

# **North Dakota Department of Public Instruction Special Education**

## **Procedural Compliance Self-Assessment Toolkit**

### **Procedural Safeguards**



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## **Purpose**

The North Dakota Department of Public Instruction (NDDPI) is responsible for developing and implementing methods to ensure public agencies comply with requirements of the Individuals with Disabilities Education Act (IDEA), 2004. The duties of the NDDPI include developing and implementing effective methods to identify noncompliance and to ensure noncompliance is corrected as soon as possible, but no later than one year after identification. As part of this effort, NDDPI created this toolkit for Special Education Units in North Dakota to assure their special education staff is complying with the requirements of the IDEA.

The State and each district need to have policies, practices and procedures in place to ensure that students are being appropriately identified for special education and related services and appropriately identified within specific disability categories.

According to §300.646(b) (1) The State must...."Provide for the review and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure that policies, procedures, and practices comply with the requirements of this Act." This tool kit was made as guidance for North Dakota Special Education Units to ensure the special educators in North Dakota are complying with the requirements of IDEA. NDDPI strongly encourages North Dakota Special Education Units to sample IEPs yearly.

## **Conducting the Self-Assessment**

### *Sampling*

It is recommended by NDDPI that North Dakota Special Education Units sample a portion of their IEPs yearly. Appendix A provides steps for creating a sample

### *Evaluating Compliance*

The most recent IEPs and IEP team evaluations are used to conduct the self-assessment. Recording forms have been created by NDDPI for use with students in the sample and are available upon request. All records created (at the request of DPI or yearly monitoring done by the Special Education Unit) must be maintained for four (4) fiscal years (July 1-June 30).

### *Corrections of Noncompliance*

When using the self-assessment, any noncompliance identified must be corrected, which is specified in the tool kit. In order to immediately address the noncompliance and ensure future compliance, the public agency must develop unit-wide corrective actions, such as communicating with staff, reviewing future work product, revising policies or procedures, training staff, increasing supervision or adding staff. The tool kit supports units by developing and maintaining internal systems to monitor compliance with school districts. Internal monitoring is an efficient way to review present practices, readily identify and correct areas of noncompliance, incorporate ongoing professional development and to promote compliance consistently. All correction documents must be maintained for four (4) fiscal years (July 1-June 30).

ITEM NO.	ITEM DESCRIPTION	DIRECTIONS	REQUIRED STUDENT-LEVEL CORRECTIVE ACTION	IDEA REGULATION
PS-1	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>A copy of the procedural safeguards must be made available to parents at least one time a year.</p> <p>Review the <i>Individualized Education Program, Joint Notice of Meeting form, Notice of Meeting form, Prior Written Notice of Special Education Action and/or Student Profile form</i>. A copy of the procedural safeguards must be made available to the parents of a child with a disability and must be given to the parents, at least one time a school year. If any of the documents listed above indicate the parents were provided their procedural safeguards during the school year, the requirement has been <b>met</b>. Enter “<b>yes</b>” and go to the next item.</p> <p>In addition to the one time listed above, if any of the following activities have occurred during the school year, a copy of the procedural safeguards must be given--</p> <ol style="list-style-type: none"> <li>1. Upon initial referral or parent request for evaluation;</li> <li>2. Upon receipt of the first State complaint and upon receipt of the first due process complaint in a school year;</li> <li>3. In accordance with the discipline procedures (on the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct,); and</li> <li>4. Upon request by parent.</li> </ol> <p>If any of these activities occurred during the school year and the parents were provided their procedural</p>	<p><i>Student Level Noncompliance:</i> Send parents a copy of their procedural safeguards and document it.</p> <p><i>Current Compliance:</i> LEA must take action to ensure future compliance including implementing a system of internal controls.</p>	<p>34 CFR 300.504</p> <p>North Dakota Procedural Safeguards-Prior Written Notice and Parental Consent Procedures guidelines page 3</p>

