

Welcome To  
Special Education for Students Attending Accredited  
Nonpublic Schools, a webinar presented by the  
FIRE Foundation of Northeast Iowa



*Igniting Inclusive Catholic Education*



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# **SPECIAL EDUCATION FOR STUDENTS ATTENDING ACCREDITED NONPUBLIC SCHOOLS**

**PRESENTED BY THE BOGACZYK LAW FIRM, PLLC    MARCH 2021**



# DISCLAIMER

- **PLEASE DO NOT SUBSTITUTE THIS INFORMATION FOR INDEPENDENT AND INDIVIDUAL LEGAL ADVICE. SUCH ADVICE SHOULD BE SOUGHT FROM A LICENSED, QUALIFIED ATTORNEY IN THE FIELD OF SPECIAL EDUCATION AND SECTION 504 DISABILITIES. EVERY SITUATION IS DIFFERENT, AND A GOOD ASSESSMENT OF THE RISKS INVOLVED IN YOUR PARTICULAR SITUATION CAN ONLY BE DETERMINED BY CONSULTING WITH YOUR ATTORNEY AND PROVIDING HIM OR HER WITH ALL OF THE RELEVANT FACTUAL DATA. SOMETIMES JUST ONE “MINOR” DETAIL CAN MAKE A MATERIAL DIFFERENCE IN THE OUTCOME OF A CASE.**

# **TODAY'S OBJECTIVE**

- **PARENTS AND GUARDIANS WHO HAVE A STUDENT ATTENDING AN ACCREDITED NONPUBLIC/PRIVATE SCHOOL (INCLUDING RELIGIOUS), OR WHO ARE CONTEMPLATING IN SENDING THEIR STUDENT TO A NONPUBLIC SCHOOL/PRIVATE SCHOOL, IF ENTITLED WILL HAVE AN UNDERSTANDING OF HOW SPECIAL EDUCATION AND RELATED SERVICES ARE DETERMINED, OFFERED AND RECEIVED.**



# WHAT IS SPECIAL EDUCATION?

- **SPECIAL EDUCATION INVOLVES SPECIALLY DESIGNED INSTRUCTION (SDI) TAILORED TO THE UNIQUE NEEDS OF EACH CHILD AND IS PROVIDED AT NO COST TO PARENTS.**
- **THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT (IDEA), IS THE FEDERAL LAW THAT ENSURES THESE SERVICES TO STUDENTS WITH DISABILITIES – INCLUDING THOSE STUDENTS ENROLLED IN AN ACCREDITED NONPUBLIC SCHOOL.**

# WHAT IS SPECIALLY DESIGNED INSTRUCTION?

- **SPECIALLY DESIGNED INSTRUCTION MEANS ADAPTING, AS APPROPRIATE TO THE NEEDS OF AN ELIGIBLE CHILD, THE **CONTENT**, **METHODOLOGY**, OR **DELIVERY OF INSTRUCTION**:**
  - **TO ADDRESS THE UNIQUE NEEDS OF THE CHILD THAT RESULT FROM THE CHILD'S DISABILITY; AND,**
  - **TO ENSURE ACCESS OF THE CHILD TO THE GENERAL CURRICULUM, SO THAT THE CHILD CAN MEET THE EDUCATIONAL STANDARDS WITHIN THE JURISDICTION OF THE PUBLIC AGENCY THAT APPLY TO ALL CHILDREN.**

# WHAT IS SPECIALLY DESIGNED INSTRUCTION?...CONTINUED

- SPECIALLY DESIGNED INSTRUCTION (**SDI**) DOES NOT ONLY ADDRESS A STUDENT'S ACADEMIC NEEDS, BUT CAN ALSO INCLUDE SOCIAL, HEALTH, EMOTIONAL, BEHAVIORAL, PHYSICAL, AND VOCATIONAL NEEDS.
- SDI IS **NOT** LIMITED TO A SPECIFIC AREA. FOR EXAMPLE: SDI CAN OCCUR IN THE GENERAL EDUCATION CLASSROOM, THE SPECIAL EDUCATION CLASSROOM, PULL-OUT INTO THE HALLWAY, EVEN DURING UNSTRUCTURED TIMES SUCH AS THE LUNCHROOM.
- EXAMPLES OF SDI CAN INCLUDE, BUT ARE NOT LIMITED TO ACCOMMODATIONS, MODIFICATIONS, ASSISTIVE TECHNOLOGY, LEARNING STRATEGIES (IE: PRE- AND RE-TEACHING), A SPECIALIZED READING PROGRAM.
- MOST IMPORTANT...SDI **MUST** BE INDIVIDUALIZED FOR THE STUDENT.

