

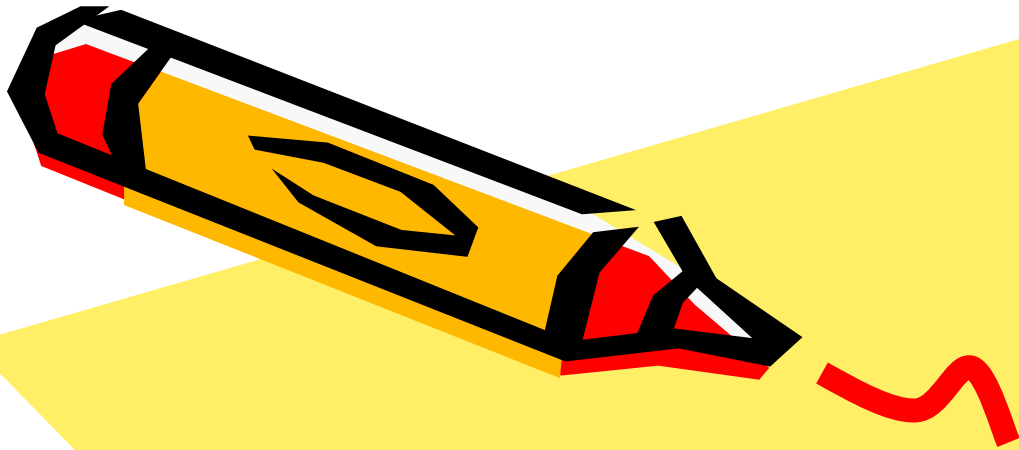


Education Advocacy

Youth Law T.E.A.M. of Indiana
Training

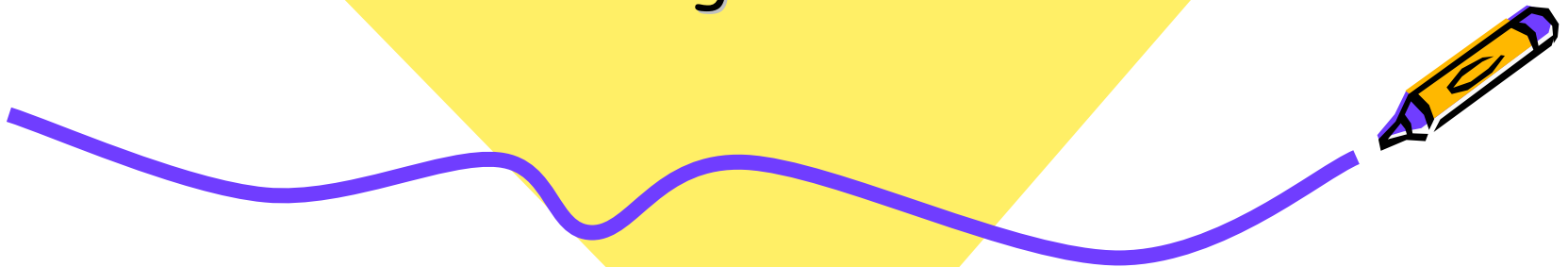


Supported by the Indiana Supreme Court - Court Improvement Program grant # CIP-FY-07-09



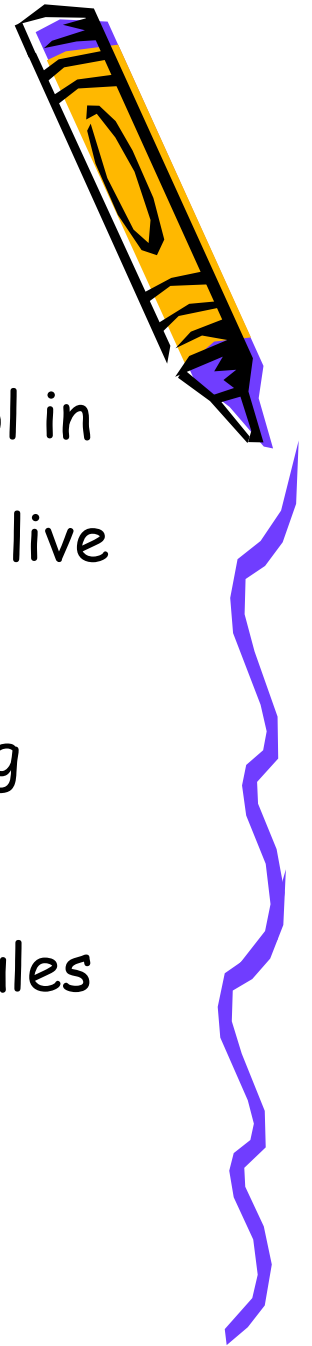
Basic Education

Rights



3 Most Important Things about Basic Education Rights

- Children have the right to attend public school in the district where they live, even if they are homeless, have just moved to the area, or will live in the area for only a short time.
- Schools must make prompt decisions regarding enrollment.
- Schools may make exceptions to their usual rules or take other special steps needed to provide equal education opportunities to out-of-home students.

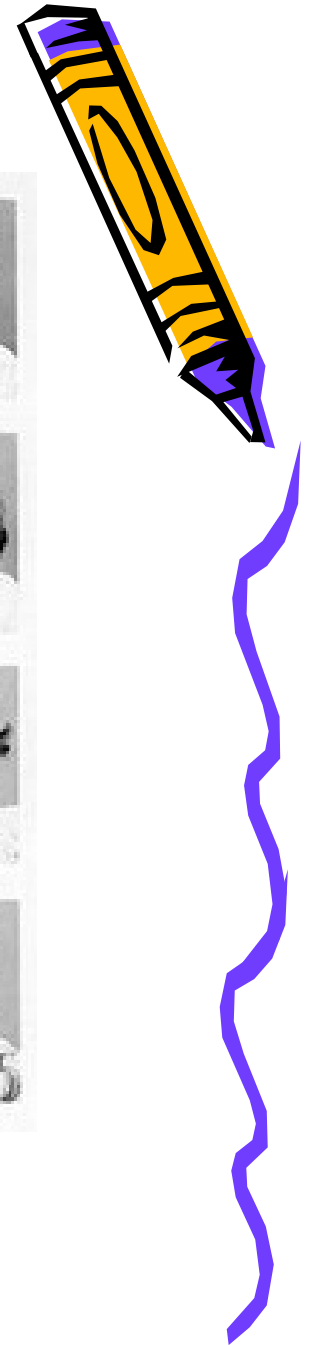


Enrollment Rules

Indiana law requires:

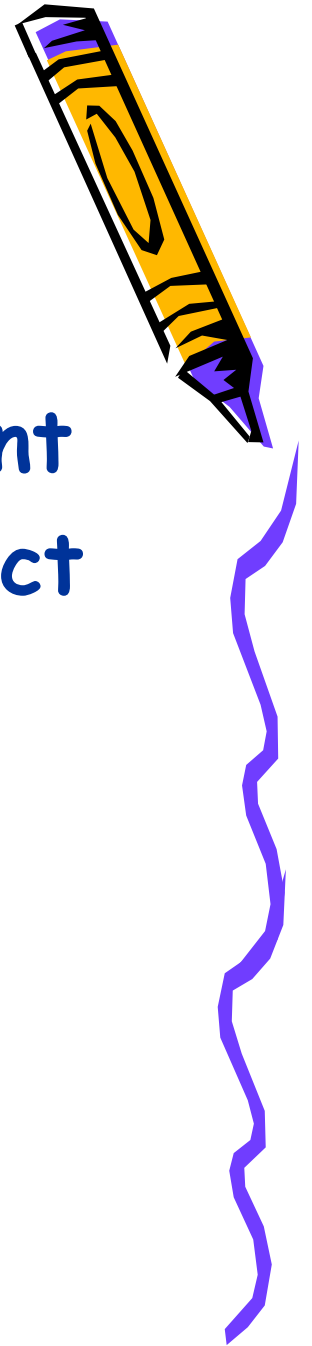
- name and address of the school that the student last attended*
 - a certified copy of either the child's birth certificate or some other form of proof of the child's date of birth
 - proof of immunizations
- * Not more than 14 days after initial enrollment in a school, the school must request the student's records from the school the student last attended.





