

# Disability Rights Nebraska

Protection and Advocacy for People with Disabilities

## Individualized Education Program (IEP)

### What is an Individualized Education Program (IEP)?

An IEP is a written document for a child with a disability, age 3 through 21. An IEP is developed, reviewed, and revised according to your child's specific needs<sup>1</sup>. An IEP must specify the special education and related services necessary to ensure that your child receives a "free appropriate public education" (FAPE)<sup>2</sup>.

### Who is eligible for an IEP?

Your child must first be evaluated by the school district's Multidisciplinary Team (MDT) Evaluation or Independent Educational Evaluation (IEE) processes (see "Multidisciplinary Team Evaluation" and "Independent Educational Evaluation" materials). The Multidisciplinary Evaluation Team decides whether your child has a disability. If your child is found to be "a child with a disability" as defined under the Individuals with Disabilities Act (IDEA), he or she is eligible for an IEP<sup>3</sup>.

An IEP meeting, initiated by the school district, must be held within thirty (30) calendar days of when your child is initially determined to be a child with a disability<sup>4</sup>.

### Why would I want an IEP for my child?

Generally, having an IEP for your child means that he or she will get the appropriate education and services necessary for his or her specific needs. An IEP gives both you and your child certain rights that can be enforced.

- Through an IEP, the school district agrees that your child will receive a "free appropriate public education" (FAPE). This means that your child is entitled to receive:
  - Special education services<sup>5</sup>
  - Related services<sup>6</sup>
  - Extended school year services (ESY)<sup>7</sup>
  - Transition services<sup>8</sup>

<sup>1</sup> Rule 51 sec. 003.31 (2017)

<sup>2</sup> Rule 51 sec. 003.24; sec. 007 (2017)

<sup>3</sup> Rule 51 sec. 006.02 (2017)

<sup>4</sup> Rule 51 sec. 007.09A; sec. 009.04A2 (2017)

<sup>5</sup> Rule 51 sec. 003.56 (2017)

<sup>6</sup> Rule 51 sec. 003.49 (2017)

<sup>7</sup> Rule 51 sec. 003.23 (2017)

- Through an IEP, the school district agrees that your child will be educated, as much as possible, with children who do not have a disability. Removing a child with a disability from the regular educational environment should only occur if services and aids are not successful in the regular environment<sup>9</sup>. This means that a child with a disability is entitled to receive an education in the “least restrictive environment” (LRE) as much as possible.
- As a parent of a child with a disability, you have the right to be notified of, and to participate in, an IEP meeting<sup>10</sup>. The notice must include the time and place that you and the IEP Team agreed to meet and who will attend the meeting<sup>11</sup>. The notice should also tell you of your right to invite people who have special knowledge or expertise about your child<sup>12</sup>.
  - An IEP meeting can be conducted without a parent, but only if the school is unable to convince the parent to attend. The school must keep documentation to that effect<sup>13</sup>.
- Through an IEP, the school district is responsible for providing special education and related services to a child with a disability and for making sure that they try to help your child achieve the goals and objectives in the IEP<sup>14</sup>.

### What must be in an IEP?

A child's IEP must be "reasonably calculated to enable the child to make progress appropriate in light of his [or her] circumstances"<sup>15</sup>. An IEP must be in writing and include the following sections<sup>16</sup>.

- **Present levels of academic achievement and functional performance.** This includes how your child is currently performing and how the disability affects his or her progress in the general education curriculum<sup>17</sup>.
- **Measurable annual goals.** This includes goals that you and the IEP Team think your child can accomplish within one (1) year. The goals must relate to meeting the needs of your child's disability and must allow your child to be involved in and make progress in the general curriculum<sup>18</sup>.
  - Your child's goals and educational program "must be appropriately ambitious in light of his [or her] circumstances"<sup>19</sup>.

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<sup>8</sup> Rule 51 sec. 003.63 (2017)

<sup>9</sup> Rule 51 sec. 008.01A (2017)

<sup>10</sup> Rule 51 sec. 007.06A (2017)

<sup>11</sup> Rule 51 sec. 007.06A1; sec. 007.06A2 (2017)

<sup>12</sup> Rule 51 sec. 007.03A6 (2017)

<sup>13</sup> Rule 51 sec. 007.06D (2017)

<sup>14</sup> Rule 51 sec. 007.07A5; sec. 007.07A5a (2017)

<sup>15</sup> *Andrew F. ex. rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 988 (2017)

<sup>16</sup> Rule 51 sec. 007.07A (2017)

<sup>17</sup> Rule 51 sec. 007.07A1 (2017)

<sup>18</sup> Rule 51 sec. 007.07A2 (2017)

<sup>19</sup> *Andrew F. ex. rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, \_\_\_ U.S. \_\_\_, 137 S. Ct. 988 (2017)