# **SPECIAL EDUCATION IN A NONPUBLIC SCHOOL**

- **IN IOWA, CHILDREN WITH DISABILITIES ENROLLED IN ACCREDITED NONPUBLIC SCHOOLS ARE ENTITLED TO SPECIAL EDUCATION PROGRAMS AND SERVICES IN THE SAME MANNER AND TO THE SAME EXTENT THAT THEY ARE PROVIDED TO PUBLIC SCHOOL STUDENTS.**

**IOWA CODE § 256.12**



# PARENTAL RIGHTS

- **PURSUANT TO IOWA CODE § 256.12(2), PARENTS OF NONPUBLIC SCHOOL STUDENTS WITH DISABILITIES HAVE THE SAME RIGHTS TO PUBLIC SCHOOL SPECIAL EDUCATION SERVICES AS PARENTS OF PUBLIC SCHOOL SERVICES.**

# FIRST STEP IN THE ELIGIBILITY PROCESS

- **IN ORDER TO QUALIFY AS A STUDENT WITH A DISABILITY UNDER THE IDEA, FIRST, THE STUDENT **MUST**: MEET THE DEFINITION OF ONE OR MORE OF THE CATEGORIES OF DISABILITIES, WHICH INCLUDE: INTELLECTUAL DISABILITY, A HEARING IMPAIRMENT (INCLUDING DEAFNESS), A SPEECH OR LANGUAGE IMPAIRMENT, A VISUAL IMPAIRMENT (INCLUDING BLINDNESS), A SERIOUS EMOTIONAL DISTURBANCE, AN ORTHOPEDIC IMPAIRMENT, AUTISM, TRAUMATIC BRAIN INJURY, OTHER HEALTH IMPAIRMENT, A SPECIFIC LEARNING DISABILITY, DEAF-BLINDNESS, OR MULTIPLE DISABILITIES, **AND...****

# SECOND STEP IN THE ELIGIBILITY PROCESS

- THERE **MUST** BE A DETERMINATION THAT THE STUDENT **NEEDS** SPECIAL EDUCATION AND RELATED SERVICES AS A RESULT OF HIS OR HER DISABILITY OR DISABILITIES.
- THEREFORE, A DIAGNOSIS ALONE DOES **NOT** AUTOMATICALLY QUALIFY A STUDENT FOR SPECIAL EDUCATION.
- **DISABILITY SUSPECT REVIEW** DETERMINES THE FIRST STEP ONLY.

# CHILD FIND

- **“CHILD FIND” IS A FEDERAL LAW THAT REQUIRES AREA EDUCATION AGENCIES (AEA) TO CONDUCT A TIMELY AND MEANINGFUL CONSULTATION WITH PRIVATE/RELIGIOUS SCHOOL REPRESENTATIVES TO DETERMINE THE NUMBER OF PARENTALLY PLACED CHILDREN WITH SUSPECTED DISABILITIES ATTENDING PRIVATE SCHOOLS LOCATED WITHIN THEIR SCHOOL DISTRICT REGARDLESS OF WHERE THOSE STUDENTS LIVE.**
- **A UNILATERAL OFFER OF SERVICES BY A PUBLIC SCHOOL DISTRICT WITH NO OPPORTUNITY FOR DISCUSSION IS NOT ADEQUATE CONSULTATION, AS SUCH AN OFFER DOES NOT MEET THE BASIC REQUIREMENTS OF THE CONSULTATION PROCESS.**



# **CHILD FIND...CONTINUED**

- **THE PROCESS **MUST** BE DESIGNED TO ENSURE EQUITABLE PARTICIPATION OF PARENTALLY-PLACED PRIVATE SCHOOL CHILDREN.**
- **THE CHILD FIND PROCESS **MUST** BE COMPLETED IN A TIME PERIOD **COMPARABLE** TO THAT FOR STUDENTS ATTENDING PUBLIC SCHOOLS. AN INITIAL EVALUATION SHOULD BE COMPLETED WITHIN 60 DAYS.**

# REQUIRED ELEMENTS OF THE CONSULTATION PROCESS

- **THE CONSULTATION PROCESS ADDRESSES SYSTEMS ISSUES RATHER THAN INDIVIDUAL STUDENTS, MUST INCLUDE THE FOLLOWING POINTS:**
  - **1. THE AEA'S CHILD FIND PROCESS, INCLUDING HOW PARENTALLY PLACED NONPUBLIC SCHOOL CHILDREN WITH SUSPECTED DISABILITIES CAN PARTICIPATE EQUITABLY, AND HOW PARENTS, TEACHERS, AND PRIVATE SCHOOL OFFICIALS WILL BE INFORMED OF THE PROCESS.**
  - **2. HOW CHILDREN WITH DISABILITIES ENROLLED IN ACCREDITED NONPUBLIC SCHOOLS CAN MEANINGFULLY PARTICIPATE IN SPECIAL EDUCATION AND RELATED SERVICES.**

