must be addressed to allow for direct communication with peers and teachers and direct instruction opportunities for the child who is deaf or hard of hearing, to include non-verbal communication,
- Consideration of whether the child needs assistive technology devices or services.

(Authority: [20 U.S.C. 1414\(d\)\(3\)](#))

Principle 3: Placement

§300.327 – Placement

Each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.

This is completed once the team writes the child's Individualized Education Program (IEP). 1414(d)(1)(a)(i)... "written statement for each child with a disability that is developed, reviewed, and revised..."

(Authority: [20 U.S.C. 1414\(e\)](#))

The Office of Special Education Programs (OSEP) sponsored a very helpful webinar regarding change of placement and discipline. The slide deck for this webinar can be accessed [here](#).

(Authority: [20 U.S.C. 1401\(34\)](#))

[§300.536](#) – Change of Placement Due to Discipline

For purposes of removals of a child with a disability from their current educational placement, a change of placement occurs if the removal is for more than 10 consecutive days; or a child has been subjected to a series of removals that constitute a pattern and is more than 10 school days in a school year.

(Authority: [20 U.S.C. 1415\(k\)](#))

[§300.530\(e\)](#) – Manifestation Determination

Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the Local Education Agency (LEA), the parent, and other relevant members of the student's IEP Team (as determined by the parent and the LEA) must review all applicable information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine (i) If the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP. NOTE: Office for Civil Rights policy requires parallel procedures for students on a 504.

Principle 4: Least Restrictive Environment (LRE)

[§300.114](#) – Least Restrictive Environment (LRE)

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from

the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(Authority: [20 U.S.C. 1412\(A\)\(5\)\(a\)](#))

Principle 5: Parent and Student participation in decision-making

One of the core tenets of the IDEA is that students and parents have the right to participate in decision-making concerning the development of their child's IEP.

Parents are an essential part of any group making the placement decision. [34 CFR 300.116 \(a\)\(1\)](#); [34 CFR 300.501 \(c\)](#); and 71 Fed. Reg. 46,585 (2006).

"Consistent with [34 CFR 300.501 (c)], each public agency must ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child." 34 CFR 300.327.

Parents must receive notice of all meetings where the district proposes to initiate, determine, or change placement. [34 CFR 300.503](#).

Pursuant to [34 CFR 300.501 \(c\)](#):

- Each public agency must ensure that a parent of each child with a disability is a member of any group that makes decisions on the educational placement of the parent's child.
- In implementing the requirements of paragraph 34 CFR 300.501 (c)(1) of this section, the public agency must use procedures consistent with the procedures described in [34 CFR 300.322 \(a\)](#) through 34 CFR 300.322 (b)(1).
- If neither parent can participate in a meeting in which a decision is to be made relating to the educational placement of their child, the public agency must use other methods to ensure their participation, including individual or conference telephone calls, or videoconferencing.
- A placement decision may be made by a group without the involvement of a parent if the public agency is unable to obtain the parent's participation in the decision. In this case, the public agency must have a record of its attempt to ensure parents' involvement.

Pursuant to the IDEA: The parents of a child with a disability must be afforded, in accordance with the procedures of 34 [CFR 300.613](#) through 34 CFR 300.621, an opportunity to inspect and review all education records with respect to:

- The identification, evaluation, and educational placement of the child; and
- The provision of FAPE to the child.

§300.520 – Transfer of Rights

At least one year before the student turns 18, the IEP must reflect that the student has been informed of the rights that will transfer to him or her.

(Authority: [20 U.S.C. 1401\(34\)](#))

Principle 6: Procedural Safeguards

§300.121 – Procedural Safeguards

The state must have procedural safeguards in effect to ensure that each public agency in the State meets the requirements of the law. Children with disabilities and their parents must be afforded the procedural safeguards identified within the law.

(Authority: [20 U.S.C. 1412\(a\)\(6\)\(A\)](#))

CHAPTER 2

SECTION 504 OF THE REHABILITATION ACT (504 PLAN)

A student is eligible for accommodations under [Section 504](#) if the student has a mental or physical impairment that substantially limits one or more of a student's major life activities that impact their education. The 504 Plan is part of the Americans with Disabilities Act (ADA) and covers a vast number of disabilities or temporary needs that are not covered under IDEA. But like an IEP, these plans cover the needs of the student and accommodations that will benefit the student's education. This is the only plan that will follow a student post-graduation.

The Basic Components of a 504 Plan

A comprehensive 504 plan includes the following information:

- Student characteristics and progress
- Program accommodations to be provided by school personnel
- Individual student accommodations
- Extent, if any, to which the student will not participate with general education students
- Projected date for the beginning of accommodations
- Frequency, location, and duration of accommodations

Supporting Law

Section 504 of the Rehabilitation Act of 1973 is a civil rights act prohibiting discrimination on the basis of a disability. Title II of the Americans with Disabilities Act parallels 504 relative to preschool, elementary, and secondary education. Funding for 504 comes from both state and local education units. Each school district is responsible for having a designated 504 Coordinator to ensure services are being provided consistent with the law.

Common Elements between IDEA & 504 Act

- Procedural Safeguards
- Services
- Due Process

Initial Intervention

1. If a student is experiencing educational difficulties, a school team meets to discuss the concerns. This team may be a part of a Multi-Tiered System of Support (MTSS), Response to Intervention (RTI), Building Level Support Team (BLST), or similar school team.
2. The primary function of these teams is to determine interventions that will be the most beneficial to the student and to provide support to teachers to implement interventions.
3. If the strategies are unsuccessful, the team can determine additional levels of intervention that may benefit the student and/or can make a referral for evaluation for Section 504/ADA, Special Education, or Title I services.

Six Principles of Subpart "D" Section 504

Principle #1: Free Appropriate Public Education (FAPE) in Section 504

[34 CFR 104.33](#) "A recipient...shall provide a free appropriate public education to each qualified handicapped person...regardless of the nature or severity of the person's handicap."

[34 CFR 104.32](#) – Location and Notification...schools shall identify and locate every qualified (handicapped) person...not receiving a public education; and notify the student, parents, or guardians of the school's duty under this subpart.

[34 CFR 104.3 \(j\)](#) in Subpart A "...this applies if a student has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment."

