

# PARENTS' BILL OF RIGHTS

Provided by Indiana Attorney General Todd Rokita



A roadmap for Hoosier parents and caregivers  
to exercise their legal right to direct their  
children's education Edition 4.0 Updated August 2023





## Student and Parent Rights

### Preamble

Dear Indiana Parent,

Thank you for all you do to raise and protect your children. “We the Parents” are primarily responsible for what and how our children learn. It is not the government’s job to raise our children, even if it wants to do so. Therefore, it is of utmost importance that we understand our legal rights to effectively oversee and participate in the part of our children’s education that occurs outside the home, including in government schools. Towards that effort, the Office of the Attorney General (OAG) published the Parents’ Bill of Rights to provide parents with a roadmap to understanding their rights and how the law interacts with their children’s education.

The Parents’ Bill of Rights consists of four volumes. [Volume I](#) outlines parents’ rights in school governance, curricula and standards, and civil rights complaints. [Volume II](#) details parents’ rights in making medical decisions for their children. [Volume III](#) explains parents’ rights to educate their children in one of Indiana’s many public or private school choice options. [Volume IV](#), the most recent edition, empowers parents to understand their children’s right to live out their faith at school freely. Many think our elementary and secondary schools are “religion-free” zones, but religious freedom does not end at the school doors. Both state and federal laws protect religious freedom in public schools, with the U.S. Constitution providing, in part, that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech.” Volume IV also includes updates to vols. I, II, and III to reflect changes made to the law during the 2023 legislative session, including a few bills I’d like to bring to your attention:

- The Indiana General Assembly passed SEA 480, prohibiting the use of surgical and hormonal procedures to transition children to the opposite sex. The ACLU challenged this law, which resulted in a ruling that the prohibition on hormone therapy would not be in effect while the case is deliberated. However, the prohibition on the use of surgical procedures to transition a minor is still in effect. My office will continue to robustly defend all aspects of SEA 480 in court to protect a child’s right to reach adulthood before consenting to experimental procedures linked to permanent mental and physical harm.
- The passage of HEA 1447 was an excellent first step toward removing inappropriate books from our children’s school libraries. The law requires schools to post a catalog of all library books on their websites. If a parent finds a book objectionable, the law allows parents to request its removal through the local school board.

The Parents’ Bill of Rights is available on our website and can be downloaded in its entirety or by volume. If the OAG can provide further information on these rights, please call (317) 232-6201 or visit [www.in.gov/attorneygeneral/](http://www.in.gov/attorneygeneral/). Additionally, please follow @AGToddRokita on Twitter to receive Parents’ Bill of Rights alerts on education matters and developments important to your child’s education.

Very truly yours,

A handwritten signature in black ink that reads "Todd Rokita".

Todd Rokita  
Parent  
Attorney General of Indiana



## Parent Education Bill of Rights

**1.**

You have the right and expectation to question and address your child's school officials via letters, electronic communications, and in-person meetings. You also have the right to attend publicly designated meetings with proper notice of the meetings provided.

**2.**

You have the right and expectation to provide public comments at designated school board meetings.

**3.**

You have the right and expectation to question and review the curriculum taught in your child's school.

**4.**

You have the right and expectation that the academic curriculum taught in your child's school aligns with Indiana and federal law.

**5.**

You have the right and expectation to participate in the selection and adoption of academic standards for the State of Indiana.

**6.**

You have the right to run as a candidate for your local school board.

**7.**

You have the right and expectation to make medical care decisions on behalf of your child, including vaccinations and immunizations.

**8.**

You have the right and expectation to receive your child's student health records.

**9.**

You have the right to receive special education services on behalf of your child with a disability, regardless of enrollment in the public school system.

**10.**

You have a constitutional right to direct the upbringing and education of your child in the manner you see fit.

**11.**

You have the right to request a transfer for your public school-child to attend another public school that is either within or outside the boundaries of your public school district.

**12.**

You have the right to apply for school choice offerings through the Indiana Choice Scholarship Program, Indiana Educational Savings Account Program, or a Scholarship Granting Organization to reduce the cost of private education.



## Parent Education Bill of Rights

**13.**

You have the right to receive notice from your child's school if he or she is bullied.