Enrollment Issues

- Mid-year or semester enrollment
- Prior discipline in another district
 - Uncertain or transient living situations
 - Delayed decision-making



Out of home youth

- Indiana Department of Education coordinator for education of homeless children.

www.doe.state.in.us/alted/homelesslinkpg.html

- Each school corporation is required to appoint a liaison for homeless children.
- Tutoring, beginning June 30, 2009.
- *McKinney-Vento Homeless Act at 42 U.S.C. § 11431 et seq.; I.C. 20-50-2-3*



CHINS

- **Students placed by the Department of Child Services or the court:**
 - A student placed, by the Department of Child Services or by the court in foster care or with relatives or caregivers may attend either the school where they are placed or the school where they have legal settlement.

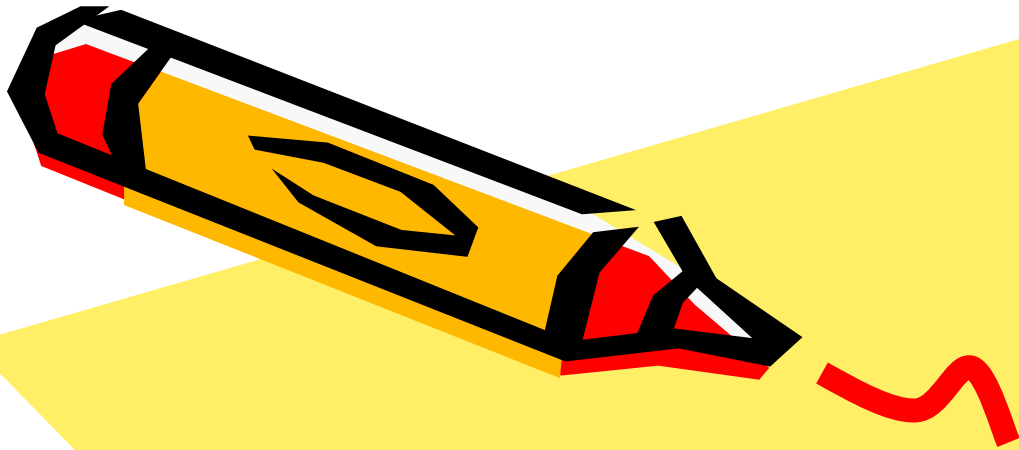


Informally placed children

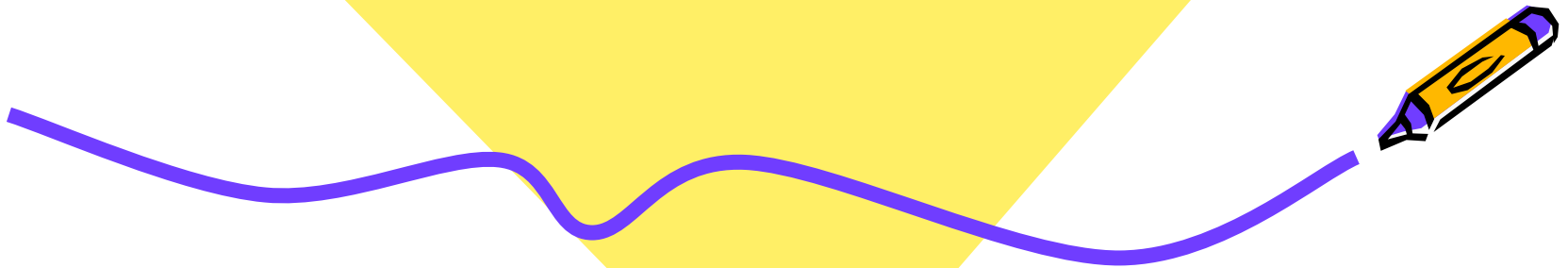
- The legal settlement of the student is in the attendance area of the school corporation where the student's parents reside.
- If the student is living with someone other than the student's parent but is not in a foster care situation, the student's legal settlement will be where the student is currently residing if the Custodial Agreement Form is filled out and submitted to the school.

www.doe.state.in.us/legal/welcome.html



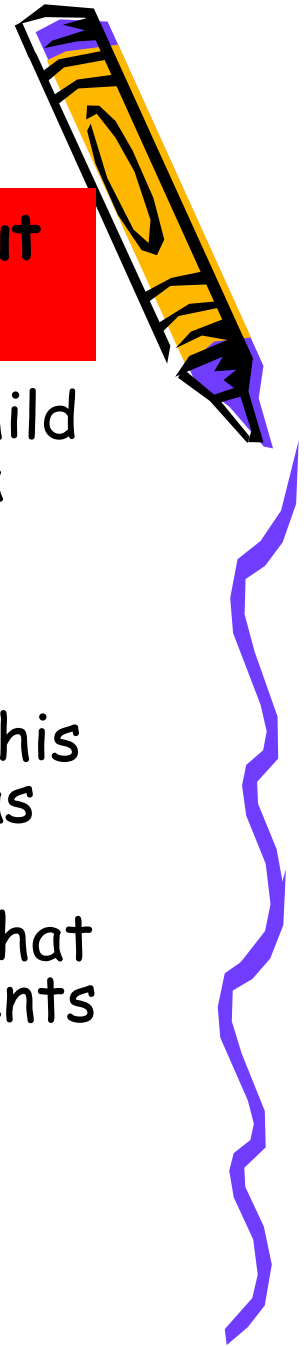


SPECIAL EDUCATION



The 3 Most Important Things to Remember about Special Education

- A problem that adversely interferes with a child or youth's ability to learn may be considered a disability under the law.
- Every child and youth with a disability that adversely affects learning has a right to instruction that is specially designed to meet his or her needs, in a school environment that is as much like a regular classroom as possible.
- There are strict timelines and requirements that school districts must follow in providing students with special education services.





Right to Special Education Services

- All children and youth between the ages of 3 and 21 who have an impairment that adversely interferes with their ability to learn can be eligible for additional support and services to help them achieve a meaningful education. Even babies and toddlers, from birth up to age three, can receive special education services through Indiana's First Steps Early Intervention System.



There are two primary laws that protect students with disabilities.



Section 504

- (Section 504 of the Rehabilitation Act)
- more expansive definition of "disability."
- Section 504 provides services and accommodations if a child has a physical or mental impairment that substantially limits a major life activity.
- school districts are required to provide disabled students with FAPE.