# **REQUIRED ELEMENTS OF THE CONSULTATION PROCESS ...CONTINUED**

- **3. HOW, WHERE, AND BY WHOM SPECIAL EDUCATION AND RELATED SERVICES WILL BE PROVIDED FOR PARENTALLY PLACED NONPUBLIC SCHOOL CHILDREN WITH DISABILITIES. THE CONSULTATION PROCESS SHOULD DESCRIBE HOW, ON WHAT SERVICES, AND IN WHAT ORDER PART B MONIES ARE TO BE SPENT. THIS MUST INCLUDE HOW PART B FUNDS WILL BE ALLOCATED, IF PART B FUNDS ARE INADEQUATE TO PROVIDE SERVICES TO ALL STUDENTS WITH DISABILITIES PLACED BY THEIR PARENTS IN PRIVATE SCHOOLS. THIS REQUIREMENT ONLY ADDRESS FEDERAL FUNDS.**
- **4. IF THE AEA DISAGREES WITH THE NONPUBLIC SCHOOL ABOUT THE PROVISION OF SERVICES (EITHER DIRECTLY OR THROUGH A CONTRACT), HOW THE AEA WILL PROVIDE TO NONPUBLIC SCHOOL OFFICIALS A WRITTEN EXPLANATION OF REASONS WHY THE AEA CHOSE NOT PROVIDE THE REQUESTED SERVICES.**

# CONSULTATIVE PROCESS

- **FEDERAL LAW REQUIRES THAT THE CONSULTATION PROCESS OCCUR AT LEAST ANNUALLY BUT CAN OCCUR MORE OFTEN AND BE ONGOING.**
- **IN IOWA, IT IS FACILITATED AT THE AEA LEVEL AND THE PARTICIPANTS INCLUDE PUBLIC AGENCY REPRESENTATIVES (SCHOOL DISTRICT AND AEA) AND A REPRESENTATIVE FROM THE ACCREDITED NONPUBLIC SCHOOL. IT IS TYPICALLY A MEETING BETWEEN ALL OF THE ADMINISTRATORS.**
- **REMEMBER, THIS PROCESS IS NOT CHILD SPECIFIC! SINCE IOWA OFFERS A FAPE TO ENTITLED STUDENTS AT ACCREDITED NONPUBLIC SCHOOLS, SERVICES CANNOT BE LIMITED BY A CONSULTIVE AGREEMENT.**



# MY CHILD HAS BEEN LOCATED OR IDENTIFIED - NOW WHAT?

- **THE AEA **MUST** HAVE **INFORMED CONSENT IN WRITING** FROM THE PARENTS PRIOR TO CONDUCTING THE **INITIAL EVALUATION**.**
- **I ALWAYS ENCOURAGE THE PARENTS TO REQUEST TO BE INTERVIEWED AS PART OF THIS EVALUATION PROCESS. FOR EXAMPLE, PARENTS HAVE VALUABLE INFORMATION TO SHARE ABOUT THEIR CHILD'S DIAGNOSIS, HOW IT COULD IMPACT LEARNING AND ACCESS TO EDUCATION, INFORMATION ABOUT THEIR CHILD'S BEHAVIOR, INCLUDING KNOWN TRIGGERS, COPING SKILLS, DE-ESCALATION TECHNIQUES, ETC.**

# **WHO IS RESPONSIBLE FOR CONDUCTING THIS INITIAL EVALUATION?**

- **THE PUBLIC SCHOOL DISTRICT AND THE AEA IN WHICH THE PRIVATE SCHOOL IS LOCATED IS CHARGED WITH EVALUATING THE CHILD AND HOLDING AN IEP TEAM MEETING (WITH ALL NECESSARY MEMBERS) TO CONSIDER THE ASSESSMENT, AND TO DETERMINE WHETHER THE CHILD IS ELIGIBLE FOR SPECIAL EDUCATION AND/OR RELATED SERVICES.**
- **THE AEA HAS THE RESPONSIBILITY TO LEAD THE EVALUATION.**

# DO PARENTS HAVE TO WAIT FOR THEIR CHILD TO BE “FOUND”?

- **ABSOLUTELY NOT!**
- **PARENTS CAN MAKE A WRITTEN REQUEST FOR AN EVALUATION TO THE AEA OR TO THE RESIDENT PUBLIC SCHOOL DISTRICT IN WHICH THE PRIVATE SCHOOL IS LOCATED.**
- **ONCE PARENTAL CONSENT IS GIVEN, THE CLOCK STARTS TICKING TO START THE EVALUATION. THEREFORE, TIMING OF THE REQUEST CAN MAKE A DIFFERENCE.**
- **MAKE SURE THE PARENTAL CONSENT FORM IDENTIFIES ALL AREAS OF SUSPECTED DISABILITY AND NEED FOR SPECIAL EDUCATION IN ANY OR ALL OF THE PERFORMANCE DOMAINS (ACADEMIC, BEHAVIOR, PHYSICAL, HEALTH, HEARING, VISION, ADAPTIVE BEHAVIOR, AND COMMUNICATION).**