**14.**

You have the right to determine which educational pathway your child pursues for high school graduation.

**15.**

You have the right to know what books are available to students in the school library and to request the removal of books that are obscene or include material harmful to minors.

**16.**

You have the right to be notified if your child requests to be addressed by a name or use the pronouns of the opposite sex.

**17.**

You have the right to defend your child's First Amendment rights to religious expression and free speech in a school environment.



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# PARENTAL RIGHTS & CURRICULUM

Provided by Indiana Attorney General Todd Rokita



A roadmap for Hoosier parents and caregivers to exercise their legal right to direct their children's education • Volume I





## Questions and Answers

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### Volume I: Indiana School Curriculum and Academic Standards

#### **Q: What are the roles of local school boards, superintendents, and principals?**

**A:** A school corporation includes the school board, its members, school administrators, and any other aspects of the school district. The superintendent is the executive for the school corporation. The principal is the administrator of individual schools. All these educational stakeholders share the goal of ensuring that curricula aligns with state law and meets state standards. Local school boards are widely regarded as the principal body capable of representing citizens in local educational decisions, including adopting curricula presented to them by the superintendent. School boards have a duty in deciding what educational content is included in curricula and what is left out. It is of extreme importance for parents to voice their concerns when curricula deviates from approved academic standards.

#### **Q: How are Indiana academic standards and curriculum established?**

**A:** The Indiana General Assembly (“IGA”) establishes the academic subjects and courses schools must teach under Indiana Code § 20-30-5-5. The Indiana Department of Education (“IDOE”) is responsible for developing standards for these courses and subjects under Indiana Code § 20-19-2-14(1)<sup>1</sup>. The State Board of Education (“SBOE”) formally adopts the standards developed by IDOE under Indiana Code § 20-19-2-14.5. School boards are charged with selecting a curriculum aligned to the standards adopted by SBOE for each subject or course. It is important to note that IDOE does not have the authority to unilaterally create courses, develop standards, or set policies not authorized by the IGA under the law. The IGA intended for IDOE to carry out the duties outlined in statute and any “policies and procedures established by the state board” set forth in statute. Ind. Code § 20-18-3-1. Additionally, local school boards may approve subjects and courses for schools within their district under Indiana Code § 20-30-5-21, but such subjects and courses may not conflict with or supplant those mandated by the IGA. If a school board exercises this power and approves an additional subject or course, the IGA may pass a law to prohibit the school corporation from doing so. In sum, schools and teachers are prohibited from teaching any subjects or courses that are not authorized by law or approved by their local school board.

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<sup>1</sup>See also Ind. Code § 20-19-2-14.5.





## Questions and Answers

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### **Q: Can Indiana academic standards and curriculum be changed?\***

**A:** Yes. Indiana academic standards are diverse and developed over time through IDOE standards revision committees. Pursuant to Indiana Code § 20-31-3-4, IDOE shall appoint an academic standards committee composed of subject area teachers, higher education representatives with subject matter expertise, *and parents* (emphasis added) during the period when a subject area is undergoing revision. The law also specifies that parents appointed to an academic standards committee must be racially and geographically diverse. Ind. Code § 20-31-3-4 (2023). Pursuant to Indiana Code § 20-31-3-3, parents can provide comments and suggestions when academic standards are proposed for adoption, typically every six years.

Indiana Code 20-31-3-1(c) (2023) requires SBOE to identify the traits and skills necessary for post-secondary success and to adopt standards that help students develop these traits and skills.

SBOE identified the following skills and traits to which the current standards were recently aligned: Communication, Collaboration, Initiative and Self-advocacy, Problem Solving, Perseverance (Grit) and Adaptability, Integrity, Growth Mindset, and Information, Digital, and Financial Literacy<sup>2</sup>. The law also directs IDOE to identify 33% of Indiana’s academic standards (effective July 1, 2022) as “essential” for students to develop those skills and traits and to reduce by at least 25% the overall number of the existing academic standards. On June 7, 2023, SBOE adopted the revised academic standards for English, mathematics, science/computer science, and social studies in kindergarten through grade 12. See “Additional Parent Resources” for a link to the standards. Schools must implement the new standards by the 2023-2024 school year, and IDOE must realign the ILEARN state assessments to reflect the new standards no later than March 1, 2025. Ind. Code § 20-31-3-1.