IDEIA

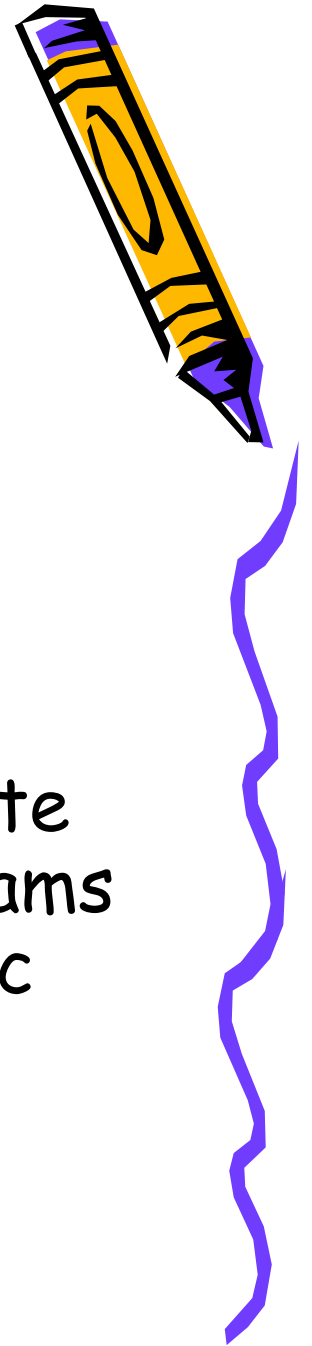
- (Individuals with Disabilities Education Improvement Act of 2004)
- The IDEIA provides services to children who fall within one or more of categories of disability and who need special education and related services to make academic progress.
- school districts are required to provide disabled students with FAPE.



What is a Disability under Section 504?

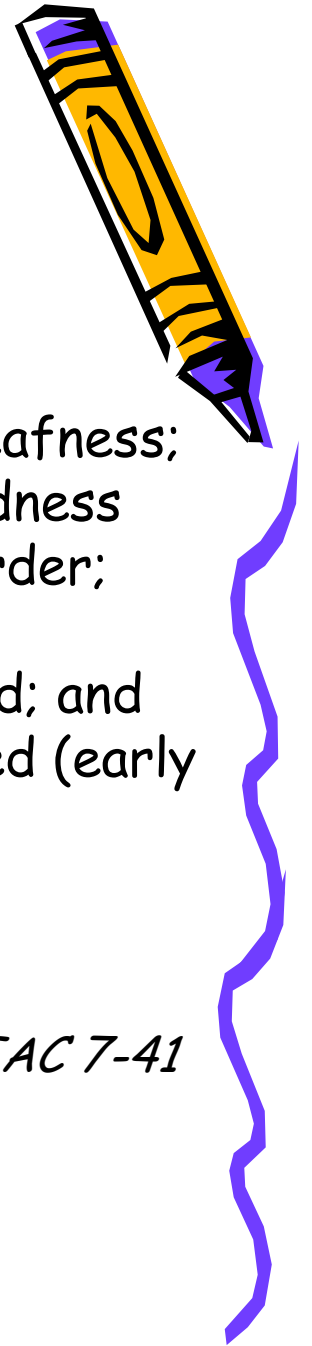
A physical or mental impairment that substantially limits a major life activity

Section 504 made it illegal to discriminate against people with disabilities in programs receiving federal funds, such as public schools



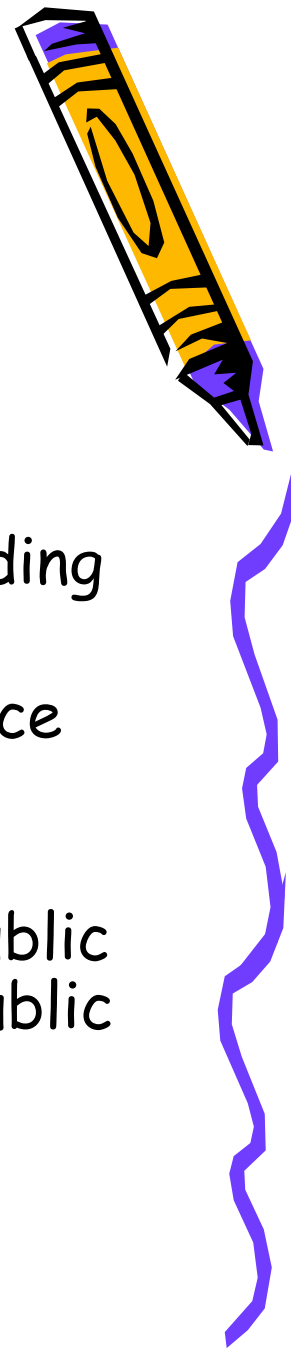
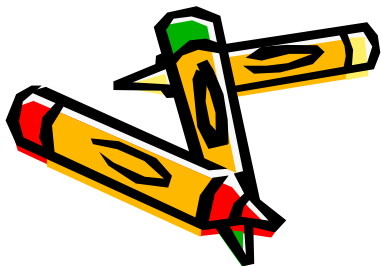
What is a Disability under the IDEA?

- Emotionally/behaviorally disabled;
 - Health impaired (may include ADD and ADHD);
 - Specific learning disability (difficulty with thinking, reading, writing, spelling or doing math);
 - Communication disorder (speech and language impairments);
 - Mental retardation;
 - Hearing impairment/deafness;
 - Visual impairment/blindness
 - Autism spectrum disorder;
 - Traumatic brain injury;
 - Orthopedically impaired; and
 - Developmentally delayed (early childhood).
- 20 U.S.C. § 1401(3); 511 IAC 7-41*



What is Article 7 of the Indiana Administrative Code?

- Article 7 of the Indiana Administrative Code contains Indiana's regulations and rules regarding the provision of special education services.
- Ensures that Indiana's schools are in compliance with the federal law IDEIA.
- Requires that each student with a disability between the ages of 3 and 22, enrolled in a public school, be provided with a free appropriate public education ("FAPE").

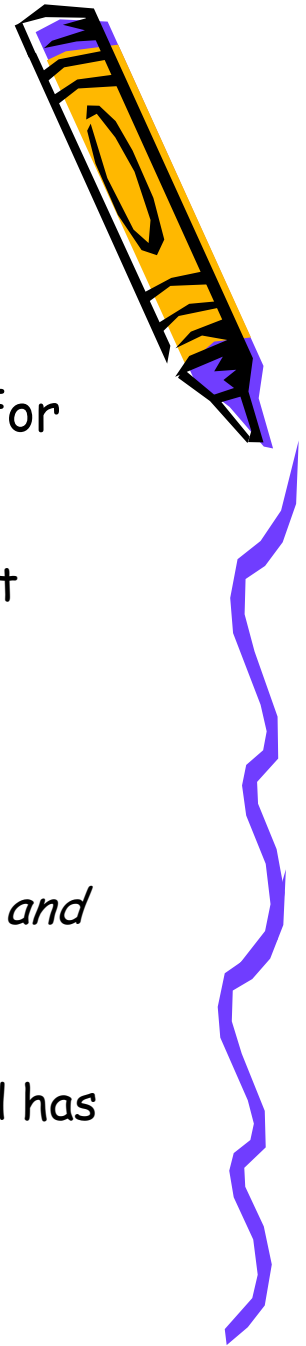


Who can make special education decisions?

A "parent" is needed to make special education decisions for child. The Individuals with Disabilities Education Act (IDEA) and Article 7 define a "parent" as

- Any natural or adoptive parent whose parental rights have not been terminated or restricted in accordance with law.
- A guardian, including a court-appointed temporary guardian.
- A foster parent.
- A person with legal custody, including a grandparent or other relative, who accepts full legal responsibility for the student *and* with whom the student lives.
- An educational surrogate parent ("ESP").
- Any student with a disability who is age eighteen or older and has not had a guardian appointed by a court.