# WHO SHOULD ATTEND THE MEETING TO DISCUSS THE INITIAL EVALUATION & ELIGIBILITY?

- **AN AEA REPRESENTATIVE – ENSURE THE INDIVIDUAL WHO CONDUCTED THE EVALUATION IS PRESENT TO EXPLAIN THE OUTCOMES AND RESULTS, AND TO ANSWER ANY QUESTIONS FROM THE PARENTS AND TEAM MEMBERS.**
- **A PUBLIC SCHOOL ADMINISTRATOR – USUALLY A SPECIAL EDUCATION DIRECTOR OR PRINCIPAL**
- **A PUBLIC SCHOOL SPECIAL EDUCATION TEACHER AND GENERAL EDUCATION**
- **A GENERAL/SPECIAL EDUCATION TEACHER(S) FROM THE NONPUBLIC SCHOOL**
- **AN ADMINISTRATOR FROM THE NONPUBLIC SCHOOL**
- **PARENTS/LEGAL GUARDIANS**
- **A TRANSLATOR IF NECESSARY FOR THE PARENTS, AND/OR FOR THE CHILD IF PARTICIPATING**
- **OTHER PERSONS WHO MAY HAVE RELEVANT KNOWLEDGE (IE: SPEECH THERAPIST, NURSE)**



# IF THE STUDENT IS ELIGIBLE FOR SERVICES, IS THE PUBLIC SCHOOL ALWAYS INVOLVED?

- **YES!** THIS IS **NOT** NEGOTIABLE. A PARENT OR THE NONPUBLIC SCHOOL CANNOT REJECT PUBLIC SCHOOL INVOLVEMENT AND STILL DEMAND SERVICES OR FUNDING.
- BOTH THE IDEA AND THE IOWA CODE **REQUIRE** SERVICES TO BE UNDER PUBLIC SUPERVISION AND CONTROL, IT IS A **NECESSARY** CONDITION.
- IF A PARENT DOES NOT ACCEPT PUBLIC AGENCY INVOLVEMENT, THE PARENT, AS A MATTER OF LAW, REJECTS SERVICES THE PUBLIC AGENCY IS REQUESTED TO PROVIDE.

# IF MY CHILD IS ELIGIBLE, WHAT IS MY CHILD ENTITLED TO?

- **EVERY STUDENT WITH A DISABILITY ELIGIBLE UNDER THE IDEA IS ENTITLED TO A **FAPE**, AND IN IOWA, THAT INCLUDES STUDENTS ATTENDING ACCREDITED NONPUBLIC SCHOOLS. THE IDEA DEFINES FAPE AS SPECIAL EDUCATION AND RELATED SERVICES THAT:**
  - **A. ARE PROVIDED AT **PUBLIC EXPENSE**, UNDER PUBLIC SUPERVISION AND DIRECTION, AND WITHOUT CHARGE;**
  - **B. **MEET THE STANDARDS** OF THE STATE EDUCATIONAL AGENCY, INCLUDING THE REQUIREMENTS OF THIS PART;**
  - **C. INCLUDE AN **APPROPRIATE** PRESCHOOL, ELEMENTARY SCHOOL, OR SECONDARY **SCHOOL EDUCATION** IN THE STATE INVOLVED; AND**
  - **D. ARE PROVIDED IN CONFORMITY WITH AN INDIVIDUALIZED EDUCATION PROGRAM (**IEP**) THAT MEETS THE FEDERAL REQUIREMENTS OF 34 CFR 300.320 THROUGH 34 CFR 300.324.**

# HOW IS A FAPE OFFERED?

- IF A CHILD IS ELIGIBLE FOR SPECIAL EDUCATION SERVICES, THE CHILD'S IEP TEAM USES EVALUATION DATA TO DRAFT AN **IEP** THAT ADDRESSES THE NEEDS IDENTIFIED IN THE EVALUATION.
- THIS MEANS THE IEP TEAM IS CHARGED WITH DETERMINING IEP PROGRAMMING AND SERVICES REQUIRED TO PROVIDE FAPE.
- THIS DOES **NOT** MEAN, HOWEVER, THAT THE IEP TEAM IS REQUIRED TO DEVELOP AN IEP THAT WILL MAXIMIZE A STUDENT'S EDUCATION, BUT IT SHOULD ADDRESS THEIR UNIQUE AND INDIVIDUAL CIRCUMSTANCES.
- **APPROPRIATE** EDUCATION IS DECIDED ON A CASE-BY-CASE BASIS.
- DRAFTING THE IEP IS A **COLLABORATIVE** PROCESS – THE PARENTS **MUST** BE INVOLVED.