- **Statement of how your child's progress will be measured.** This includes how the school personnel will measure your child's progress toward annual goals. This also includes a statement of when periodic progress reports will be provided to you<sup>20</sup>.
- **Special education, related services, and supplementary aids and services to be provided.** This includes all of the supports that will be put in place to help your child meet his or her goals and receive a free and appropriate public education<sup>21</sup>.
- **Participation with children who are not disabled.** This includes how much time your child will be separated from children who do not have disabilities<sup>22</sup>.
- **Participation in state and district-wide assessments.** This must include accommodations to the assessments that are given to your child. It must also include a statement if your child will not participate in the regular assessment as well as a reason why. If your child will participate, it must include any required accommodations and why they are needed<sup>23</sup>.
- **Dates and locations.** This includes when the services will begin, how often they will be provided, where they will be provided, and how long the services will last<sup>24</sup>.
- **Transition services.** This includes services to help your child move from high school to adulthood. Generally, this section will apply to students aged sixteen (16) and over unless it is deemed appropriate for younger students. The IEP team will develop goals based on transition assessments involving education, training, employment, and, as appropriate, independent living skills<sup>25</sup>.
- **Transportation plan.** If necessary, a transportation plan and any special conditions necessary for your child's safe transportation must be included<sup>26</sup>.
- **Behavioral Intervention Plan.** If your child experiences behavioral issues due to their disability you may wish to include a Behavioral Intervention Plan in the IEP (see "Behavioral Plans" material)<sup>27</sup>.

### Who participates in an IEP meeting?

The IEP Team includes:

- The child's parent(s);
- The child, if appropriate;

<sup>20</sup> Rule 51 sec. 007.07A4 (2017)

<sup>21</sup> Rule 51 sec. 007.07A5 (2017)

<sup>22</sup> Rule 51 sec. 007.07A6 (2017)

<sup>23</sup> Rule 51 sec. 007.07A7 (2017)

<sup>24</sup> Rule 51 sec. 007.07A8 (2017)

<sup>25</sup> Rule 51 sec. 007.07A9 (2017)

<sup>26</sup> Rule 51 sec. 014 (2017)

<sup>27</sup> Rule 51 sec. 016.02F; sec. 003.26 (2017)

- At least one regular education teacher (if the child currently participates or may in the future participate in the regular education environment);
- At least one special education teacher;
- A representative of the school district who is qualified to provide or supervise provision of special education, knows about the general curriculum, and knows the availability of special education resources of the school district;
- A person who can interpret evaluation results of the child and guide what services the child may need;
- A representative of any service agency from which the child receives services;
- A representative of the nonpublic school the child attends if he or she is attending a nonpublic school;
- A representative of an agency responsible for providing transition services for the student (if the student has reached the age of majority or if the parents consent)
- An educator who is endorsed to teach children with hearing or visual impairments if the child has been verified in the category of hearing or visual impairment; and
- Other individuals invited by the parent or school who have special knowledge or expertise about the child<sup>28</sup>.

### What happens during an IEP meeting?

At an IEP meeting, the IEP Team will consider numerous factors. Examples of such factors include, but are not limited to:

- Child's strengths;
- Parent concerns;
- Results of recent evaluations of the child, if appropriate;
- Academic, developmental, and functional needs of the child;
- Results of state or district-wide assessments, if appropriate;
- Behavior of the child if it affects his or her learning or the learning of others;
- Language needs of the child;
- Communication needs of the child;
- Potential need for assistive technology services and devices; and
- Necessity of related services and supplemental aids and services<sup>29</sup>.

The IEP Team will write the child's IEP, which will include the appropriate services to be provided. All team members will be asked to sign the IEP. The school must give you a copy of the IEP at no cost<sup>30</sup>. It is also the school's responsibility to make sure that you understand and are able to participate in the IEP process. The school district

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<sup>28</sup> Rule 51 sec. 007.03 (2017)

<sup>29</sup> Rule 51 sec. 007.07B (2017)

<sup>30</sup> Rule 51 sec. 007.09D (2017)

must arrange for an interpreter if necessary for parents whose native language is other than English or who are deaf<sup>31</sup>.

### What if I do not agree with the IEP?

If you disagree with an IEP, you have two options. You can:

- Sign the IEP, and make a note near your signature that you “do not agree with the IEP,” or
- Choose not to sign the IEP.

You may also consider writing and attaching a statement of "Parent Concerns" in which you detail any areas of concern or disagreement that you have with the IEP.

### How often are IEP meetings held?

IEP meetings must be held at least once per year to determine whether your child’s annual goals are being achieved<sup>32</sup>. At these annual meetings, the IEP Team will discuss your child’s progress toward the current IEP, the results of any reevaluations, whether any new goals should be added, and whether any changes need to be made<sup>33</sup>.

### What if I want to change the IEP after the annual IEP meeting?

Even if the annual IEP meeting has taken place, you can still request another IEP meeting. If you feel that a formal IEP meeting is not necessary, you and the rest of the IEP Team can agree to change the current IEP by a written document that will list the changes in the IEP<sup>34</sup>.