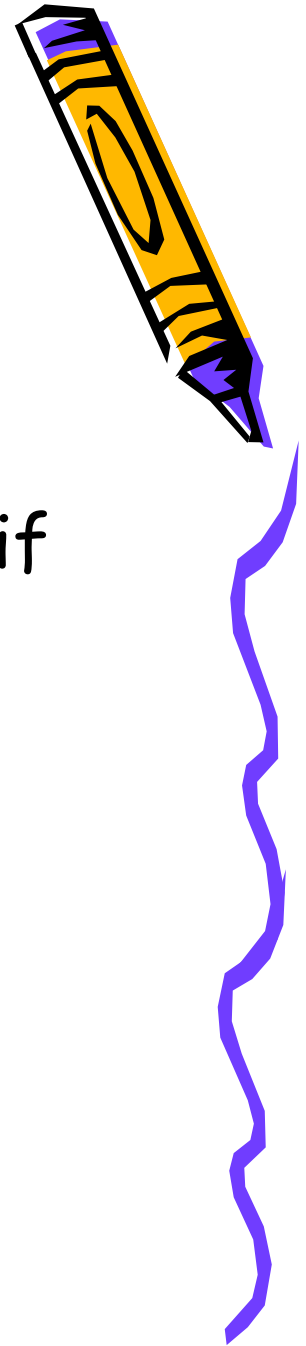
• *511 IAC 7-32-70*



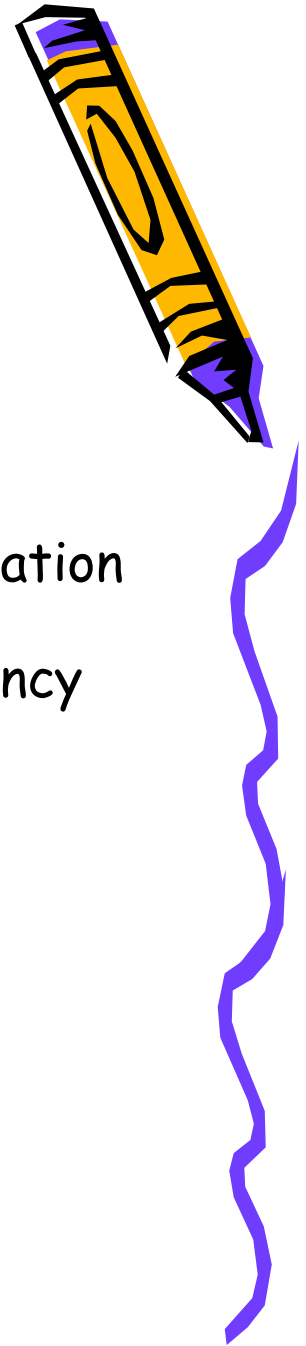
When Does a Child Need a Educational Surrogate Parent?

School district must appoint a surrogate if

- No "parent" can be identified
- School, after reasonable efforts, can't locate parent
- Child is unaccompanied homeless youth



What are the limits on who a school district can appoint as a surrogate parent?



- Who may not be a surrogate parent?
 - Employees of school district or department of education
 - Employees of "any agency that is involved in the education or care of the child" (DCS or private agency workers)
- Other rules for School-appointed surrogates:
 - Can't have a conflict of interest
 - Must have knowledge and skills to represent child
 - Must match the student's cultural and linguistic background to the extent possible



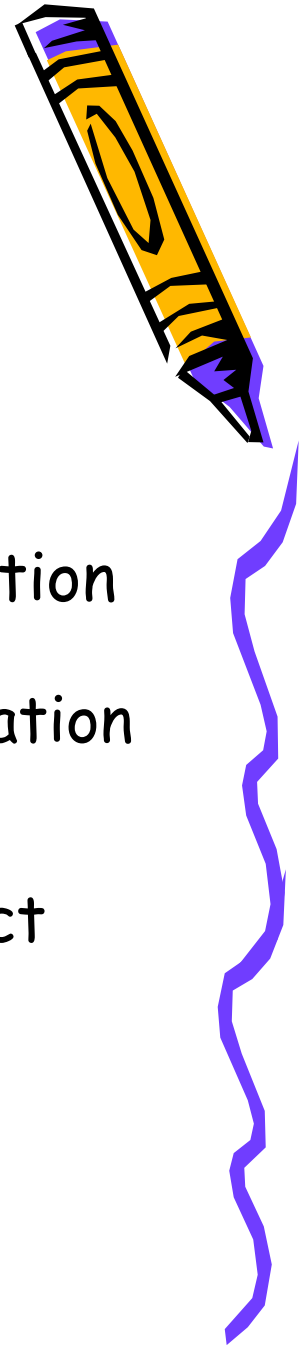
Process

Step 1: Request an Evaluation

There are three basic steps to make an evaluation happen:

- The parent or school makes a special education referral.
- The district provides written notice to the parent that the district proposes to conduct the educational evaluation.
- Written parental consent is given to the district for the evaluation.

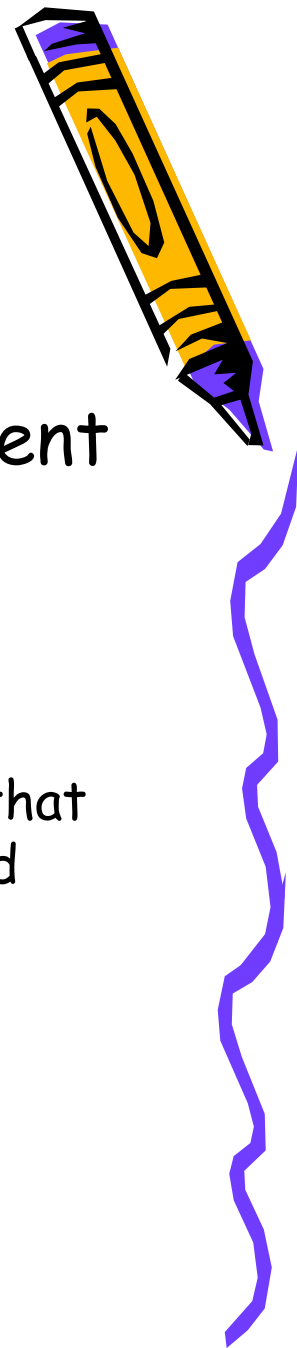
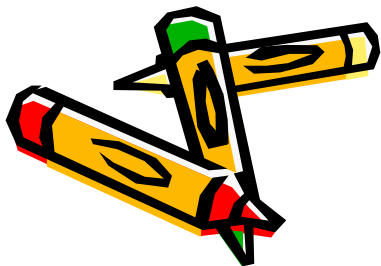
- 511 IAC 7-40-4



Who can refer a student for a special education evaluation?

The following individuals can refer a student for a special education evaluation:

- Parents;
- A “public agency”
 - A public agency is defined as “any public entity that is responsible for providing special education and related services.” 511 IAC 7-32-77



Step 2: Evaluation

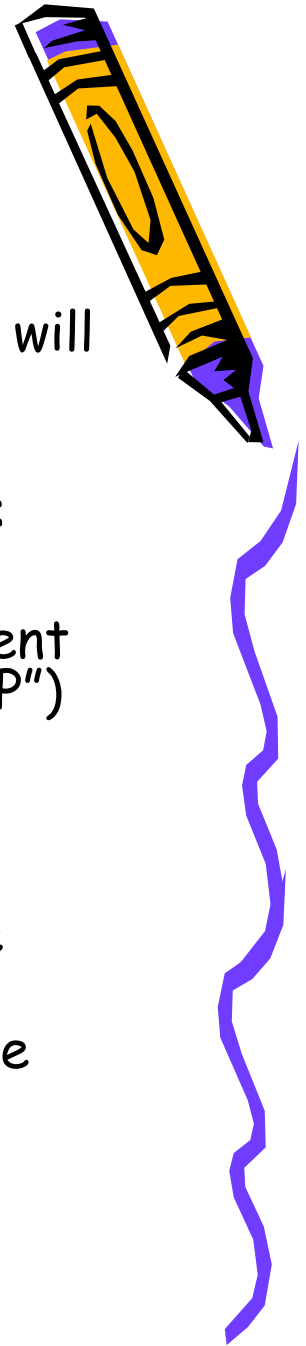
A multidisciplinary team of qualified professionals will conduct the evaluation testing.