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		<p>safeguards, the requirement is <b>met</b>. Enter “<b>yes</b>” and go to the next item.</p> <p>If any of the four activities above have occurred and the parents were not provided their procedural safeguards, the requirement is <b>not met</b>. Enter “<b>no</b>” and go to the next item.</p>		
PS-2	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<p>Informed parental consent must be obtained before conducting an initial evaluation.</p> <p>Review the <i>Consent for Evaluation</i> page. If the student did not have an initial evaluation for the school year being reviewed, enter “<b>NA</b>” (not applicable) and go to the next item.</p> <p>IDEA regulations state that the district must obtain informed parental consent <u>prior</u> to conducting an initial evaluation. Once the parents are provided the necessary information regarding the initial evaluation procedures and have developed a clear understanding of their procedural safeguards, they will determine if they will consent to the initial evaluation to determine their child’s eligibility for Part B services.</p> <p>If the parents decide to proceed, the district must obtain informed parental consent prior to beginning the initial evaluation procedures.</p> <p>The public agency proposing to conduct an initial evaluation must make reasonable efforts to obtain informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability. This includes the parent of a child who is a ward of the State. These efforts must be documented using procedures such as: a detailed</p>	<p><i>Student Level Noncompliance:</i> Obtain parental consent for evaluation.</p> <p><i>Current Compliance:</i> LEA must take action to ensure future compliance including implementing a system of internal controls.</p>	<p>34 CFR 300.300(a)</p> <p>North Dakota Procedural Safeguards-Prior Written Notice and Parental Consent Procedures guidelines pages 5-6</p> <p>North Dakota Evaluation Process guidelines page 6-9</p>

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			<p>record of telephone calls made or attempted and the results of the calls; copies of correspondence sent to parents such as prior written notice forms and any responses received from the parents.</p> <p>An exception to the parental consent requirements for initial evaluations is for a child who is a ward of the State who is not residing with the child's parent. The exception applies if:</p> <ul style="list-style-type: none"> <li>✓ the public agency has made reasonable efforts to obtain the parent's consent, but is unable to discover the whereabouts of the parent,</li> <li>✓ the rights of the parent of the child have been terminated under State law, or</li> <li>✓ the rights of the parent to make educational decisions have been subrogated by a judge under State law and consent for the initial evaluation has been given by an individual appointed by the judge to represent the child.</li> </ul> <p>The requirement is <b>met</b>, if the student had an initial evaluation for the school year being monitored and there is a <i>Consent for Evaluation</i> and documentation that the parent's signature was obtained and in the student's permanent record. Enter "<b>yes</b>" and go to the next item.</p> <p>The requirement is <b>not met</b>, if the student had an initial evaluation for the school year being monitored and there is a <i>Consent for Evaluation</i> but no documentation that the parent's signature was obtained. Enter "<b>no</b>" and go to the next item.</p>		

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			<p>If a parent fails to respond to consent for evaluation, the school must demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond. The school must document attempts to contact the parents, such as: a detailed record of telephone calls made or attempted and the results of the calls; copies of correspondence sent to parents such as prior written notice forms and any responses received from the parents; detailed records of visits made to the parent's home or place of employment and the results of those visits.</p> <p>The requirement is <b>not met</b>, if the student had an initial evaluation for the school year being monitored and a <i>Consent for Evaluation</i> could not be located. Enter "<b>no</b>" and go to the next item.</p> <p>Please note: If a child has an initial evaluation and does not qualify and is reassessed both evaluations are considered the initial and consent for evaluation needs to be obtained each time.</p>		
<b>PS-3</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	For reevaluation, informed parental consent must be obtained if the team determines new information is needed.	<p>Review the <i>Consent for Evaluation and Student Profile</i> page. If the student did not have a reevaluation for the school year being reviewed, enter "<b>NA</b>" (not applicable) and go to the next item. If the reevaluation team determined new information is needed, parental consent must be obtained.</p> <p>The requirement is <b>met</b>, if the IEP team had determined new information was needed and there is a <i>Consent for Evaluation form</i> and documentation that the parent's signature was obtained. Enter "<b>yes</b>" and</p>	<p><i>Student Level Noncompliance:</i> Obtain parental consent for evaluation.</p> <p><i>Current Compliance:</i> LEA must take action to ensure future compliance including implementing a system of internal controls.</p>	<p>34 CFR 300.300 (c)</p> <p>North Dakota Procedural Safeguards-Prior Written Notice and Parental Consent Procedures guidelines page 6</p> <p>North Dakota Evaluation Process guidelines page 26-27</p>