# CONSULTATIVE SERVICES & RELATED SERVICES

- **CONSULTIVE SUPPORT SERVICES ARE THE SPECIALLY DESIGNED INSTRUCTION (SDI) AND ACTIVITIES THAT **AUGMENT, SUPPLEMENT OR SUPPORT** THE EDUCATIONAL PROGRAM OF ELIGIBLE INDIVIDUALS. THESE ARE CORRECTIVE AND SUPPORTIVE SERVICES THAT ARE REQUIRED TO ASSIST A CHILD WITH A DISABILITY TO BENEFIT FROM SPECIAL EDUCATION.**
- **FEDERAL LAW IDENTIFIES THESE TYPES OF SERVICES AS "**RELATED SERVICES**" AND THEY ARE **NOT** LIMITED TO THIS LIST:**
  - **SPECIAL EDUCATION CONSULTANT SERVICES, EDUCATION STRATEGIST SERVICES**
  - **AUDIOLOGY, SPEECH-LANGUAGE SERVICES, OCCUPATIONAL THERAPY, PHYSICAL THERAPY**
  - **SPECIAL EDUCATION NURSING SERVICES, SCHOOL SOCIAL WORK, SCHOOL PSYCHOLOGY**



# TRANSPORTATION

- **THERE IS NOTHING IN THE IDEA REQUIRING A PUBLIC SCHOOL DISTRICT TO TRANSPORT A PARENTALLY PLACED STUDENT TO AND FROM THE PARENT'S PREFERRED PRIVATE/RELIGIOUS SCHOOL.**
- **EXCEPTION - TRANSPORTATION FOR SPECIAL EDUCATION AND/OR RELATED SERVICES.**

# WHAT IS LEAST RESTRICTED ENVIRONMENT (LRE)?

- **THE IDEA REQUIRES CHILDREN WITH DISABILITIES TO BE EDUCATED IN REGULAR CLASSROOMS WITH NONDISABLED PEERS TO THE MAXIMUM EXTENT APPROPRIATE. 34 CFR 300.114 (A)**
- **WHEN DETERMINING **LRE**, THE IEP TEAM CONSIDERS MANY DIFFERENT FACTORS. FOR EXAMPLE:**
  - **DOES THE STUDENT'S NEED FOR INTENSIVE SPECIAL EDUCATION SERVICES OUTWEIGH HIS/HER NEED TO INTERACT WITH TYPICALLY DEVELOPING PEERS?**
  - **DOES THE STUDENT ENGAGE IN SIGNIFICANTLY DISRUPTIVE BEHAVIOR THAT INTERFERES WITH THE EDUCATION OF CLASSMATES?**
  - **WILL THE STUDENT NOT RECEIVE A SUFFICIENT EDUCATIONAL BENEFIT IN A GENERAL EDUCATION CLASSROOM, EVEN WITH THE PROVISION OF SUPPLEMENTARY AIDS AND SERVICES?**

# WHERE AND WHO CAN PROVIDE THESE SPECIAL EDUCATION SERVICES?

- SPECIAL EDUCATION AND RELATED SERVICES **MAY** BE PROVIDED ON THE NONPUBLIC SCHOOL SITE, IF CONSISTENT WITH STATE LAW.
- SPECIAL EDUCATION AND RELATED SERVICES **MUST** BE PROVIDED BY AN EMPLOYEE OF THE PUBLIC SCHOOL OR AEA, OR BY CONTRACT WITH THE PUBLIC SCHOOL OR AEA.
- PERSONNEL WHO PROVIDE IDEA PART B-FUNDED SPECIAL EDUCATION OR RELATED SERVICES IN ACCREDITED NONPUBLIC SCHOOLS **MUST** MEET THE SAME STANDARDS AS PERSONNEL EMPLOYED IN PUBLIC SCHOOLS.

# ARE THERE SERVICES THAT MUST BE PROVIDED ON THE NONPUBLIC SCHOOL SITE?

- **YES! FEDERAL REGULATION CONCERNING TRANSPORTATION SERVICES.** 34 C.F.R. § 300.139(B)
  - **IF NECESSARY FOR THE CHILD TO BENEFIT FROM OR PARTICIPATE IN THE SERVICES PROVIDED UNDER THIS PART, A PARENTALLY-PLACED PRIVATE SCHOOL CHILD WITH A DISABILITY MUST BE PROVIDED TRANSPORTATION:**
    - **(A) FROM THE CHILD'S SCHOOL OR THE CHILD'S HOME TO A SITE OTHER THAN THE PRIVATE SCHOOL; AND**
    - **(B) FROM THE SERVICE SITE TO THE PRIVATE SCHOOL, OR TO THE CHILD'S HOME, DEPENDING ON THE TIMING OF THE SERVICES.**