Life activities may include breathing, learning, eating, speaking, seeing, working, hearing, and caring for oneself.

[34 CFR 104.35](#) "A recipient that operates a public elementary or secondary education program or activity shall conduct an evaluation in accordance with the requirements of paragraph (b) of this section of any person who, because of handicap, needs or is believed to need special education".

Referral

- A referral can be initiated by parents, professional staff, students, and/or community agencies.
- The student's presenting needs and previous interventions are considered and reviewed during a team meeting. The best practice is to include parents in these meetings. The meeting summary should include all current information and recommendations.

Principle #2: Evaluation

Assessments, evaluations, and other tests are an important part of an evaluation, but they are only a piece. These should include:

- Observations and data of professionals who have worked with the child;
- Medical history when it is relevant to the child's performance in school; and
- Information regarding the student's experiences, abilities, needs, and behavior in school and outside of school, and his or her feelings about school.

Professionals will observe your child and may give your child tests. They are trying to get a picture of the "whole child." It's important that the school evaluate your child in all areas where he or she might have a disability.

[34 CFR 104.350](#) Evaluation and Placement

1. The district shall conduct an evaluation before taking any action with respect to the initial placement or any subsequent significant change in placement,
2. Tests validated for this specific purpose are administered by trained personnel,
3. The assessment will include all areas of educational need and not merely those that are designed to provide a single general intelligence quotient (IQ),
4. Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking

skills (except where those skills are the factors that the test purports to measure).

Notifications

- The school notifies the parents/guardians and student (as age appropriate), of the school's reason and intent to conduct an evaluation. The notice should include a description of the evaluation and procedural safeguards. The best practice is to provide the notification in writing.

Consent

- Even though Section 504/ADA does not require written consent before the initial evaluation, the Office for Civil Rights position is to obtain written consent prior to evaluating.

Principle #3: Placement Procedures - 34 CFR 104.35(c)

- Drawing upon information from a variety of sources throughout the evaluation process (aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior),
- Establish procedures to ensure that information obtained from all such sources is documented and carefully considered,
- Ensure the placement decision is made by the team, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and
- Ensure the placement decision is made in conformity with [104.34](#) [Least Restrictive Environment (LRE)].

Principle #4: Least Restrictive Environment (LRE)

[34 CFR 104.34](#) Educational Setting - "Academic Setting. "...shall educate or provide for the education of each qualified handicapped person...with persons who are not handicapped to the maximum extent appropriate..."

Principle #5: Parent and Student Participation in Decision Making

[34 CFR 104.35\(c\)](#) - "...a recipient shall...(3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child..."

Written Consent

- Even though Section 504/ADA does not require written consent before the initial service, consent should always be considered a best practice.

Services

- Supports and services should be determined by a group of individuals knowledgeable about the student, disability, evaluation, and service options. The team should include those with knowledge to make the following decisions:
 - Evaluation results;
 - Section 504/ADA eligibility;
 - The student's unmet needs;
 - Services and/or accommodations based on eligibility; and
 - Discuss how to share the student's plan with those who will be working with him/her.

Implementation

- The school staff will provide support and accommodations to level the playing field for the student relative to their disability. Input from the student and parents is important to ensure the success of the services provided.
- Support and accommodations are documented in a written plan. NOTE: There is no standard or required form, so each school district will develop its own method in which the plan will be documented.
- All agreed-upon support and accommodations will then be implemented in all school settings.

Review

- Each student's 504 plan must be reviewed periodically. A recommended best practice is to convene the team to review the plan annually.
- Re-evaluations and assessments should be completed at any point in time that feedback is needed to ensure the success of the 504 plan. The frequency may depend on each student and how they are proceeding through the general education curriculum. A recommended best practice is that

re-evaluation is completed every three years or earlier if data demonstrates a need to do so.

Principle #6: Procedural Safeguards

[34 CFR 104.36](#)

A recipient that operates a public school shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure.

Grievance Procedure

- If you have concerns regarding services under Section 504, refer to the school policy manual. If needed, consult with the school district's 504 Coordinator.
- If your concerns are not resolved at the local or state level, a written complaint may be filed with the [Office for Civil Rights](#).

CHAPTER 3

MEETING TO PLAN

The IEP team process is one of the most important aspects of the entire process. The meeting is an opportunity for all individuals who know the student to come together and discuss the student's strengths and educational needs. The makeup of the IEP team and the engagement of all members is critical to ensure a comprehensive IEP is developed and implemented. Preparing for the meeting and planning before the meeting sets the stage for all subsequent activities.

This chapter will address what to include before, during, and after the IEP meeting. Each of these periods includes careful planning and preparation to ensure that IEP decisions can be made.

BEFORE THE MEETING

Nine Steps of Effective Pre-planning

- Talk with your child to get their perspective on how the past year has gone and identify what they feel has gone well, what they would like to have changed, and what their goals are in their life. Use the list below to guide your discussion to ensure their input is comprehensive and involves all aspects of their life.
 - Academic
 - Social-Emotional
 - Developmental
 - Communication
 - Behavioral
 - Environmental
 - Health & Motor
 - Transition
- School personnel will compile data regarding IEP goals and academic achievement, if appropriate, for the past year. As a parent, make sure you have collected this information throughout the year, or that you request copies of it before the IEP meeting. Review the information and ensure you understand the data and can prepare any questions you may have and need to ask during the meeting.