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			<p>go to the next item.</p> <p>The requirement is <b>met</b>, if the IEP team had determined no new information was needed and there no <i>Consent for Evaluation</i>. Enter <b>“yes”</b> and go to the next item.</p> <p>The requirement is <b>not met</b>, if the IEP team determined new information was needed and there is a <i>Consent for Evaluation</i> but no documentation that the parent’s signature was obtained. Enter <b>“no”</b> and go to the next item.</p> <p>The requirement is <b>not met</b>, if the team determined new information was needed and there is no <i>Consent for Evaluation</i>. Enter <b>“no”</b> and go to the next item.</p> <p>If a parent fails to respond to a request for consent for evaluation, the school must demonstrate and document that it has taken reasonable measures to obtain that consent, and the child’s parent has failed to respond.</p> <p><b>Please note:</b> A parent failing to respond to a request for consent is different from refusing to consent. A school district can proceed with a reevaluation without informed consent only when parents have failed to respond to the districts reasonable attempts to obtain the consent.</p>		
<b>PS-4</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	Students must be told about the decisions and choices to	If the student will turn age 17 or older during the next year, review the T-2 page of the <i>IEP</i> document. If the student will not turn 17 or older during the next school year, enter <b>“NA”</b> (not applicable) and go to the next	<i>Student Level Noncompliance:</i> Discuss Transfer of Rights with the student and parent and document the discussion date on the T-2 page	34 CFR 300.320(c)  North Dakota Individualized Education Program Planning guidelines pages 38-39

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		become their own educational guardian no later than one year before they reach the "age of majority" or legal age.	<p>item. Transfer of rights must be addressed with parents and students at IEP meetings as part of the transition process <b>no later than one year before the student will turn 18</b>. The date this discussion takes place needs to be recorded on the IEP. Having this information at age 17 allows the team, especially the student and parents to discuss guardianship and initiate the process in a timely manner.</p> <p>The requirement is <b>met</b>, if the student will turn age 17 or older during the next year has a date on the T-2 page of the <i>IEP</i> document in the "Date of IEP Meeting when transfer of rights was discussed" section and the date is before the student turned age 17. Enter <b>"yes"</b> and go to the next item.</p> <p>The requirement is <b>not met</b>, if the student will turn age 17 or older during the next year has a date on the T-2 page of the <i>IEP</i> document in the "Date of IEP Meeting when transfer of rights was discussed" section and the date is not before the student turned age 17. Enter <b>"no"</b> and go to the next item.</p>	<p>of the <i>IEP</i> document.*</p> <p><i>Current Compliance:</i> LEA must take action to ensure future compliance including implementing a system of internal controls.</p>	
<b>PS-5</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	At age 18 or prior, the LEA must provide written notice to both the student and the parents indicating that rights have transferred to the student.	If the student is 18 years or older look for the <i>Transfer of Rights</i> form and <i>Prior Written Notice</i> to the student and parent. If the student is under the age of 18, enter <b>"NA"</b> (not applicable) and go to the next item. When a student with a disability turn the age of majority (18 years in ND), the LEA must provide written notice to the student and the parent, which may or may not be at the time of the annual review, about the IDEA Rights transferring to the student. The notification to the parent should occur on the <i>Prior Written Notice</i>	<p><i>Student Level Noncompliance:</i> Notify student and parents (i.e. <i>Prior Written Notice</i> and <i>Transfer of Rights to Student</i>) of rights transferring to student at age 18.</p> <p><i>Current Compliance:</i> LEA must take action to ensure future compliance including implementing a system of internal</p>	<p>34 CFR 300.520</p> <p>North Dakota Individualized Education Program Planning Guidelines 38-39</p>