IDOE also must consider standards “necessary to understand and utilize emerging technologies” and eliminate any academic standards that “may be obsolete” due to “emerging technologies.” Ind. Code § 20-31-3-3(b) (2023). Beginning with the 2023-2024 school year, SBOE must adopt reading standards aligned to the “Science of Reading” and may not adopt reading standards based on the “Three-cueing Model.” Ind. Code § 20-31-3-2.5 (2023). For more information about these models, see “Are schools required to teach a specific curriculum in reading?”

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<sup>2</sup> Ben Carter and Matt Fleck, *House Bill 1251: Key Skills and Traits*, Inspire Success, 8-9, (October, 2022).



## Questions and Answers

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Under Indiana law, parents do not have a right to individual notice of these adoption meetings and committees. Still, parents are urged to consult IDOE's website and subscribe to the Indiana Secretary of Education's weekly update letters (see "Additional Parent Resources"). This proactive approach is crucial for parents to hold school boards, school administrators, and legislators accountable and to assure oversight in reviewing standards. In addition, parents can be appointed to committees and provide input regarding how a particular standard may affect curricula related to controversial theories, social advocacy groups, and political topics.

### **Q: How else are academic standards changed or modified?**

**A:** Academic standards should reflect a holistic approach that is balanced and representative of all viewpoints. These standards may be reviewed and altered as necessary and should reflect Indiana parents' educational values and interests. As discussed above, parents should take every opportunity to join IDOE committees and provide comments in response to IDOE solicited parent feedback when standards are revised or proposed for adoption. SBOE adopted the most recent standards revision on June 7, 2023. Ind. Code § 20-31-3-3. **The IGA has oversight of IDOE proceedings and the authority to change them. If parents find IDOE unresponsive or its processes unworkable, Indiana law would need to be changed to accommodate a more open, collaborative process for developing academic standards. Parents should contact their representatives and the legislators sitting on the Indiana House and Senate education committees.**

### **Q: What is the difference between an academic standard and academic curriculum?**

**A:** Generally, academic standards reflect benchmarks for student achievement and what students should learn at each grade level. Standards are used as the basis for a curriculum and may include specific instructional strategies, but Indiana Academic Standards are not curricula. Rather, the curriculum includes the textbooks, digital content, and materials selected by a school district and adopted by a local school board.

### **Q: Does the Indiana Department of Education (IDOE) evaluate curricular materials?\***

**A:** Indiana law requires IDOE to evaluate, approve, and publish a list of "high-quality" Science, Technology, Engineering, and Math (STEM) curricular materials annually. Ind. Code §20-20-5.5-2 (2023). However, a similar requirement for IDOE to evaluate curricular materials in reading, English, and social studies was repealed by HEA 1590 (2023).



## Questions and Answers

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### **Q: What metrics does IDOE use to determine if STEM curricula is “high-quality?”\***

**A:** IDOE identifies “high-quality” STEM curricula as one in which the publisher offers multiple student tests (formative, summative, etc.) and provides an assessment of student-level data on such tests (per a data-sharing agreement under Indiana Code § 20-20-5.5-2(e), alignment to Indiana standards, and the inclusion of “experiential learning opportunities.” Ind. Code § IC 20-20-5.5-2(g) (2023). “Experiential learning opportunities” is not defined within Indiana Code, but it is generally understood within the teaching profession to include learning through experience.

### **Q: Are schools required to use specific instructional methods in math?\***

**A:** In some math courses, Indiana law requires schools to use a specific method of instruction. Core 40 math curricula in Algebra I, Algebra II, and Geometry courses must include “real-world applications” and “project-based and inquiry-based learning,” and schools must implement these courses by the 2025-2026 school year. Ind. Code § 20-30-10-2.7 (2023). These instructional terms are not statutorily defined, but they are understood within the teaching profession to include student-directed learning, rather than direct instruction provided by the teacher.