- Review your child’s educational plan (IEP or 504) and highlight any content you identify needs to be discussed or updated at the upcoming meeting.
- If any assessments or evaluations were done in preparation for the IEP meeting, ensure you have obtained copies of the full assessment (not just a summary or interpretation of the findings or recommendations) so you can review the information before the meeting.
- Create a list of questions, comments, or concerns you have so you are prepared for the meeting. If possible, try to seek the answers or clarifying information prior to the meeting because you will have limited time at the meeting.
- Identify two to three critical items you were not able to resolve and will need to ensure are discussed at the IEP meeting. If you are comfortable, provide these items to the IEP case manager and ask that they be placed on the agenda so they are not forgotten and the meeting length can be planned accordingly. As you are developing the critical items, it is important to ensure they are related to your child’s education as this is critical when creating expectations.
- If needed, schedule consultations or appointments with outside professionals who may see your child or your child’s physician before the meeting, so all needed information has been obtained.
- If your child has an advocate, or if you are receiving support from a parent advocate, schedule a time to meet with them and review your IEP preparation materials with them. This can help to prioritize and ensure everything that has occurred or needs to occur has been identified.
- Specifically review your child’s goals and the data taken over the past year to determine if these are still applicable, or whether they should be changed for the coming year.
- Prior to the meeting you should receive a Prior Written Notice (PWN) that outlines any proposed change to the IEP, a description

of the action the school district intends to take, the reason for this action, and a description of each evaluation, assessment, record, or report used as a basis for the proposed action. The school district is required to ensure a student’s parents are informed of this information before the IEP meeting. Additional information regarding other options the IEP team considered and other relevant factors should also be detailed in the PWN. The PWN should also contain information regarding who will attend the IEP meeting. (Authority [§300.503](#))

AT THE MEETING

| Basic Components of an IEP or 504 Plan | |
|--|--|
| Present level of academic achievement and functional performance | Summary of a student’s academic performance |
| Goals to be achieved | Outcomes to be achieved |
| Methods of determining progress | Methods of determining progress |
| Program modifications, accommodations, or supplementary aids and services to be provided | Program accommodations to be provided |
| Projected date and duration of time for implementation | Projected date and duration of time for implementation |
| Frequency, location, and duration of services and modifications | Frequency, location, and duration of accommodations |
| Methods of collecting data and determining the effectiveness of the plan | Methods of collecting data and determining the effectiveness of the plan |
| Identification of persons responsible | Identifications of persons responsible |
| Timeline for review of the plan | Timeline for review of the plan |

Understand the Process

ND State-recommended age categories

- Early Childhood Plan (ages 3 – 5)
- IEP Plan (ages 6 – 13)
- IEP with Transition Plan (ages 14 – 21)

Establishment of annual goals

Annual goals are developed by the IEP team and are formed using all assessment and evaluation data, and information from the present level of educational performance. Goals should be written in measurable terms and achievable within a reasonable period. Each goal should also identify who will be responsible for ensuring goal implementation and data collection.

Key things to keep in mind when establishing goals:

- Be creative and open-minded.
- Share supporting information for your ideas.
- Create a list of ideas and identify which are a priority.

Additional Considerations:

- How will data be collected on each goal?
- How often will Progress Reports be provided to team members and parents?
- What supports, modifications or accommodations are needed to ensure success? Ideas include grading, credits, transportation, staff, facilities, materials, equipment, assistive technology, adaptive devices, curriculum, methods, and other services.
- Discuss your child's participation in district and statewide assessments to include what accommodations and modifications your child would need to be successful.
- Identify opportunities for inclusion and integration with students without disabilities.
- Does your child need assistive technology to benefit from or fully participate in their education?
- Are there positive behavioral support concerns the team needs to address? If so, ensure a functional behavioral assessment and positive behavior support plan is developed.
- Ensure the team discusses Extended School Year (ESY) services.

AFTER THE MEETING

Review the IEP or 504 Plan that has been developed. Compare its content with the notes you or the school took during the meeting. If you have questions regarding the content of the plan, set up a time to meet with the school case manager to talk through areas that you need clarification on or those that may need to be addressed further by the team. It is important to remember the plan development process does not require a signature or formal approval. If you have concerns, ensure you address them immediately, or it will be presumed you agree with the content, and it will be implemented.

THROUGHOUT THE YEAR

Monitor your child's progress:

- Visit with the teacher/case manager regularly.
- Ask your child how school is going and work to resolve any needs as they arise.
- Be mindful of when progress reports are completed and ensure receipt and review of the report.

CHAPTER 4

COMMUNICATION

Communication is one of the most important tools to use while working as a team to identify services for a child. Making sure there is open dialogue with moments of listening and talking while being respectful, lays the foundation of a team atmosphere. Let's dive into what communication looks like.

How we talk to each other and how we listen can make a difference in whether we:

- CREATE conflict or PREVENT it
- ESCALATE a problem or RESOLVE it
- DIMINISH or ENHANCE relationships

Important Factors to Consider with Communication

- EXPRESSIVE/WHAT WE SAY
 - A. Communication Style
 - B. Language of Resolution
 - C. Power of Positive Communication
- RECEPTIVE/WHAT WE HEAR
 - A. Barriers to Listening
 - B. Listening Techniques
- NON-VERBAL COMMUNICATION
 - A. What our body says
 - B. How our emotions respond to what we hear

Content of Communication:

The content of communication can be broken down into six different areas: who, what, when, where, why, and how.

Examples

WHO - I'd like to talk to you about my son, Joe. Joe is in the 6th grade. He really likes school, but

WHAT - Lately, Joe has been having trouble with another student,

Chad. Joe says Chad picks on him, calls him names, pushes him, and tries to get him to do things that he knows he shouldn't.

WHEN - Joe told me this trouble with Chad started about a week ago. Joe says Chad does these things between classes and after school when teachers are not around.

WHERE - Joe said that Chad followed him into the restroom and pushed him into the lockers in the hallways. Chad also pushed Joe around on the playground when Joe was leaving school.

WHY - Joe says he doesn't know why Chad is picking on him.

HOW/HOW IT AFFECTS - Joe says he's scared to come to school, and he's having a hard time concentrating on his work because he's worried about what Chad will do to him.

Language of Resolution

Two choices:

- Respond in a way that closes the door, which dissolves the relationship and creates conflict; or
- Respond by using words that show a willingness to listen, compromise, and work towards resolution.

Benefits of Focused Language Resolution

- Acknowledges that you have heard what the other person is saying.
- Creates opportunity for a shared exchange of information.
- Builds bridges and a sense of "team".
- Releases the negative feelings that prevent resolution.
- Effort is spent on moving towards resolution and positive outcomes.
- Creates a culture of respect.

The Power of Positive Communication

The more we use positive communication and build self-esteem, the more we build bridges between team members, which increases the likelihood of the child's success.

Two components of positive communication:

- The words used are positive in context.

- Reframing a negative comment into a positive comment before further communication continues. If a negative statement is made, pause, and choose not to engage until the response is positive and can move the conversation forward positively. Do not wait for others to engage positively, initiate positive communication, and don't let the negative continue.