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			<p>form. The official notification to the student may occur either on the Prior Written Notice form or through the use of the Transfer of Rights to Student form. Upon meeting with the student and assuring that the student understands his/her rights, the student shall be asked to sign the <i>Transfer of Rights to Student</i> form. The exception to this occurs if parents or other adults have become the child's legal guardian. Look for a court order or other legal documentation to verify guardianship. If there is evidence of guardianship, enter "<b>NA</b>" (not applicable) and go to the next item.</p> <p>The requirement is <b>met</b>; if there is documentation (i.e. <i>Prior Written Notice</i> and/or the <i>Transfer of Rights</i> form to Student) the student age 18 or older and his/her parent have been notified in writing that the rights have transferred. Enter "<b>yes</b>" and go to the next item.</p> <p>The requirement is <b>not met</b>; if there is not documentation (i.e. <i>Written Prior Notice</i> and/or <i>Transfer of Rights</i> form to Student) the student age 18 or older and his/her parent have been notified in writing that the rights have transferred. Enter "<b>no</b>" and go to the next item.</p> <p><b>Please note:</b> If the student turns 18 during the summer months, the school must provide notice to the student and parents before summer (while school is in session).</p>	controls.	
<b>PS-6</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	For initial placement of a student into	Review the <i>Consent for Initial Placement in Special Education Services</i> form. If the student did not have an initial evaluation for the school year being	<i>Student Level Noncompliance:</i> Obtain consent for initial placement.	34 CFR 300.300 (b) Procedural Safeguards-Prior Written Notice and Parental Consent Procedures 5

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	special education, parental consent is required.	<p>monitored, enter <b>"NA"</b> (not applicable) and go to the next item.</p> <p>Parental consent is required for the initial placement of a student in special education. Parents do not have to give consent every year unless the local special education unit or school district has established policy and procedures that require annual written consent for placement in special education. A student who has been dismissed from special education services and later is found to need those services must have a new Consent for Initial Placement form completed.</p> <p>The requirement is <b>met</b> if the student had an initial evaluation for this school year and has a <i>Consent for Initial Placement in Special Education Services</i> in the file as well as documented parent signature. Enter <b>"yes"</b> and go to the next item.</p> <p>The requirement is <b>not met</b> if the student had an initial evaluation for this school year and has a <i>Consent for Initial Placement in Special Education Services</i> in the file but does not have parent signature documented. Enter <b>"no"</b> and go to the next item.</p> <p>The requirement is <b>not met</b> if the student had an initial evaluation for this school year and does not have a <i>Consent for Initial Placement in Special Education Services</i> in the file. Enter <b>"no"</b> and go to the next item.</p>	<p><i>Current Compliance:</i> LEA must take action to ensure future compliance including implementing a system of internal controls.</p>	

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PS-7	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	<p>Parents can choose to revoke consent for special education and related services at any time.</p> <p>Review the <i>Revocation of Consent for Special Education &amp; Related Services</i> form. If the services have not been revoked and there is not an exit form or meeting notes stating the parent revoked services, enter <b>“NA”</b> (not applicable) and go to the next item.</p> <p>Parents can unilaterally withdraw their children from further receipt of special education and related services by revoking their consent for the continued provision of special education and related services to their children. Parental revocation of consent for the continued provision of special education and related services must be in writing.</p> <p>The requirement is <b>met</b>, if there is a <i>Revocation for Consent</i> form and all the boxes in the For School District or Public Agency Use section are filled in. Enter <b>“yes”</b> and go to the next item.</p> <p>The requirement is <b>not met</b>, if there is a <i>Revocation for Consent</i> form and all the boxes in the For School District or Public Agency Use section are not filled in. Enter <b>“no”</b> and go to the next item.</p> <p>The requirement is <b>not met</b>, if there is not a <i>Revocation for Consent</i> form but there is indication in additional paperwork that services stop at the request of the parents or student. Enter <b>“no”</b> and go to the next item.</p>	<p><i>Student Level Noncompliance:</i> Obtain and complete <i>Revocation of Consent for Special Education and Related Service</i> form for evaluation.</p> <p><i>Current Compliance:</i> LEA must take action to ensure future compliance including implementing a system of internal controls.</p>	<p>Supplemental regulations 34 CFR 300.300 (b)(4)</p> <p>North Dakota Procedural Safeguards-Prior Written Notice and Parental Consent Procedures guidelines: page 6</p>
PS-8	<input type="checkbox"/> Yes <input type="checkbox"/> No	<p>The school must provide notice to ensure that</p> <p>Review the <i>Notice of Meeting</i> form. The school must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team</p>	<p><i>Student Level Noncompliance:</i> Send out a prior written notice for the proposed or rejected action.</p>	<p>34 CFR 300.322 North Dakota Procedural Safeguards-IEP guidelines: pages 22-24</p>