The special education evaluation has two purposes:

- to determine eligibility for services, and
- to identify the needs and strengths of the student so that an individualized education program ("IEP") can be developed.

The evaluation:

- Must be free, non-discriminatory and assess the child in all areas of suspected disability
- Must be in a language most likely to give accurate info.



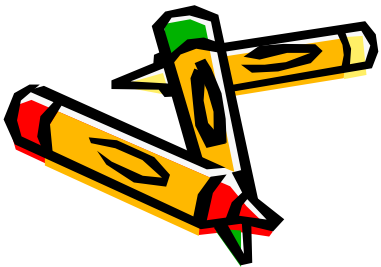
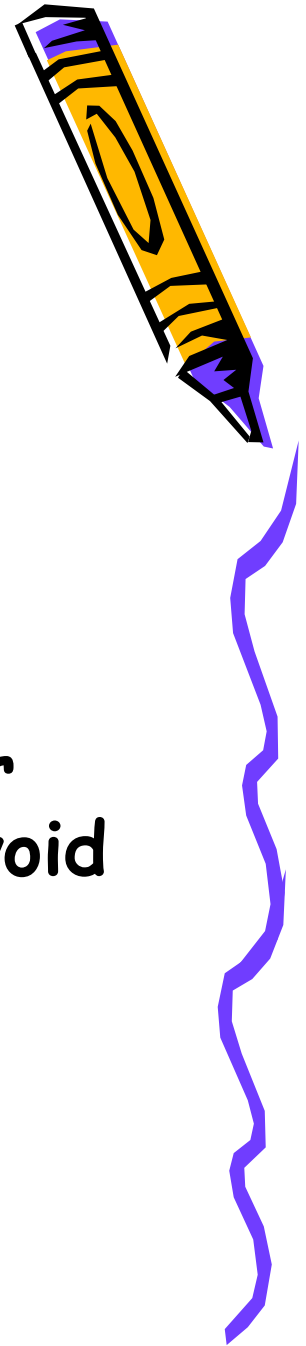
Case Conference Committee

- Whether a student is eligible for special education is determined by a group of people called the Case Conference Committee ("CCC"). The CCC includes :
 - A representative of the school district
 - The student's current teacher of record,
 - One of the student's general education teachers, if the student is or may be participating in the general education environment;
 - An individual who can interpret the instructional implications of evaluation results, who may be a member of the CCC already described, and;
 - The parent of a student, who is less than age eighteen, or the student, if the student is at least age eighteen and has not been adjudicated incompetent.
 - *511 IAC 7-42-3(b)*



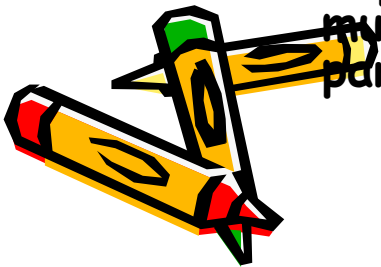
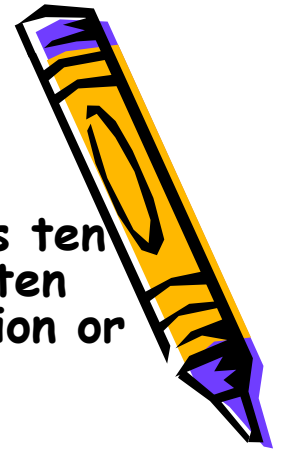
Independent Educational Evaluation

- If a parent disagrees with the evaluation results, the parent can request an independent educational evaluation ("IEE").
- The IEE is done at public expense (or the school must go to a hearing to avoid paying)
- Only one IEE per school evaluation



Timelines

- After a parent makes a request, the public agency has ten (10) instructional days to provide the parent with written notice that the school is willing to conduct the evaluation or that the school refuses to conduct the evaluation.
- The initial educational evaluation must be conducted and the CCC convened within fifty (50) instructional days of the date the written parental consent is received.
- The school district will provide the parent with a copy of the IEP at the end of the CCC meeting or will mail a copy of the IEP to the parent within ten (10) business days after the date of the CCC meeting. Services identified in the IEP will be provided within ten (10) instructional days after the parent consents to the initial IEP.
- If a parent disagrees with the evaluation results, the parent can request an independent evaluation at public expense. Within TEN (10) business days, the school district must either initiate a due process hearing or notify the parent in writing that the IEE will be at public expense.



What can parents do if a child is denied eligibility for special education?

- A parent may initiate a due process hearing that is conducted by an independent hearing officer ("IHO") when there is any dispute regarding the student's identification and eligibility for services.
- A parent can also request mediation.



STEP 3: Individualized Education Program



If student is found eligible:

- What is an "IEP"?
 - An IEP is a written document that describes how a student will access the general education curriculum and the special education services needed to participate in the educational environment. An IEP should be tailored to a child and his or her educational needs. The IEP is developed by the CCC.
 - IEP provided to parent at the end of the CCC meeting or mailed within ten (10) business days.
 - Services identified in the IEP will be provided within ten (10) instructional days after the parent consents to the initial IEP



- Implementing/Revising IEPs

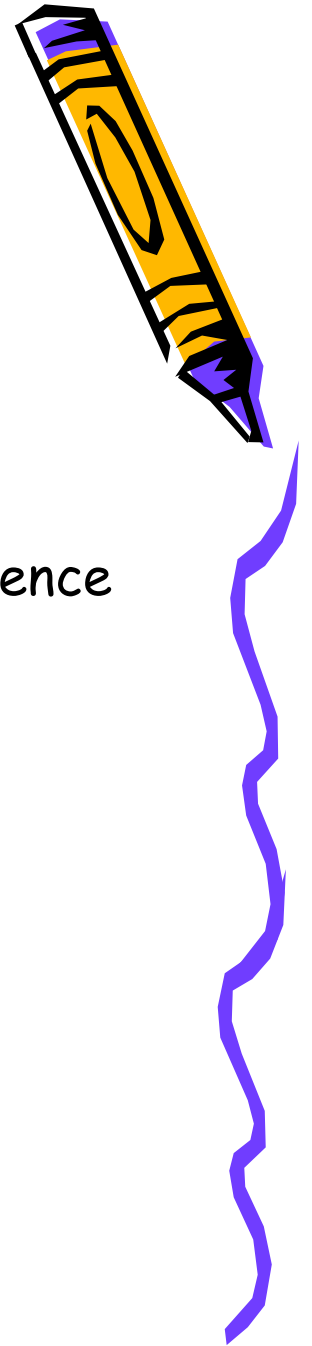
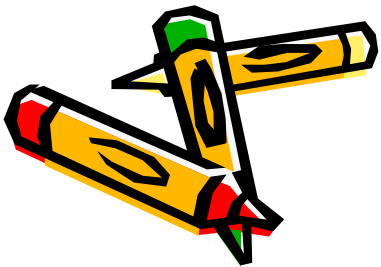
- When and how often?

- Must be implemented w/in 10 school days
 - Case conference committee must meet at least annually to review the student's IEP
 - Parents or the school may request a case conference committee meeting at any time

- Reevaluations

- When?