Think about what your goal is with your words:

- Is the goal to encourage further communication?
- Is the goal to hurt someone's feelings?
- Do you have a personal agenda?

Barriers to Listening

- Mistakenly believing we can do two things at once – listen before a response is offered.
- When we are angry, upset, or anxious, our listening ability diminishes.
- Making assumptions that the other party has all the same information you are using.
- Personal biases are not recognized or acknowledged.
- Creation of a playing field that is not level with one another.
- Dismissing others' thoughts if they do not align with your opinion.

Listening Techniques

Best Practices:

- Look at the person speaking to you.
- Establish eye contact but avoid staring.
- Let the person know periodically you are listening, by affirming or gesturing your understanding.
- Ask if you can jot down notes of what they are saying.
- Avoid distracting behaviors such as being on your phone during a conversation, and multi-tasking, especially within virtual settings.
- Avoid looking at your watch/phone or asking questions not pertinent to the conversation.
- Avoid engaging in side-bar conversations with people during the meeting.

Types of Listening

Paraphrasing/Reflective Listening

Re-stating what has been said can be very effective in demonstrating that you are engaging in active listening and your perception of the

statement is consistent with the message that was intended to be delivered.

"I want to make sure I understood you; I heard you say ..."

"My understanding of what I heard you say..."

Perception Checking

When you are speaking to someone, ask the individual to re-phrase what you have said. This lets the other person know you are interested in what they heard and gives an opportunity to clarify misunderstandings in jargon/concepts.

"Just so we are on the same page, can you tell me about your thoughts on the IEP"

"Let's go over what we have discussed, and what we have agreed upon."

"If we summarize the concern, we want to focus efforts on helping Johnny to count to 20."

Empathetic Listening

With basic listening, we listen through our ears and attach meaning to words based on our experiences, etc. With empathic listening we create an intellectual or emotional identification with another by putting ourselves in that person's position, seeing the situation through their eyes, and hearing it through their ears.

"As a schoolteacher (etc.), what do you mean by ...?"

"Would you explain what you mean by ...?"

"I think ... means ..., what does it mean to you?"

Non-verbal Communication

Best Practices:

- Be yourself
- Be relaxed
- Be sensitive to the needs of others
- Be mindful of tone of voice, facial expressions, posture, eye contact, and sounds you may make during communication
- Try not to read into the body language of the person you're talking with so much that you forget to use your receptive listening skills or your opportunity to speak and share information

Choose to build bridges with your communication.

CHAPTER 5

UNDERSTANDING CONFLICTS

While it is always the intent to avoid conflict, it is always a possibility that conflict may arise when working with a team of people. Conflicts tend to occur when a team member feels unheard, misunderstood, or undervalued. It is important when working as a team, to understand why conflicts happen and the different types of conflicts that exist.

Five types of Conflicts

- Relationship conflicts
- Data conflicts
- Interest conflicts
- Structural conflicts
- Value conflicts

Relationship Conflicts occur when an incident or situation creates challenges to relationships that impact a student's education.

- Strong emotions – Ensure common procedures, ground rules, etc.;
- Misperceptions and stereotypes – Seek clarification and ensure positive perceptions are the focus of the team;
- Lack of communication or miscommunication – Identify expectations and methods of communication; and
- Repetitive negative behavior – Be willing to acknowledge and encourage problem-solving discussions

Group Discussion:

Three IEP meetings have been held over the past two months for a student new to the middle school environment. Each meeting begins with school personnel providing comments on how the child is doing and concerns that are noted. Each time the parent tries to talk, the IEP Case Manager interrupts him and tells the parent that school staff only have a limited amount of time to participate as they need to return to their classroom. This interruption is done with a harsh and demanding tone of voice. This has created a fear in the parent and he is no longer willing to speak up during IEP meetings.

Data Conflicts occur when information shared in some context is not understood or perceived in a consistent manner.

- Lack of information or misinformation - Ensure all relevant information is shared.
- Different views on what is relevant – Share information in ways that it is understood by all parties and connected to the student.
- Different interpretations of data – Ensure someone who can explain the data is present and agree upon what data is important to collect.
- Different assessment procedures – Ensure understanding of what assessments are needed, why, and the use of outside experts, if needed.

Group Discussion:

The behavioral analyst who is on a student’s IEP team informed the team that each time a student engages in a target behavior this needs to be documented on a data sheet and rated on a scale of 1-5 based upon the severity of the behavior. The classroom teacher has identified she does document on the datasheet when a behavior occurs, but her additional data identifies how many prompts are needed to help the student get back on task. The classroom teacher does not feel rating the behavior is appropriate and has not been doing so. The parent agrees with the classroom teacher.

Interest Conflicts occur when there are varying beliefs of what is needed and the resources that it may take to make it happen.

- Conflict over substantive items, i.e. money, resources, time – Be flexible and think outside the box in a creative manner.
- Conflict over procedural items, including how things will be done and what process will be used – Ensure the team identifies the characteristics of service and it is clearly documented in the IEP.
- Conflict regarding trust, fairness, and outcomes – Ensure team members are focused on outcomes to be achieved and not individual positions.

Group Discussion:

During an IEP meeting, a conflict arises regarding the frequency that the child needs speech therapy with the Speech Language Pathologist (SLP). The previous two years therapy has been provided three times per week, for 30 minutes each session. The recommendation from the SLP in the most recent three-year evaluation is that formal therapy be done two times per week, for 30 minutes each session. The SLP is recommending strategies be more formally infused into the regular education classroom to begin to show the transference of skills into the

child's education. The parent does not want formal therapy time to be decreased as she feels that progress made will be lost.

Structural Conflict occur when outside forces or behavior begins to negatively impact a team's success.

- Destructive patterns of behavior or interaction – Ensure roles of team members are clearly defined and establish ground rules for effective communication.
- Unequal playing fields – Create an understanding all team members are equal in their role and participation in the team process.
- Geographical, physical, or environmental factors that hinder cooperation – Ensure the meeting is scheduled so that everyone can participate in person or encourage participation for those who may be attending virtually.
- Time constraints – Ensure adequate time has been set aside for the team to effectively address all agenda items. If items need to be prioritized, ensure these are selected by consensus of team members.