### **Q: Are schools required to teach a specific curriculum in reading?\***

**A:** Yes. Curricula used by schools must align to the “Science of Reading” standards. Ind. Code § 20-26-12-24.5 (2023). The “Science of Reading” is statutorily defined to mean “the explicit, systematic inclusion of phonemic awareness, phonics, fluency, vocabulary, and comprehension” that is “supported by evidence” with a “demonstrated record that it leads to increased student competency.” Ind. Code § 20-18-2-17.5 (2023). The “Three-cueing Model,” which is prohibited, refers to the model of reading instruction that uses meaning drawn from the context, pictures, or syntax as the primary basis for teaching word recognition. Ind. Code § 20-26-12-24.5 (2023).

### **Q: How can parents see the reading curriculum adopted by a school corporation?\***

**A:** Public school corporations, including charter schools, are required to annually report (by July 15) on their website the name and publisher of the adopted reading and writing curricula by grade level, as well as information regarding related remedial programs provided by the school. Ind. Code § 20-26-5-44.2 (2023).



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### **Q: Does a parent have the right to decide which graduation “pathway” a student chooses to fulfill graduation requirements?\***

**A:** Yes. Schools are prohibited from requiring a student to participate in any particular graduation pathway to be eligible to graduate. Ind. Code § 20-32-4-1.8 (2023). There are three general pathways to graduation. The first is “Credits,” whereby the student earns credits towards a high school diploma designation (Core 40 designation, Academic Honors designation, Technical Honors designation, or General designation). The second is “Employability Skills,” whereby the student learns and demonstrates employability skills through project-based, service-based, or work-based learning opportunities. The third pathway is “Postsecondary Ready Competency,” whereby the student does one of the following: earns a diploma designation of Honors Academic or Honors Technical, attains a certain score on the SAT, ACT, or the Armed Services Vocational Aptitude Battery (ASVAB), earns an industry recognized certification, completes a federally recognized apprenticeship or a Career and Technical Education (CTE) concentrator, completes a certain number of and earns a certain grade in coursework designated as either Advanced Placement, International Baccalaureate, Dual Credit, Cambridge International, or College-Level Examination Program, or completes a locally created pathway that is approved by SBOE (*see* “Additional Parent Resources”).

### **Q: Are students required to take a course on personal financial responsibility?\***

**A:** Yes. Starting with the class graduating of 2028, all students attending public schools, including charter schools, and accredited nonpublic schools must take a personal financial responsibility course to graduate from high school. Ind. Code § 20-30-5-19 (2023)

### **Q: What civics education and curricula are required in schools?**

**A:** Indiana law requires patriotism in multiple instances in schools. In Indiana, the United States flag shall be displayed in each classroom of every school in a school corporation. Indiana law also mandates that the governing body of each school corporation provide a daily opportunity for students to voluntarily recite the Pledge of Allegiance. A student is exempt from participation in the Pledge of Allegiance and may not be required to participate if the student chooses not to participate, or the student’s parent chooses to have the student not participate. Ind. Code § 20-30-5-0.5. Moreover, Indiana law requires that each governing body procure a 4 feet by 6 feet United States flag for schools to display every day the school is in session. Ind. Code § 20-30-3. Indiana law provides discretion for schools that wish to place a poster



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or framed picture of the national motto of the United States, “In God We Trust,” and a representation of the United States flag and Indiana state flag. Ind. Code § 20-30-3.

Regarding civics education, Indiana law instructs schools to provide education to students on the Constitution, American history, and American writings and documents. Specifically, in grades 6-12, every school must provide instruction on the Constitution of Indiana and the United States. Ind. Code § 20-30-5-1. Courses on the Constitutions should encompass the historical, political, civic, sociological, economical, and philosophical aspects of the Constitutions. A school corporation cannot censor certain American writings, such as the Constitution of the United States or the Declaration of Independence, and must allow those to be displayed or read by teachers and principals. Ind. Code § 20-30-5-3. Within two weeks following a general election, all students in grades 6-12 shall have five class period discussions concerning the system of governing in Indiana and the United States, methods of voting, party structure, election laws, and citizenship participation.