# ARE THERE SERVICES THAT COULD BE PROVIDED AT THE NONPUBLIC SCHOOL?

- **YES!** ALL POTENTIAL SERVICES ARE THEN BROKEN INTO **TWO GROUPS:**
  - (1) THOSE THAT “**MAY** BE PROVIDED ON NONPUBLIC SCHOOL PREMISES WITH THE **PERMISSION** OF THE LAWFUL CUSTODIAN” AND,
  - (2) THOSE THAT “**MAY** BE PROVIDED ON NONPUBLIC SCHOOL PREMISES AT THE **DISCRETION** OF THE SCHOOL DISTRICT OR AREA EDUCATION AGENCY **AND** WITH THE **PERMISSION** OF THE LAWFUL CUSTODIAN OF THE PROPERTY.”

# GROUP 1...

- **UNDER STATE LAW THE FOLLOWING SERVICES MAY BE PROVIDED ON THE PREMISES OF A NONPUBLIC SCHOOL, WITH THE PERMISSION OF THE LAWFUL CUSTODIAN OF THE NONPUBLIC SCHOOL PROPERTY:**
  - **A. HEALTH SERVICES**
  - **B. SPECIAL EDUCATION SUPPORT, AND RELATED SERVICES PROVIDED BY THE AEA FOR THE PURPOSE OF IDENTIFYING CHILDREN WITH DISABILITIES**
  - **C. ASSISTANCE WITH PHYSICAL AND COMMUNICATION NEEDS OF STUDENTS WITH PHYSICAL DISABILITIES**
  - **D. SERVICES OF AN EDUCATIONAL INTERPRETER**

## GROUP 2...

- **AGAIN, PURSUANT TO STATE LAW, ANY OTHER IDENTIFIED SERVICES MAY BE PROVIDED ON THE PREMISES OF AN ACCREDITED NONPUBLIC SCHOOL AT THE DISCRETION OF THE PUBLIC SCHOOL DISTRICT OR AEA PROVIDER OF THE SERVICE AND WITH THE PERMISSION OF THE LAWFUL CUSTODIAN OF THE PROPERTY.**
- **NEITHER THE AEA OR THE PUBLIC SCHOOL DISTRICT, NOR THE ACCREDITED NONPUBLIC SCHOOL IS REQUIRED TO AGREE TO PROVIDE SERVICES ON THE SITE OF AN ACCREDITED NONPUBLIC SCHOOL. AT THE SAME TIME, THE PUBLIC SCHOOL AND AEA CANNOT ABUSE THIS DISCRETION.**

# **RECAP...LOCATION PER DEPARTMENT GUIDANCE**

- **CONCERNING LOCATION OF SERVICES, FEDERAL LAW ALLOWS SERVICES TO BE PROVIDED ON THE SITE OF THE ACCREDITED NONPUBLIC SCHOOL IF PERMITTED BY STATE LAW.**
- **STATE LAW PERMITS THOSE SERVICES IF AGREED, AS DESCRIBED ABOVE IN GROUP 1 AND 2.**



# **WHAT IF THE PARENT DOES NOT AGREE WITH WHAT IS BEING PROPOSED OR OFFERED BY THE PUBLIC SCHOOL DISTRICT AND THE AEA?**

- **PARENTS WHO ARE DISSATISFIED WITH IEPS OFFERED TO THEIR CHILDREN WITH DISABILITIES WHO ARE ENROLLED IN ACCREDITED NONPUBLIC SCHOOLS MAY USE THE SAME PROCEDURAL SAFEGUARDS AVAILABLE TO STUDENTS WITH DISABILITIES WHO ARE ENROLLED IN PUBLIC SCHOOLS.**
- **[HTTPS://EDUCATEIOWA.GOV/DOCUMENTS/SPECIAL-EDUCATION-PARENT-  
INFORMATION/2021/02/PROCEDURAL-SAFEGUARDS-MANUAL-PARENTS-RIGHTS](https://educateiowa.gov/documents/special-education-parent-information/2021/02/procedural-safeguards-manual-parents-rights)**

# WHAT ARE PROCEDURAL SAFEGUARDS?

- **PROCEDURAL SAFEGUARDS INFORM PARENTS ABOUT THE RIGHTS AND PROTECTIONS AVAILABLE UNDER THE IDEA. PROCEDURAL SAFEGUARDS ARE THE RIGHTS THAT PERSONS HAVE THAT PROTECT THEM IN THEIR INTERACTIONS WITH FEDERAL, STATE, AND LOCAL GOVERNMENTS. THE FOLLOWING IS A LIST OF THESE RIGHTS UNDER THE IDEA:**
  - **PROCEDURAL SAFEGUARD NOTICE (A WRITTEN EXPLANATION OF BOTH YOUR RIGHTS UNDER STATE LAW AND FEDERAL IDEA LAW)**
  - **PARENT/LEGAL GUARDIAN PARTICIPATION**
  - **ACCESS TO EDUCATIONAL RECORDS**
  - **CONFIDENTIALITY OF INFORMATION**