Group Discussion

The IEP Case Manager creates an agenda for each IEP meeting and sends it out to team members before the meeting. The parent of a child sends items to be added to the agenda to the IEP Case Manager before the meeting; however, the added items are always placed on the bottom part of the agenda. The school district only allows one hour for an IEP meeting due to difficulties in finding staff to cover classroom time so school personnel to participate. This always results in the parent's agenda items being very rushed, or not discussed at all.

Value Conflicts occur when there are differences in beliefs and fundamental principles between people within the team.

- Varying ideas on evaluating behavior – Avoid defining the problem in terms of value or subjective assessment. Focus on outcome or desired behavior.
- Intrinsic differences in opinions or beliefs – Define the 'why' within the conflict and identify the desired goal to be achieved.
- Cultural, societal, or religious conflicts – Be willing to share information regarding beliefs and focus on a compromise based on the student's beliefs.

Group Discussion

All methods of data collection taken on a student's IEP is focused on areas in which there is a lack of progress or frequency in which the student did not achieve the desired outcome. The parent has asked the IEP team to reframe the data collection and focus on positive achievement and outcomes; however, the school has not been willing to do so as they feel it is just sugar-coating the data.

Resolving Conflicts

Several key factors move towards the resolution of conflicts that occur within teams and collaboration. These include:

- Be willing to define and acknowledge the root of the problem without placing blame.
- Separate the people from the problem.
- Focus on common outcomes versus positions.
- Suggest options/choices so all parties will receive the information they need.
- Model and demonstrate a commitment to effective communication skills.

CHAPTER 6

EFFECTIVE PROBLEM-SOLVING

When addressing a challenge in one's life, regardless of the context or setting, it can be an emotionally challenging situation. In the case of a student with a disability, it is sometimes easy to forget that all team members are there for the student.

The following concepts will offer strategies to resolve problems and continue moving forward as a team.

- **Advocacy & Inquiry** - Situations may occur when parents or educators believe there is a problem or a lack of agreement regarding a student's educational needs. It may be necessary for parents/students to advocate for services or accommodations that will assist the student in benefitting from educational instruction. A major component is effective communication skills. Many concepts on communication were covered earlier in this manual. These concepts need to be kept in mind when working toward resolving a problem through advocacy and inquiry.

Effective problem-solving involves both advocacy and inquiry.

- **Advocacy:**
 - To speak or write in favor or opposition of
 - To support
 - To recommend
 - To plead the cause of another
 - Supports self-advocacy for the student
- **Self-advocate:**
 - To speak for yourself
 - To make your own recommendations
 - To make your own decisions
 - To make your voice heard
- **Inquiry:**
 - Use good communication skills to identify the other team members' positions.
 - Take time to understand and respect the other team members.

- Answer questions with clarity based on the question asked.
NOTE: A P&A advocate's focus is on the expressed wishes of the student and not the parent or school district. Other advocacy organizations may serve in the role of parent advocate.

- **Identifying the problem** - It is essential to be specific in defining and understanding the various aspects of a concern. Sometimes conflict has clouded the issue to the point where it is not recognizable. In these situations, it is important to sit back and look at things objectively to ensure the concern is clearly identified, otherwise, it will be difficult to come to a resolution.
 - Ensure facts are clear and that all parties are operating on the same facts
 - Ensure research has been done regarding the law and regulations so the expectation is clear
 - Seek resources or involvement of experts in a field if there are unanswered questions
 - Involve a neutral party if the team is struggling to move in a positive direction

There are many resources available to help – find people, agencies, or organizations that may be of assistance.

- [Special Education Unit Directors](#)
 - [ND Department of Public Instruction](#)
 - Advocacy Organizations
 - [Protection & Advocacy](#)
 - [Federation of Families for Children's Mental Health](#)
 - [Family Voices](#)
 - [Pathfinder Services](#)
 - [Special Education Connection](#)
 - Online research (be careful to ensure that it is credible)
- **Developing an action plan** – organizing information and developing an action plan is critical pre-planning that will improve all components of the team process. Your action plan should include:
 - A list of specific concerns with potential strategies to resolve the concerns.
 - Potential timelines you feel will impact the action plan.
 - Identify plans and mechanisms to provide updates to team members.

- Prioritize your list of concerns as you may not be able to address all of them.
- **Take Action** – List the simplest ideas for resolution first and ensure the discussion is based upon outcomes and not just the tasks to be accomplished.
 - Be realistic – It is important to work together as a team to find a balance to achieve the outcome of success.
 - Be solution-oriented – The team’s energy should be focused on achievable outcomes with a willingness to compromise.
- **Negotiate** – Negotiation is the process of effectively communicating with others to reach an agreement. Certain conditions need to exist to successfully negotiate. They include the following:
 - Parties involved need to come together in good faith.
 - A readiness to participate in problem-solving.
 - Adequate information needs to be available.
 - Willingness to work towards consensus and compromise.
 - Parties present must have the authority to make and carryout a decision that is agreed upon.

Basic Steps to Negotiation

- Share what you believe is the common ground; something both parties agree on. An agenda can serve as a map to keep people focused.
 - Present what it is you want. Ask for something simple in the beginning, so it will be easy for the other party to agree. Once you can agree on a few issues, it is more likely they will agree with you on major issues.
 - Offer your solution and reasons.
 - It’s good to have a variety of suggestions available, as you never know which one will best benefit the child or student.
 - If there are disagreements, further ideas should be discussed to find a solution to the concerns. Allow sufficient time to digest information. It is okay to take a break or reschedule to discuss things further.
- **Develop strong working relationships** – All processes within the team should occur to work towards good relationships with everyone involved. Tips to do so include:

- Be positive and encourage partnerships to foster growth and trust with one another.
- Establish an agreement on how ongoing communication will occur to include frequency and preferred content.
- Respect that everyone is an equal partner in this process.
- Recognize the wealth of knowledge that exists regarding a student and be willing to tap into all of it.
- Acknowledge mistakes can happen and not everything will go perfectly.

CHAPTER 7

ALTERNATIVE AVENUES TO RESOLVING CONFLICT

Within the education system, there are several ways in which conflicts can be resolved. All the materials in the manual so far have been informal ways to accomplish that outcome. There will be times in which those options are not successful and formal processes will be needed to reach an outcome. This process in the special education system is called **Dispute Resolution**. Dispute Resolution occurs when the team is at a point where they can't reach an agreement and attempts to do so informally have not been successful. Dispute Resolution is the process of seeking help from a third party to formally move onto the next step.