Indiana Code requires that students take a semester of civics education in grades 6, 7, or 8. Ind. Code § 20-30-5-7.3. The SBOE established standards for civics education in 2022. Ind. Code § 20-19-2-14.7. The IGA should remain cognizant of these standards and related curricula as these standards “may only be changed by the express authorization of the general assembly.” Ind. Code § 20-19-2-14.7(b). In other words, the civic standards adopted by the SBOE, effective July 2022, may only be changed by the IGA. **If the final standards do not meet the expectations of Hoosiers, parents have the right to petition the IGA to pass legislation to correct them.**



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### Parental Consent and Educational Curricula Not Aligned with Indiana Academic Standards

#### **Q: Can children be taught certain curricula or instruction without parental consent?**

**A:** No. Pursuant to Indiana Code § 20-30-5-17(b), certain curricula cannot be taught without parental consent. Curricula and instruction related to a personal analysis, evaluation, or survey that is not directly related to academic instruction and that reveals or attempts to affect the student’s attitudes, habits, traits, opinions, beliefs, or feelings aimed toward human sexuality, religious practices, and political affiliations, are all examples of curricula needing prior parental consent. More recently, parents have observed firsthand these types of questions included on a Panorama survey completed by their children online during the Covid-19 quarantine. The survey asked students if they agreed or disagreed with controversial issues, such as government funding for Planned Parenthood, transgenderism in sports, and abortion. Schools or teachers that administer such surveys or questionnaires to students without parental consent violate Indiana Code § 20-30-5-17(b). Parental consent determinations on such curricula not directly related to academic instruction will first be made by the school corporation. Parents should work directly with school officials to discuss curricular concerns. If a parent is dissatisfied with a school district’s determination on a specific curriculum, it may request a further determination by contacting the Indiana Department of Education (“IDOE”) (*see* “Additional Parent Resources”). **Additionally, parents have the right to petition the IGA to expand the list under Indiana Code § 20-30-5-17 to include additional curricula and instruction that requires parental consent.**

#### **Q: Are controversial political and social groups discussed in my child’s classroom?\***

**A:** Schools may not ask students to participate or express their personal feelings regarding controversial political groups and politically affiliated social groups unrelated to academic instruction in a K-12 classroom without parental consent. Ind. Code § 20-30-5-17(b). Flawed ideologies that distort history and create controversy cannot be appropriately aligned with approved Indiana academic standards and student achievement. In part, because they lack the highest evidence-based practices as required by the federal Every Student Succeeds Act (“ESSA”). 20 U.S.C. § 6301 et seq. The ESSA requires schools receiving certain grant funds to use evidence-based practices in the classroom. Controversial social groups often contain political undertones and solicit political discussions in the classroom. As such, parents should utilize their voices and contact their children’s school districts when controversial political and social ideologies are brought into Indiana classrooms. The OAG is committed to supporting the rights of Indiana parents and the expectation that their children will receive an evidence-based education not contrary to Indiana or federal law.



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Indiana law allows a state agency, school corporation, or teacher to require or otherwise incentivize a student to engage in political activism or lobbying that requires “the student to adopt, affirm, affiliate, or take any action” that requires the student to take a “particular position on the issue” unless the school offers an “alternative option” that allows for the favoring of an “alternative position.” Ind. Code § 20-26-21 (2023). The law does not define an “alternative option” or “alternative position.” Thus, the law does not explicitly require that schools offer a student an “alternative option” that aligns with the student’s personal beliefs or views, but only an “alternative option” offered by the teacher that allows the student to “favor an alternative position.” If a teacher compels a student to adopt a position that conflicts with his or her personal beliefs, it would likely violate the student’s First Amendment protections.<sup>3</sup> See Volume IV for more information on a student’s First Amendment rights.

Moreover, the OAG issued an advisory opinion to state legislators that Black Lives Matter and affiliated organizations are unequivocally political organizations, and the display of such political materials by teachers in a classroom setting is unlikely to be protected under the First Amendment. The opinion also concludes that compelling students to speak about or take a position on controversial issues related to any partisan political group violates the student’s First Amendment protections. Ultimately, school corporations must ensure that their policies and procedures do not run afoul of Indiana law and constitutional protections. If a parent believes a school employee has violated their child’s constitutional rights, they may be able to bring a lawsuit under Section 1983 of the Civil Rights Act. 42 U.S. Code § 1983. Please see the section titled “Parent Participation, Procedural Rights, and Remedies” for more information on how to file a civil rights complaint.