# **WHAT ARE PROCEDURAL SAFEGUARDS?...CONTINUED**

- **INFORMED PARENTAL CONSENT**
- **PRIOR WRITTEN NOTICE**
- **UNDERSTANDABLE LANGUAGE**
- **INDEPENDENT EDUCATIONAL EVALUATION (IEE)**
- **“STAY PUT” RIGHTS**
- **ALTERNATIVE DISPUTE RESOLUTIONS (DUE PROCESS, VOLUNTARY MEDIATION, STATE COMPLAINT)**

# **IF THE PARENT DOES NOT AGREE WITH THE PROPOSED SERVICES OR LOCATION OF SERVICES...**

- **BE PREPARED TO ASK WHAT SPECIFIC FACTORS WERE CONSIDERED AND WHAT INFORMATION WAS RELIED UPON WHEN THE PUBLIC SCHOOL DISTRICT AND AEA MADE THEIR DECISIONS.**
- **FOR EXAMPLE, WERE THEY BASED UPON PUBLIC STAFF ADMINISTRATIVE CONVENIENCE INSTEAD OF THE BEST INTERESTS OF THE CHILD?**
- **IF THE PUBLIC SCHOOL AND AEA REFUSE TO PROVIDE SERVICES AT THE NONPUBLIC SCHOOL, EVEN IF THEY WERE GRANTED PERMISSION FROM THE CUSTODIAN, BE PREPARED TO ASK HOW PROVIDING SERVICES AT THE NONPUBLIC SCHOOL WOULD FRUSTRATE ITS PURPOSE OR WOULD NOT BE AN EDUCATIONAL BENEFIT TO THE STUDENT.**



# **THERE IS A FUNDING MECHANISM FOR THE PUBLIC SCHOOL DISTRICT TO PROVIDE SERVICES**

- **PUBLIC SCHOOL DISTRICTS HAVE ACCESS TO IDEA (FEDERAL) FUNDS TO PROVIDE A STUDENT FROM A NONPUBLIC SCHOOL WITH SPECIAL EDUCATION AND RELATED SERVICES.**
- **THERE IS ALSO STATE FUNDING UNDER IOWA CODE § 256(12)(6), WHICH IS DESIGNED TO MAKE THE DISTRICT WHOLE. THE DISTRICT CAN CARRY OVER UNSPENT FUNDS FOR ONE YEAR; AND CAN SUBMIT A CLAIM FOR ACTUAL COSTS TO THE DEPARTMENT OF EDUCATION.**
- **RED FLAG - IF THE PUBLIC SCHOOL OR AEA STATES THEY CANNOT AFFORD THE SERVICES.**

# **PARENTS, CAREFULLY REVIEW THE PRIOR WRITTEN NOTICE (PWN)**

- **AFTER THE ELIGIBILITY MEETING, A PRIOR WRITTEN NOTICE WILL BE ISSUED DESCRIBING WHAT SERVICES WERE SPECIFICALLY PROPOSED AND/OR REJECTED, WHY THEY WERE PROPOSED AND/OR REJECTED, WHAT INFORMATION WAS CONSIDERED WHEN THESE DECISIONS WERE MADE, AND IF ELIGIBLE, WHEN THESE SERVICES WILL COMMENCE.**
- **UPON REVIEW, IF THE PWN IS NOT CORRECT, IMMEDIATELY, AND IN WRITING, NOTIFY THE PUBLIC SCHOOL DISTRICT AND AEA OF ALL CONCERNS AND SUSPECTED ERRORS.**
- **BEFORE THE ELIGIBILITY OR IEP MEETING HAS ENDED, IT IS IMPORTANT TO EXPRESS YOUR CONCERNS, INCLUDING IF YOU HAVE ANY OBJECTIONS TO ANY OF THE PROPOSALS.**

# THERE ARE ALTERNATIVE DISPUTE RESOLUTIONS OFFERED TO PARENTS WHO DISAGREE WITH THE PROPOSED IEP OR DENIAL OF SERVICES

- **AS PART OF THEIR PROCEDURAL SAFEGUARD PROTECTIONS, PARENTS HAVE OPTIONS TO CHALLENGE THE EVALUATION, PLACEMENT AND FAPE DECISIONS MADE BY THE PUBLIC SCHOOL AND THE AEA:**
  - **FILE A DUE PROCESS COMPLAINT WITH THE IOWA DEPARTMENT OF EDUCATION.**
  - **REQUEST A MEDICATION CONFERENCE WITH THE IOWA DEPARTMENT OF EDUCATION (WHICH IS A VOLUNTARY PROCESS).**
  - **FILE A STATE COMPLAINT WITH THE IOWA DEPARTMENT OF EDUCATION.**
  - **THE PARENTAL PROCEDURAL SAFEGUARDS MANUAL FURTHER EXPLAINS EACH OF THESE OPTIONS.**