There are five options available to a team as part of the dispute resolution process. These include facilitation, mediation, complaint process, due process, and court.

Facilitation

IEP facilitation is a process, not required by the IDEA, which North Dakota provides to parents and schools. A facilitated IEP meeting is the same as any other IEP meeting, except a neutral facilitator joins the meeting. The facilitator helps with communication among team members without influencing or making decisions about the student's IEP. The goal of a facilitated IEP meeting is to develop an IEP that is supported by team members and benefits the student while resolving the conflict.

Within North Dakota, a request for facilitation can be made by a parent or the school district by contacting the ND Department of Public Instruction (NDDPI):

ND Department of Public Instruction
600 E. Blvd. Ave., Dept. 201
Bismarck ND 58505-0440
(701) 328-2277
dpispecial@nd.gov
<https://www.nd.gov/dpi/>

The facilitator is neutral and cannot make decisions about the student's IEP. They assist the entire team to move beyond emotion to effective team planning and cooperation. They build parent and teacher capacity to better understand and work within the IEP process. They give both parties an opportunity to build trust and improve relationships.

What to expect with the facilitation process

- Facilitation can be initiated by the parent or the school district.
- Both parties will be notified by NDDPI when a request for a facilitated IEP is received.
- The facilitator will communicate separately with both parties to prepare for the meeting to ensure that all concerns are addressed.
- Information will be shared before the IEP meeting regarding issues that will be addressed to ensure both parties have the same information.
- During the IEP meeting the facilitator will guide the team through effective communication steps to ensure all necessary information is shared and a solution reached which all parties can agree upon.
- NDDPI maintains an array of trained personnel who can provide for the facilitation of the IEP process.

How to prepare for facilitation

- Create a list of outcomes you want to achieve without focusing on the barriers, just the outcome.
- Review information regarding your child's rights and review the [Parental Rights](#) booklet.
- Seek technical assistance from ND Department of Public Instruction or an advocacy organization before the meeting.

Mediation

Mediation is the process that assists parents and school officials, who disagree, to reach an agreement. It is a relatively quick (compared to other formal avenues) and positive method for resolving disputes.

A request for Mediation can be made at any time to the local school or the Department of Public Instruction:

ND Department of Public Instruction
600 E. Blvd. Ave., Dept. 201
Bismarck, ND 58505-0440
(701) 328-2277
dpispecial@nd.gov

In Mediation, both parties have an equal opportunity to solve problems by developing an agreement, which reflects the agreed upon services for the student.

The participants in mediation include the parent/student, a school official who can commit to decisions on behalf of the district, and the trained mediator. This service is provided by the state of ND without any cost to the student or parents; however, if either party chooses to have an attorney present, they are responsible for the cost associated with legal representation.

Mediation is:

- Voluntary
- Confidential
- Must be mutually agreed upon.
- Information shared during mediation cannot be shared outside of that process and cannot be used as evidence in the future.
- The only component of mediation that is legally binding is the written agreement both parties approve after mediation.
- Mediation can be stopped by either party at any point in time.

The Mediation Process

Phase 1 - Opening statement provided by the mediator including establishing ground rules

Phase 2 - Each party provides their brief opening statement including what they hope to be the outcome of mediation.

Phase 3 - Exploratory joint session led by the mediator to share information and agree upon a mutual agenda of issues.

Phase 4 - Private caucus with each party facilitated by the mediator.

Phase 5 - Negotiation

Phase 6 - Development of a written agreement

How to prepare for mediation

- Identify one or two outcomes you want to accomplish at the conclusion of the process.
- Brainstorm potential solutions without identifying the barriers associated with the solutions as those may work themselves out during mediation.

- Review information regarding your child's rights and review the Parental Rights booklet.
- Seek technical assistance from ND Department of Public Instruction or an advocacy organization before the meeting.

State Complaint Process

One method of dispute resolution is submitting a written complaint to the ND Department of Public Instruction (DPI). This is a process in which DPI will select a neutral/impartial party to conduct a fact-finding process as a form of investigation to determine if there have been rights violations.

A written complaint may be sent at any time to the Department of Public Instruction:

ND Department of Public Instruction
600 E. Blvd. Ave., Dept. 201
Bismarck, ND 58505-0440
(701) 328-2277
dpispecial@nd.gov

The complaining party does not need to be the parents of the student. Any person who has an interest in the child's welfare or education may file a complaint. Once DPI has received and acknowledged receipt of a written complaint, the investigator has 60 days to complete the investigation and issue written findings. An extension of this timeline can be granted; however, there is a formal process and the complainant must be part of this decision-making.

The written complaint should include the following:

- The current date.
- The school district and special education unit.
- The name, address, and phone number(s) of the person filing the complaint.
- The name, address, and telephone number of the student(s) involved.
- A statement regarding what specific violation has occurred.
- Information and facts to support the presence of a rights violation.
- Information to indicate what steps have been taken to resolve the issues.
- Copies of relevant documents to support the facts presented.

- A statement regarding a desired resolution or outcome.
- Signature of the person writing the complaint.

NOTE: A request for Mediation or Due Process can be initiated at any time during the Complaint process.

How to prepare for the state complaint process

- Ensure you have addressed prior to the complaint being filed the concerns identified with the school district.
- Focus on only the areas in which a violation has occurred and identify what resolution will address the concern.
- Review information regarding your child's rights and review the Parental Rights booklet.
- Seek technical assistance from ND Department of Public Instruction or an advocacy organization before the meeting.

Due Process

Due Process is a proceeding on any matter relating to the school's proposed initiation, or change, in the identification, evaluation, or educational placement of the student, or services being provided within the IEP. A request for Due Process can be initiated by the parent/student or the school district by contacting:

ND Department of Public Instruction
600 E. Blvd. Ave., Dept. 201
Bismarck ND 58505-0440
(701) 328-2277
dpispecial@nd.gov

If a Due Process request has been filed with the Department of Public Instruction, this filing does trigger the IDEA-mandated resolution session.