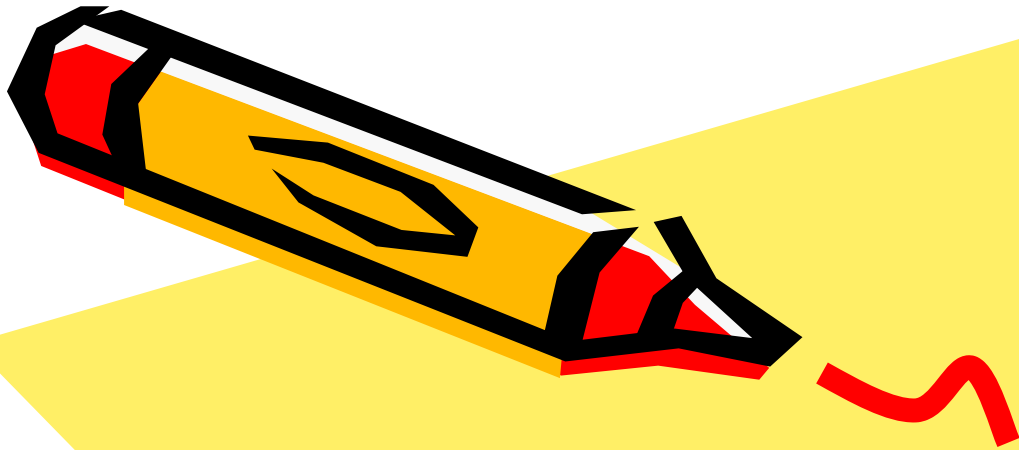
- Every 3 years; or
 - If the student's parent or teacher requests a reevaluation; or
 - If school believes "conditions warrant"



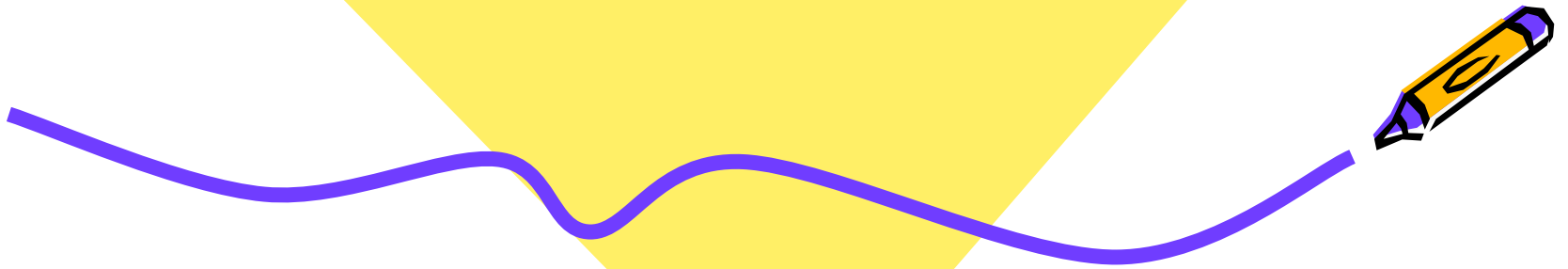
What to do if you there is a disagreement with the school

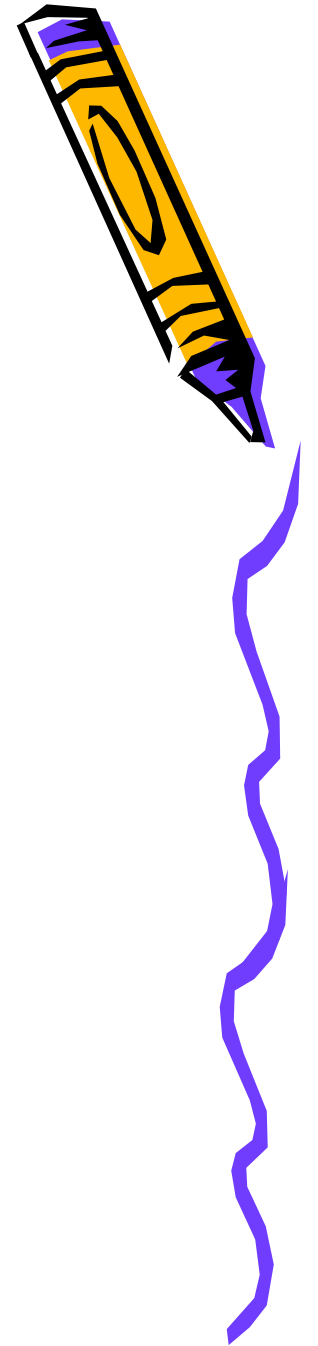
- What: File a complaint with the Indiana Department of Education's Division of Special Education ("Division of Special Education") and the school district.
- When: school isn't following the IEP or a clear legal rule (ex: timelines, procedures, etc.)
- Who: Anyone may file a complaint on behalf of a student
- How:
 - The complaint must be in writing;
 - state the alleged Article 7 or IDEIA violations and the facts on which the allegations are based;
 - be signed by the complainant or complainants; and be submitted to the Division of Special Education and the school district.
- Timeline: The Indiana Department of Education will issue its final written report within 40 calendar days of the date the written complaint was received by the Division of Special Education





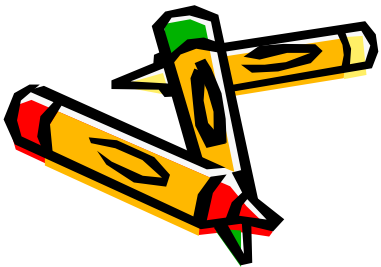
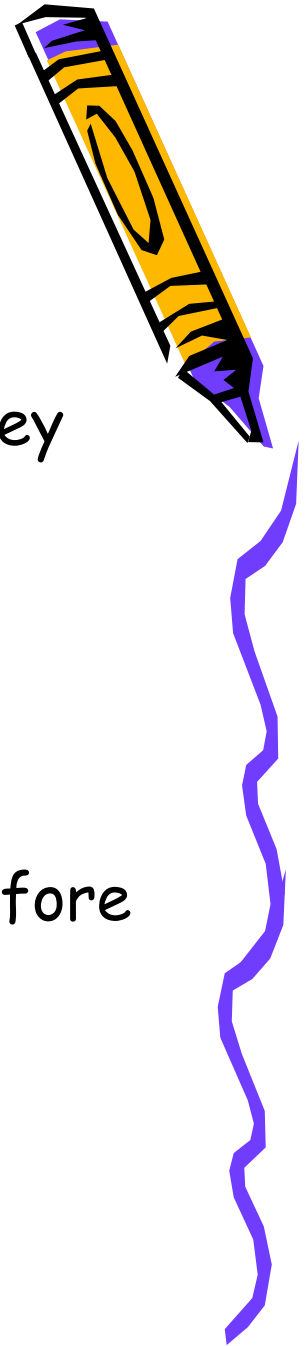
SCHOOL DISCIPLINE





3 Most Important Things about School Discipline

- Students have a right to education, even if they misbehave in school.
- Students often have the right to challenge punishment and tell their side of the story.
- Students have a right to basic due process before being completely excluded from school.