### What parental rights do I have regarding the IEP?

You have the right to:

- **Receive procedural safeguards notice.** You have the right to a procedural safeguards notice which describes all rights of a parent of a child with a disability. You may request the notice if the school district has not furnished one<sup>35</sup>.
- **Inspect and review education records.** You have the right to inspect and review any education records relating to your child within forty-five (45) days after you have requested the records. It is best to make your request in writing. You may be responsible for copying costs<sup>36</sup>.
- **Prior written notice.** You have the right to be notified within a reasonable time before a school district denies or proposes to initiate or change your child's

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<sup>31</sup> Rule 51 sec. 007.06E (2017)

<sup>32</sup> Rule 51 sec. 007.09C (2017)

<sup>33</sup> Rule 51 sec. 007.10 (2017)

<sup>34</sup> Rule 51 sec. 007.09E (2017)

<sup>35</sup> Rule 51 sec. 009.06A (2017)

<sup>36</sup> Rule 51 sec. 009.03 (2017)

identification, evaluation, or placement or proposes to change the provision of your child's free appropriate education<sup>37</sup>.

- **Give informed parental consent.** You have the right to limit the initial placement of your child in a special education program until you give your consent<sup>38</sup>.
- **Participate in the IEP meeting.** The school district should take steps to ensure that one or both parents are able to participate in and attend the IEP meeting by giving adequate advance notice of the meeting as well as scheduling the meeting at a mutually agreed upon time and place. If you are not able to attend, the meeting may still be held, but the school district must ensure your participation by using individual or conference telephone calls<sup>39</sup>.
- **A copy of the IEP.** You have a right to receive a copy of your child's IEP at no cost<sup>40</sup>.
- **Request a Due Process Hearing.** You have the right to request a due process hearing (see "How to File a Due Process Petition with the Nebraska Department of Education" material)<sup>41</sup>.
- **File a complaint with the Nebraska Department of Education.** You have the right to file a complaint if the school district has violated the special education rules (see "How to File a complaint with the Nebraska Department of Education" materials)<sup>42</sup>.
- **File a civil action.** If you are unsatisfied with any decision made following a hearing, you have a right to file a civil action. It must be filed (in a state court or federal district court) within ninety (90) days after you receive its decision<sup>43</sup>.

### How do I request an IEP meeting?

It is a good idea to put all communications between you and school administrators and staff regarding your child's special education services in writing. Make sure to write down conversations and events that affect your child's schooling. Note the date, who was involved, what was said, and the resolution. You may want to create and maintain a file with all of your child's school information such as report cards, evaluation reports, and Individual Education Programs (IEPs).

All requests for evaluations or meetings should be made in writing to your child's school principal. You should keep a copy for your own records. Send your written

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<sup>37</sup> Rule 51 sec. 009.035 (2017)

<sup>38</sup> Rule 51 sec. 009.08B (2017)

<sup>39</sup> Rule 51 sec. 007.06 (2017)

<sup>40</sup> Rule 51 sec. 007.09D (2017)

<sup>41</sup> Rule 51 sec. 009.14B (2017)

<sup>42</sup> Rule 51 sec. 009.11 (2017)

<sup>43</sup> Rule 55 sec. 009 (2012)

request to the school via certified, return receipt requested mail. Attach the return receipt to your copy of the request and keep this in your file.

### **Additional resources:**

- Multidisciplinary Team Evaluation - Disability Rights Nebraska
- Independent Educational Evaluation - Disability Rights Nebraska
- Behavioral Plans - Disability Rights Nebraska
- How to File a Complaint with the Nebraska Department of Education - Disability Rights Nebraska
- How to File a Due Process Petition with the Nebraska Department of Education - Disability Rights Nebraska
- IEP Flowchart - Disability Rights Nebraska
- Questions and Answers about IDEA: Parent Participation - Center for Parent Information and Resources (2016). This article includes information on the Individuals with Disabilities Education Act (IDEA) and how to get special education services, and explains what an IEP is and your parental rights.
- Communicating with Your Child's School through Letter Writing - Center for Parent Information and Resources (2017). This article includes ideas on how to write effective letters to your child's school and includes sample letters.
- Center for Parent Information & Resources. This is a resource providing information created by Parent Centers that serve families of children with disabilities.
- IDEA Part B Parents' Rights in Special Education (Age 3-21) - Nebraska Department of Education, Office of Special Education (August 2018).

## Sample Letter

You may wish to use similar language when requesting an Individual Education Program (IEP) meeting for your child:

[Principal's Name]

[School's Name]

[School Address]

[City, State, Zip code]

Re: [Your child's name] – Request for an Individual Education Program meeting

Dear [Principal's Name]:

Please consider this letter as a formal request for an Individual Education Program (IEP) team meeting for my child, [Your child's name]. It is my understanding that I have a right to request an IEP meeting at any time, pursuant to the provisions of 92 NAC 51 (Nebraska Department of Education, Rule 51).

To prevent complications with my schedule, please notify me of the date and time of the meeting one week in advance. I appreciate your prompt attention to this request and ask that you respond in writing by [Insert a date two (2) weeks from the time mailed], and that the meeting be held by [Insert a date five to ten days later than the previous date]. Thank you.

Sincerely,

[Your Name]

[Your Address]

[Your City, State, Zip]

[Your Phone Number]