The request for Due Process should include:

- The current date
- The name and address of the student.
- The name of the school and district that the student attends.
- A brief description of the issue or violation.
- Information and facts to support the issue or violation.
- A statement regarding a desired resolution or outcome.
- Signature of the person requesting the hearing.

Upon receipt of the request, NDDPI will appoint an impartial hearing officer to preside over the hearing. The hearing will be scheduled after the required resolution session occurred and only if that process was unsuccessful.

Due Process hearing rights:

Any party to a due process hearing (including a hearing relating to disciplinary procedures) has the right to:

- Be accompanied and advised by a lawyer and/or persons with special knowledge or training regarding the challenges experienced by children with disabilities;
- Present evidence and confront, cross-examine, and require the attendance of witnesses;
- Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing;
- Obtain a written, or, at the parent's option, electronic, word-for-word record of the hearing; and
- Obtain written, or, at the parent's option, electronic findings of fact and decisions.

The parent must be given the right to:

- Have the child who is the subject of the complaint present;
- Open the hearing to the public; and
- Obtain a record of the hearing, the findings of fact, and decisions available at no cost.

How to prepare for the Due Process hearing

- Ensure that you have addressed previously the concerns identified with the school district.
- Focus on only the areas that require resolution so the hearing is focused.
- Be prepared to provide the hearing officer with information and potential resolution of your concerns.
- Review information regarding your child's rights and review the Parental Rights booklet.
- Seek technical assistance from ND Department of Public Instruction or an advocacy organization before the meeting.

Court/Formal legal action

Using the court system to address IDEA disputes is rarely an effective method to resolve concerns. All other dispute-resolution options must be thoroughly exhausted before legal action is considered. This process will be costly for both parents and the school district and will most likely take an extended time before resolution of the issues. One factor to also consider is that all positive relationships between the student, parent, and school district will most likely be impacted relative to the future.

Chapter 8

TRANSITION FROM EARLY INTERVENTION TO SPECIAL EDUCATION

The Early Intervention process begins when a delay in a child's development is identified. The process is initiated through a referral to the State's Early Intervention system, which is part of the ND Department of Health and Human Services. The process begins with an evaluation to determine if a child has a developmental delay or is at risk of falling behind his/her peers.

Early Intervention Process in ND

8 steps in the Early Intervention (EI) Process (IDEA Part C):

1. Referral
2. Evaluation
3. Individualized Family Service Plan (IFSP) Meeting
4. EI Services
5. IFSP Review
6. IFSP Annual Review
7. Transition Plan
8. IDEA Part B (Special Education Services)

If eligible, the EI team (including parents, supports, and professionals) will come together to develop the Individualized Family Service Plan (IFSP). These are services that will be provided for the child and the family. Once the plan has been created it will be implemented. There will be periodic review of the IFSP as needed but must be no less than annually. Once a child passes the age of two, transition planning begins with walking through how services will go from Early Intervention services to Special Education services, and if services will need to continue.

Note: EI is managed and funded under the ND Department of Health and Human Services as is IDEA Part B - Section 619 (ages 3-5). Once a child moves into kindergarten, management and funding changes to the Department of Public Instruction, IDEA Part C.

Each Early Intervention service must meet the needs of the infant or toddler and the family. These services must be provided by qualified personnel, at no cost to parents. Services begin once the parent provides consent for the service.

Early Intervention Services

1. Assistive technology devices and services
2. Audiology
3. Family training, counseling, and home visits
4. Health services
5. Medical services
6. Nursing services
7. Nutrition services
8. Occupational therapy
9. Physical therapy
10. Psychological services
11. Service coordination
12. Sign language and cued languages
13. Social work services
14. Special instruction
15. Speech-language pathology services
16. Vision services
17. Transportation (to access EI services and the related costs)

Early Intervention in the General Education Classroom

Early intervention is a process that is provided to and for children with learning and behavioral challenges. When used with fidelity, across all classrooms, this process reduces the number of students who might eventually qualify for special education services. Early intervention (EI) services can reduce the risk of having a specific learning disability or behavioral concerns while the student is provided their education with their peers. EI includes childhood education, high-quality preschool programs, and improvements in diagnostic screenings to support readiness before entering the public school system. EI can be provided to all students regardless of the grade when a disability is first suspected.

It is important to remember that when considering EI, “the screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and

related services” (§300.302). The process for early intervening begins with the Multi-Tiered Systems of Support (MTSS) or the Response to Intervention (RTI) team gathering to discuss the needs of the student, the development of an MTSS or RTI plan, and then implementing the MTSS or RTI plan with fidelity in the general education classrooms. The use of these programs in the general education classroom may result in fewer students being misidentified for special education programming.

“North Dakota’s Multi-Tier System of Supports (NDMTSS) is a framework to provide all students with the best opportunities to succeed academically, socially, emotionally, and behaviorally in school. NDMTSS focuses on providing high-quality instruction and interventions matched to student need, monitoring progress frequently to make decisions about changes in instruction or goals. Data are used to allocate resources to improve student learning and support staff implementation of effective practices.”
(NDMTSS website)

Even with several interventions in place, there may be a point when a special education evaluation is contemplated. Before the MTSS team considers a comprehensive special education evaluation, the team must review their data and the appropriateness of submitting a referral. NDDPI offers several questions that should be considered regarding the MTSS process, such as:

- Has the student been involved in general classroom instruction and curriculum?
- Is there evidence that suggests the student’s achievement differs significantly from his/her same-age peers?
- What types of strategies and interventions have been used to instruct and support the student? Were these strategies successful? Why or why not?
- Were the attempted interventions evidence-based, carried out with fidelity, and implemented for an adequate length of time?
- Were the interventions adjusted based on the results of ongoing progress monitoring?
- Does the achievement gap with grade-level peers appear to be closing?
- Does the student appear to need ongoing supports and services that cannot be maintained through general education alone to benefit from the general education program?

- Is it possible the student's learning problems are the result of a visual, hearing, or motor impairment, or of a disability other than a specific learning disability?
- Have the student's socio-economic and cultural backgrounds been considered?
- Has the student been observed in his/her learning environment?