Forms of Corrective Action

Discipline:

- ▶ All forms of corrective action or punishment

Suspension:

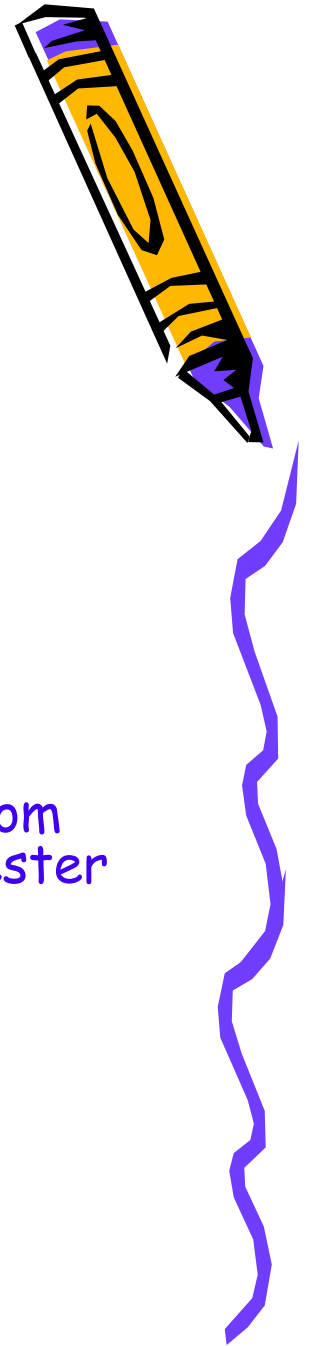
- ▶ 10 days or less

Expulsion

- ▶ disciplinary action where the student is removed from school for 10 days, the balance of the current semester or the current year

Emergency Expulsion

- ▶ Immediate removal from school property



Expected Behavior/Allowable Punishment

- School corporations must establish written discipline rules and make the rules available to students and their parents. Should be available through school's website or should be delivered to the student or parents.
- School corporations can take any disciplinary action necessary to ensure an orderly and effective educational system.
- *I.C. 20-33-8-8*



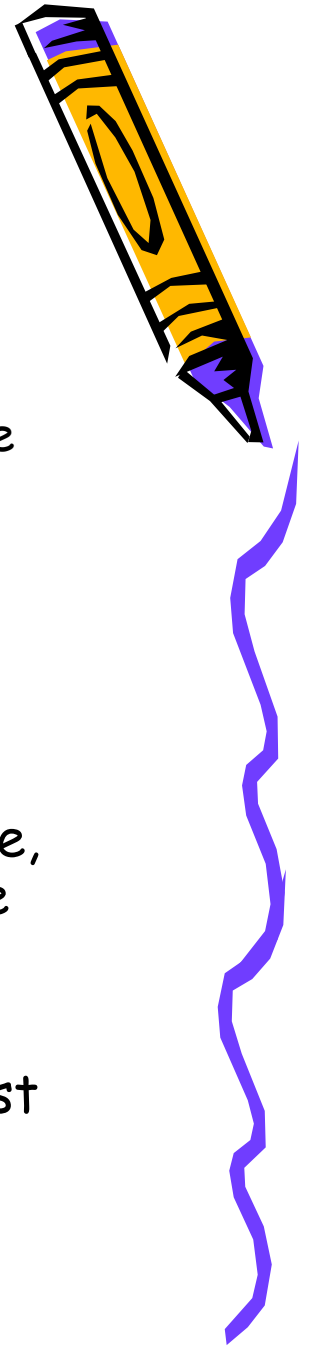
What are a student's rights when being suspended?

- Meeting with principal
- Statement of the charges
- Summary of the evidence against the student and an opportunity for the student to explain his or her side of the story.
- After the principal suspends the student, the principal must then send the parent a written statement that describes the student's misconduct and the action taken by the principal.
- *I.C. 20-33-8-18.*



What are a student's rights when being expelled?

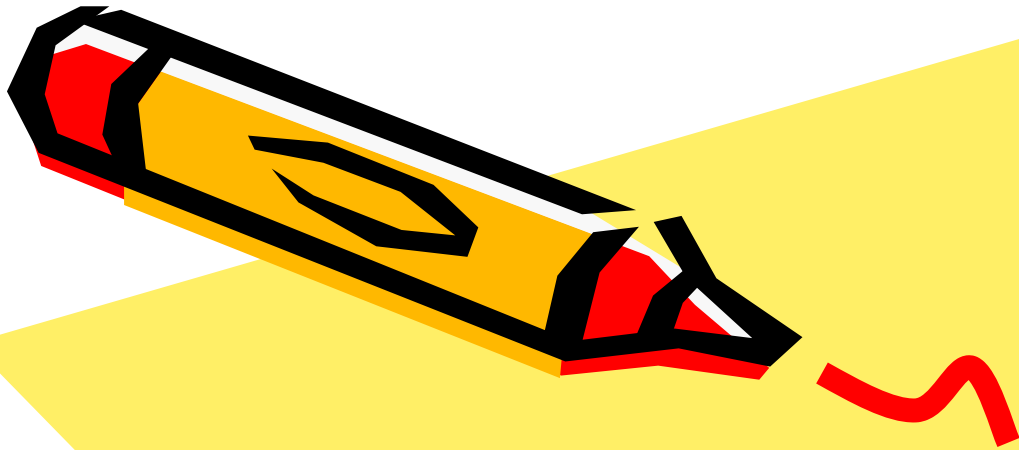
- Student and the parent must be given notice of the right to appear at an expulsion hearing with the superintendent of the school corporation.
 - Notice by certified mail or personal delivery.
 - Notice must contain the reasons the school is seeking expulsion.
 - Notice must describe the procedure for requesting an expulsion hearing.
- The student has the right to question, or cross-examine, the witnesses that the school corporation calls into the expulsion hearing.
- The student has the right to answer the charges against him or her and present evidence.



After the expulsion hearing

- After the hearing, the hearing examiner will decide to expel the student or reinstate the student into the school.
- The hearing examiner must give notice to the student and the parent of what this action will be.
- In order to appeal an expulsion after the hearing, the student or parent must make a written appeal to the school board within ten (10) days of receiving notice of the action taken at the expulsion hearing





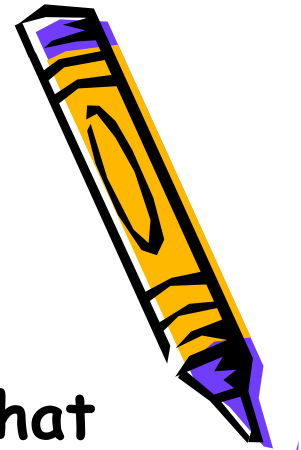
Special Education

Discipline



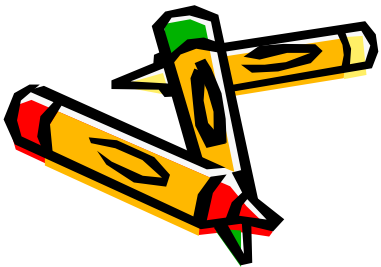
3 Most Important Things about Disciplining Students with Disabilities

- Students cannot be punished for behavior that is the result of their disability.
- Students with disabilities have the right to receive education even if they are expelled from school.
- The school administrator who is in charge of discipline may not know about the special needs of a particular student or the important steps that must be taken before imposing discipline.