# DISCRETION SHOULD NOT BE ABUSED

- **THE PUBLIC SCHOOL DISTRICT DOES **NOT** HAVE THE DISCRETION TO REJECT ELIGIBILITY UNLESS THE PARENTS AGREE TO ALL SERVICES IN THE PUBLIC SCHOOL DISTRICT. A “TAKE IT OR LEAVE IT” APPROACH MAY NOT ONLY BE AN ABUSE OF DISCRETION, BUT POSSIBLY A FAPE VIOLATION AS WELL.**
- **THE PUBLIC SCHOOL **MUST** HAVE A VALID REASONS TO EXERCISE ITS DISCRETION AND THOSE REASONS SHOULD BE EXPLAINED IN DETAIL IN THE PWN.**



# **ARE THERE PARENTAL OPTIONS IF THE NONPUBLIC SCHOOL DOES NOT PROVIDE PERMISSION FOR ONSITE SERVICES?**

- **THE STUDENT CAN BE TRANSPORTED TO THE PUBLIC SCHOOL FOR THE OFFERED SPECIAL EDUCATION AND RELATED SERVICES.**
- **THE STUDENT CAN STAY FULL-TIME IN THE NONPUBLIC SCHOOL AND FORGO SPECIAL EDUCATION IMPLEMENTATION.**
- **THE STUDENT CAN ENROLL IN THE PUBLIC SCHOOL FULL-TIME.**
- **THE STUDENT CAN TRANSFER TO ANOTHER NONPUBLIC SCHOOL THAT DOES PERMIT ONSITE SPECIAL EDUCATION AND RELATED SERVICES.**

# **RELATIONSHIP BUILDING AND TRANSPARENCY IS HELPFUL**

- **AS SOON AS PRACTICABLE, MEET WITH THE ESSENTIAL ADMINISTRATORS AND TEACHERS BOTH AT THE PUBLIC AND NONPUBLIC SCHOOLS.**
- **CONSIDER INTRODUCING THEM TO YOUR CHILD AS WELL.**
- **DISCUSS YOUR PREFERENCE FOR WANTING TO ENROLL YOUR CHILD IN THE NONPUBLIC SCHOOL.**
- **IF THE NONPUBLIC SCHOOL IS HESITANT TO PERMIT SPECIAL EDUCATION AND RELATED SERVICES ONSITE, ENGAGE IN AN OPEN DIALOGUE TO LEARN WHY. BRAINSTORM AND DISCUSS POSSIBLE SOLUTIONS. IS THE TEACHER NOT COMFORTABLE? CAN TRAINING REMEDIATE A CONCERN?**
- **PARENTS ASK THE NONPUBLIC TEACHER WHAT HE/SHE NEEDS IN ORDER TO DO HIS/HER JOB?**
- **ASK THE NONPUBLIC TEACHER IF HE/SHE CAN IMPLEMENT THE PROPOSED IEP WITH FIDELITY? AND IF NOT, WHY?**

# SOME ADDITIONAL THOUGHTS

- **EXERCISE FLEXIBLE THINKING AND CREATIVE PLANNING, EXPLORE ALL POSSIBLE SERVICES AND OPTIONS.**
- **IS IT POSSIBLE FOR THE NONPUBLIC TEACHER TO IMPLEMENT THE IEP GOALS AND PROVIDE THE SDI AND THEN HAVE THE PUBLIC SCHOOL TEACHER REVIEW THE PROGRESS MONITORING AND ANALYZE THE DATA?**
- **SOME STUDENTS MAY HAVE DIFFICULTY WITH TRANSITIONS OR WITH ELOPEMENT. LOOK AT ALL VARIABLES AND DISCUSS CONCERNS AND SAFETY ISSUES BEFORE SELECTING LOCATION OF SERVICES.**
- **REQUEST A COPY OF THE EVALUATION REPORT AND CORRESPONDING DATA, ALONG WITH THE DRAFT IEP **PRIOR TO THE IEP MEETING** SO YOU HAVE TIME TO REVIEW AND PREPARE QUESTIONS AND COMMENTS.**
- **BEFORE YOU LEAVE AN IEP MEETING, MAKE SURE THE TEAM REVIEWS **WHAT** SERVICES ARE BEING PROVIDED, **WHERE** THE SERVICES ARE BEING PROVIDED AND **HOW MUCH** IS BEING PROVIDED. THEN ASK WHAT WILL BE DOCUMENTED IN THE PWN. IF THE PARENT HAS OBJECTIONS TO ANY PROPOSALS, REQUEST THAT THOSE BE DULY NOTED IN THE PWN AS WELL.**



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