### **Q: What is Critical Race Theory (“CRT”)?**

**A:** The IGA established as a policy of the state that students receive equal and nondiscriminatory education opportunities. As such, children should expect a welcoming learning environment, nondiscriminatory teachings, equal protection under the Constitution, and equal educational opportunity under the law.

Indiana students are taught to reflect upon the important contributions and struggles of racial and minority groups, which are ingrained in the heart of American history. Our nation’s history reflects a melting pot of experiences and cultural backgrounds from many ethnic and racial groups, all of whom have overwhelmingly shaped our great country for centuries.

<sup>3</sup> Ind. Att’y Gen. Op. 2021-2, <https://www.in.gov/attorneygeneral/files/Official-Opinion-2021-2.pdf>.



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However, CRT, the 1619 project, and similar concepts and lesson plans are deeply flawed and controversial teachings. CRT is an ideological construct that analyzes and interprets American history and government primarily through the narrow prism of race. Like CRT, many related ideologies purport to teach diversity and inclusion but in reality, promote exclusionary tenets under the guise of euphemisms commonly referred to as “culturally responsive teaching,” “intersectionality theory,” “radical genderism,” “microinequities,” and “diversity and equity” initiatives. The 1619 Project aims to reframe the country’s history by placing slavery at the center of the United States narrative. CRT’s teachings are widespread, and their principles are not rooted in American history or known historical fact.

Rather, CRT, the 1619 Project, and other similar lesson plans attempt to create their own truths through Marxist ideologies, seeking to abolish individual rights and redistribute wealth. Such CRT teachings have a discriminatory effect on students who are inappropriately defined as having “privilege” or being “oppressors” based solely on their race. Teachers promoting such theories denigrate classes of students. Classroom instruction rooted in CRT teachings runs afoul of broad non-discrimination protections, equal protection, Title VI, and well-established Indiana law.

### **Q: What is Critical Theory (“CT”)?**

**A:** CT is the foundation from which all these destructive theories flow and can be traced back formally to 1937 at the Frankfurt School, an institute known for its Marxist philosophies.<sup>4</sup> CT’s goal, like Critical Legal Theory (“CLT”) and CRT, is “to attack Western institutions and norms in order to tear them down.”<sup>5</sup> CT and CLT have spawned a wide variety of offshoots beyond CRT, including Critical Gender Theory, Latino Critical Theory, and many others. CRT is an outgrowth of Critical Theory (“CT”), which spawned CLT, from which CRT formed. The common theme of these CT offshoots is that they view all aspects of life through the lens of race or gender (containing two classes of people, the oppressed and the oppressor), therefore promoting the need to replace systems of western civilization with a Marxist worldview.

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<sup>4</sup> Jonathan Butcher and Mike Gonzalez, *Critical Race Theory, the New Intolerance, and Its Grip on America*, The Heritage Foundation, 3-4, (December 7, 2020), <http://report.heritage.org/bg3567>.

<sup>5</sup> *Id.* at 4.





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### **Q: What is Critical Gender Theory (CGT)?**

**A:** Similar to CRT, Critical Gender Theory (“CGT”) is a controversial and problematic teaching that originates from Marxist ideologies. It is a complex, theoretical perspective that analyzes society through the lens of power and unpacks the ways in which LGBTQ+ individuals are oppressed by heterosexuals through hegemonic structures and ideals. Gender under the framework of CT furthers the narratives of “structural oppression” and “power and privilege.” Students are taught that if they are comfortable being a boy or a girl they are members of an “oppressor group” (the cisgender) and that belief in binary sex is a form of bigotry and bullying.