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		parents of children with disabilities have the opportunity to participate in meetings.	<p>meeting or are afforded the opportunity to participate. This includes notifying the parent of the meeting early enough to ensure they have an opportunity to attend and scheduling the meeting at a mutually agreed on time and place. Schools are allowed to use alternative methods of participation such as video conferencing, conference calls, etc. Special education unit policy and procedures should be consulted for a description of the nature and number of contacts that must be attempted before determining that parent attendance is not possible, as well as the documentation required.</p> <p>The requirement is <b>met</b> if there is a <i>Notice of Meeting</i> form for Team meeting and the parent attended the meeting. Enter “<b>yes</b>” and go to the next item.</p> <p>The requirement is <b>not met</b> if there is not a <i>Notice of Meeting</i> form for Team meeting. Enter “<b>no</b>” and go to the next item.</p> <p>The requirement is <b>not met</b> if there is a Notice of Meeting form but parents and parent were afforded the opportunity to participate. Enter “<b>no</b>” and go to the next item.</p>	<p><i>Current Compliance:</i> LEA must take action to ensure future compliance including implementing a system of internal controls.</p>	
PS-9	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> NA	The school must Prior Written Notice to the parents or guardians whenever it proposes or	Review the <i>Prior Written Notice of Special Education Action</i> form. If the IEP team has not proposed or rejected to initiate a change in identification, evaluation or educational placement of a child or the provision of a free appropriate public education for the 2016-2017 school year, enter “ <b>NA</b> ” (not applicable) and go to the next item.	<p><i>Student Level Noncompliance:</i> Send out future prior written notices for proposed or rejected actions.</p>	<p>34 CFR 300.503 North Dakota Procedural Safeguards-Prior Written Notice and Parental Consent Procedures guidelines: pages 6-11</p>

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	refuses to initiate or change, the identification, evaluation or educational placement of a student with disabilities or the provision of a free appropriate public education.	<p>Prior written notice is intended to inform parents:</p> <ul style="list-style-type: none"> <li>• the school proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of a free appropriate public education to your child; or</li> <li>• the school refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of free appropriate public education to your child.</li> </ul> <p>The district must inform parents in writing of important decisions regarding a child's special education, and the parents must be notified before those decisions are put into place.</p> <p>Prior written notice must include:</p> <ul style="list-style-type: none"> <li>• a description of the action proposed or refused by the school district;</li> <li>• an explanation of why the action is proposed or refused;</li> <li>• a description of any other options considered and the reasons why those options were rejected;</li> <li>• a description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;</li> <li>• a description of any other factors relevant to the action proposed or refused.</li> </ul> <p>The requirement is <b>met</b>, if the school proposed or refused a change to the identification, evaluation or educational placement of a student with disabilities or the provision of a free appropriate public education</p>	<p><i>Current Compliance:</i></p> <p>LEA must take action to ensure future compliance including implementing a system of internal controls.</p>	

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		<p>and did provide the parent with Prior Written Notice before implementing the change. Enter <b>“yes”</b> and go to the next item.</p> <p>The requirement is <b>not met</b>, if the school proposed or refused a change to the identification, evaluation or educational placement of a student with disabilities or the provision of a free appropriate public education and did not provide the parent with Prior Written Notice before implementing the change. Enter <b>“no”</b> and go to the next item.</p>		