The important reminder with all of this is regardless of age or grade level of a student, once a disability is detected the early intervention process begins in the general education classroom. The general educators collect data, and the MTSS (or RTI) team meets regularly to review progress. Keeping this process in motion ensures the student will receive several interventions properly based on individual skills. This also ensures data will be provided to the special education team when a comprehensive evaluation is discussed.

Transitioning from IDEA Part C (EI) to IDEA Part B (Special Education)

The following is a brief overview of what the transition process will look like from Part C to Part B:

- At age 2 the process of transition starts with discussions and planning steps long before the formal process begins.
- Between 2 years - 3 months, and 2 years - 7 months a meeting should be held.
 - Throughout this time frame, children can transition to a variety of settings, such as community pre-schools, childcare settings, or early childhood special education services. The purpose of the 2.7 meeting is to begin sharing information between the family and the two agencies (EI Service providers and Local Education Association (LEA)) about the needs of the child. A child's parents do have the option to opt out of the special education services.
 - At age 2 years - 9 months the second meeting should be held to discuss the child's eligibility for early childhood special education services and Developmental Disabilities Program Management. If the child is found eligible, an Individualized Education Program (IEP) meeting will occur and an IEP will be written.
 - At age 3 years and beyond the IEP will be formally reviewed and updated by the IEP team. The process will remain the same through the child's graduation or exit from special education services.

Chapter 9

SECONDARY TRANSITION

When a student begins to plan for life after high school the team will begin the secondary transition process. This process must begin at age 16 or earlier at the IEP team's discretion. If the transition will be more complex, it may be helpful to begin the process earlier than age 16.

§300.43 – Transition Services

- Transition services should begin no later than age 16. They can start as early as 14
- The IEP must focus on the general education course of study
- Statement of interagency partnerships and support
- Transition services should be based and delivered within the community

The IEP and Transition

In addition to an IEP addressing a student's unique educational needs and related services, it is also used to assist with planning for the future. Areas of adult living in the transition process are post-secondary education, vocational education, integrated employment, military enrollment, continuing and adult education, adult services, independent living, and community participation. This is NOT an exhaustive list. It is critical other relevant services be considered including financial planning, exploration of financial resources, economic assistance programs, housing, personal income, and asset restrictions (possible eligibility requirements). Planning for additional services should also be addressed.

Transition Services & Planning

Vocational Rehabilitation (VR)

In addition to the student's school, the state Vocational Rehabilitation Office has the responsibility to be actively involved in the transition planning process with schools and in the actual provision of transition services for students with disabilities. Vocational Rehabilitation (VR) is required to conduct outreach to identify students with disabilities who may need transition services. VR should do this as early as possible during the process and inform students with disabilities about the purpose of the VR program.

VR services include an application procedure, review of eligibility requirements, and the potential scope of services that may be available. A student and their family may make an informed choice on whether to apply for VR services while still in school. VR provides consultation and technical assistance to help school personnel in transition planning for students with disabilities. VR is also available as a resource to school personnel that facilitates the development of the transition plan in the IEP or the 504 Plan.

Client Assistance Program

Students also have access to the Client Assistance Program (CAP) through ND [Protection & Advocacy](#). This program is designed to assist students who are receiving services through VR, Centers for Independent Living (CILS), or Tribal VR and are experiencing difficulties with accessing or benefitting from those services.

Transition Planning

Any transition service written in the IEP should be driven by the student's strengths, preferences, and interests that are identified through transition assessments.

A free app called [Transition-ND](#) has been developed by Protection and Advocacy to help teachers, parents, and IEP team members engage students in the transition planning process. It was developed to ask simple questions of students so they can provide more detailed input regarding their IEP transition plan. It takes only about fifteen minutes to complete and produces an individualized draft transition document.

What to Expect at the age of 18

For all students, including students who have a disability, 18 is the age of majority at which time they may assume legal control over decision-making in such matters as educational placement, educational records, evaluations, and programming.

IDEA requires that beginning no later than one year before the student reaches age eighteen, the IEP must include a statement that the student has been informed of their rights and the transfer of rights that will occur at the age of 18.

The IEP team should begin discussions throughout the year before the student's 18th birthday regarding personal decision-making. Discussions with the student at this time may include, as appropriate, arrangements such as supported decision-making, use of a power of attorney or representative payee for social security benefits, or guardianship.

Supported Decision-Making

[Supported Decision-Making](#) is the process of making well-informed, voluntary decisions by methods less restrictive than guardianship or conservatorship. Supported Decision-Making allows individuals to make their own decisions and stay in charge of their lives while receiving the help and assistance they need. The statute for Supported Decision-Making was passed by the 66th State Legislative Assembly in North Dakota and became law on August 1, 2019. This tool allows people to retain their decision-making capacity by choosing supporters to help them make their own choices.

Guardianship

A [guardianship](#) of an adult is a court process where a North Dakota state district court judge or judicial referee decides that an adult (18 years or older) is incapacitated to the point they're unable to care for themselves responsibly or their incapacity endangers their health or safety. A guardianship is a formal means of transferring decision-making authority to another individual.

Representative Payee

Social Security's [Representative Payee](#) Program provides benefit payment management for beneficiaries who are not able to manage their Social Security or Supplemental Security Income (SSI) payments. In this instance, SSA will appoint a suitable representative payee (payee) who manages the payments on behalf of the beneficiary. This is typically family or friends; however, if this is not an option, an organization can also provide this service.

Power of Attorney

A [power of attorney](#) (POA) in North Dakota is a legal document that gives someone the authority to make decisions on your behalf. The person who gives the authority is called the principal, and the person who receives the authority is called the attorney-in-fact.

Meeting Attendance

Whenever the IEP team is planning to meet to consider transition services for a student, the student must be invited to the meeting. A representative of any other agency that is likely to be responsible for providing or paying for transition services may also be invited with parental consent, or the consent of the student if the student has turned eighteen. If the student does not attend the meeting, then the IEP team and school must take other steps to ensure that the student's preferences and interests are considered. Similarly, if the invited representative does not attend the meeting, the IEP team and school must take other steps to obtain the participation of that entity in the planning of any transition services.

Summary of Performance

Upon graduation, a Summary of Performance (SOP) is completed and documents the student's measurable transition goals in the areas of employment, education, and independent living. The SOP details the academic achievement and functional performance along with the recommendations to assist the student in moving into adulthood.