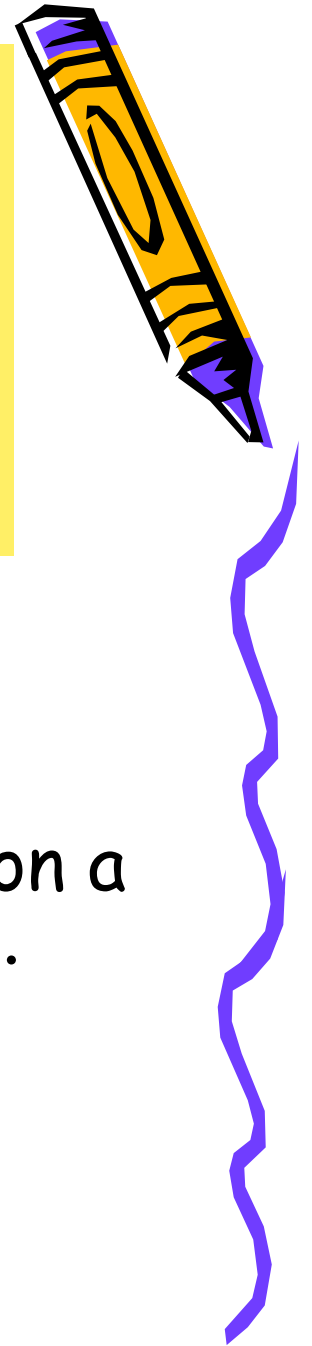
When discipline amounts to a change of placement

- If the school district wants to “change the placement” of a special education student, it must notify the parent of the decision to take disciplinary action.
- An expulsion is a change of placement.
- A suspension is a change of placement if the suspension is for more than ten consecutive instructional days or if a series of suspensions cumulates to more than ten (10) days and constitutes a pattern.



What must a school district do if a student with a disability breaks a school rule that would normally require a suspension or expulsion amounting to a change in placement?

- Give notice.
- Look at the behavior and develop a behavior intervention plan (BIP) based on a functional behavioral assessment (FBA).
- Have a manifestation determination meeting.



Manifestation Determination

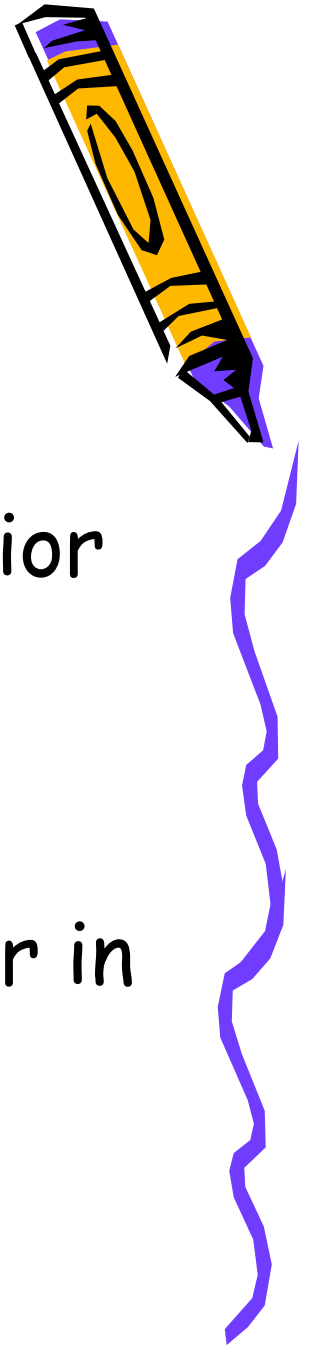
- The manifestation determination is an evaluation to determine whether the behavior requiring disciplining was caused by, or is a manifestation of, the student's disability, deficiencies in the IEP, or placement. If the behavior requiring discipline is determined to be a manifestation of the student's disability, then the student cannot be disciplined by a change of placement, suspension or expulsion.
- *511 IAC 7-17-50*



Discipline of Students with Disabilities

Functional Behavior Assessment

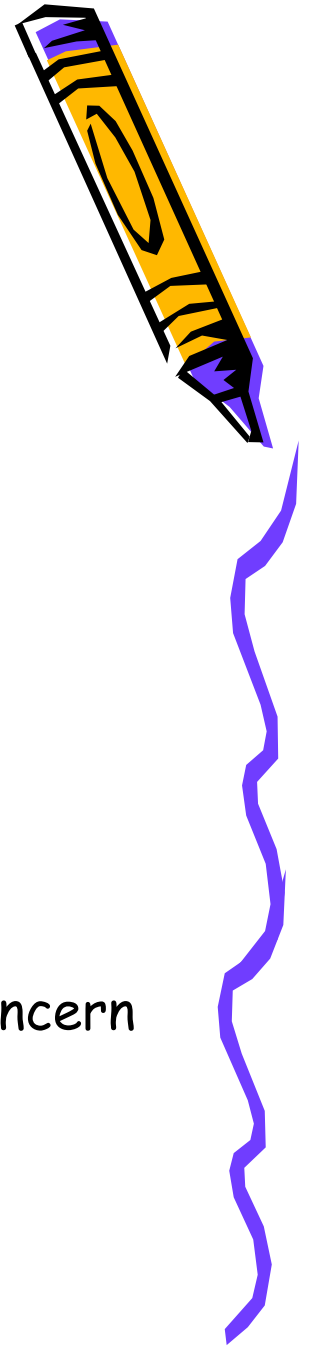
- Has there been a functional behavior assessment? (FBA)
- Is there a behavioral intervention plan? (BIP)
- Does the plan address the behavior in question?



Discipline of Students with Disabilities

Students not yet determined to be eligible for special education may still be protected by the law

- Request expedited evaluation
- "Basis of knowledge" includes:
 - Parent expressed concern in writing
 - Behavior of student demonstrates the need
 - Parent requested an evaluation, or
 - Teacher or other school personnel expressed concern about performance or behavior of student

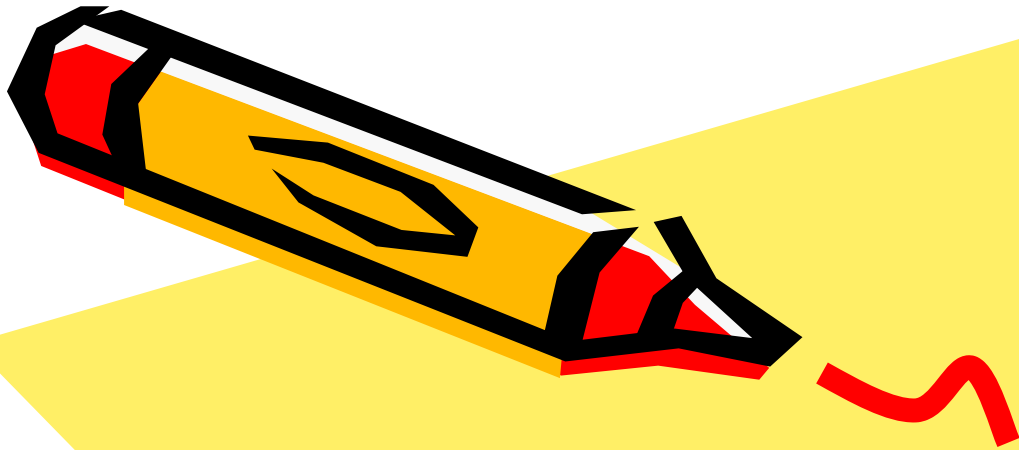


Timeline for Special Education Discipline



- Day 1
 - Suspension over 10 days or expulsion
 - Notice. The notice and procedural safeguard information must be provided to the parent on the same day that the school district decides to take disciplinary action against the student.
- Within 10 instructional days
 - the school district must convene the CCC to make a manifestation determination.
 - If the behavior requiring discipline is determined to be a manifestation of the student's disability, the student's CCC must:
 - Conduct a functional behavioral assessment, unless one was done before the behavior that resulted in the change of placement occurred, and implement a BIP for the student; or
 - If a BIP has already been developed, review the BIP and modify it as necessary to address the behavior
 - And
 - Return the student to the placement from which he or she was removed, unless the parent and school agree to a change of placement as part of the BIP.
- *511IAC 7-44-5(a); 511 IAC 7-44-5(b); 511 IAC 7-44-5(e)*





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