### **Q: What is the difference between equality and equity?**

**A:** “Equality” and “equity” sound similar but are functionally opposite. Equality refers to ensuring that individuals from all segments of society have an equal opportunity to attend school, apply for jobs, access public resources, and equal treatment under the law. On the other hand, equity is premised on the idea that people have different circumstances and abilities; thus, resources and opportunities must be allocated in accordance with these differences to reach an equal outcome. To achieve equity, some classes will gain privileges, and others will lose them. Under CRT and other theories, “equity” requires race-based discrimination because systematic racism has purportedly produced disparities between races.<sup>6</sup> The only remedy for CRT supporters is to treat the two individual classes of Americans differently based on race and forcibly produce equal outcomes.<sup>7</sup>

### **Q: Is CT, CRT, CGT, or similar instruction permissible under Indiana academic standards?**

**A:** Regarding Indiana academic standards, CT, CRT, CGT, or similar instruction is not aligned with any IDOE approved standard. Specifically, CRT is not expressly mentioned or aligned with any IDOE approved civics, history, or social studies standard.

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<sup>6</sup> *How to Identify Critical Race Theory*, The Heritage Foundation, (accessed August 11, 2021), <https://www.heritage.org/civil-society/heritage-explains/how-identify-critical-race-theory>.

<sup>7</sup> Indiana Academic Social Studies Standards, Indiana Department of Education, (accessed August 6, 2021), <https://www.in.gov/doe/students/indiana-academic-standards/social-studies/>.



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Indiana standards should reflect a holistic approach that is balanced and representative of all viewpoints and consistent with the curriculum approved by the IGA. Traditional U.S. history and civics curriculum should not be diluted with controversial and radical teachings of CRT in a K-12 classroom. Standards reflecting various civic and moral instruction must be crafted in ways that reflect equality, inclusivity, and diversity, while not maligning parents, students, and educators.

Now more than ever, controversial political groups and theories, including whether CRT and other similar ideologies should be taught in schools, are a source of controversy. Some school administrators have denied teaching CRT and Marxist ideologies by name. Yet, parents with children in these same schools have provided examples that prove otherwise. This evidence includes, among many examples, a social studies lesson on the Civil War that instructs white students to stand and be recognized by the class as oppressors and called slaveholders. Another popular example is to assign anti-racist books in English class written by CRT advocates, including Ibram X. Kendi, author of *Stamped from the Beginning: The Definitive History of Racist Ideas in America* and Robin DiAngelo, author of *White Fragility: Why It's so Hard for White People to Talk about Racism*.

Parents also reported that schools use the “Teaching for Tolerance” curriculum, also known as “Learning for Justice.”<sup>8</sup> This curriculum includes lesson plans that teach students to advocate for sanctuary schools that the 1619 Project accurately reflects America’s founding that whiteness is a racial identity with white privilege and power, and that refusing the concept of gender fluidity is wrong.<sup>9</sup> Not only does the curriculum promoted by “Teaching for Tolerance” include discriminatory CRT elements, but progressive ideologies that conflict with some students’ political and religious views. Several states have proposed and passed legislation designed to limit these controversial theories from classroom instruction. **Parents have the right to petition the IGA to pass similar legislation to address these ideologies’ polarizing effect on education instruction.**

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<sup>8</sup> Jalaya Liles Dunn, *Our New Name: Learning for Justice*, Learning for Justice, (February 3, 2021), <https://www.learningforjustice.org/magazine/our-new-name-learning-for-justice>.

<sup>9</sup> See generally <https://www.learningforjustice.org/classroom-resources/lessons>; see also <https://www.learningforjustice.org/classroom-resources/learning-plans>.



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### **Q: What are Social-Emotional Learning (SEL) competencies, and how are they implemented in Indiana Schools?**

**A:** SEL involves teaching and facilitating skills that students need to be successful at home, at school, and in the workplace. IDOE guidance defines social-emotional learning as “the process through which children and adults acquire and effectively apply the knowledge, attitudes, and skills to . . . understand and manage emotions, set and achieve positive goals, establish and maintain positive relationships, feel and show empathy for others, and make responsible decisions.”<sup>10</sup> Indiana’s SEL competencies focus on core social-emotional learning standards to foster the development of the following attitudes and skills: Collaboration, Connection, Critical Thinking, Mindset, Insight, Regulation and Sensory and Motor Integration. Such attitudes and skills are difficult for people to develop, particularly children, yet schools have assumed this responsibility. SEL programs represent a fundamental shift in the role of teachers from educators to therapists and expand the reach of government into domains of the family. Some schools may use SEL programs to assume powers over students’ mental health development beyond their training, expertise, and authority under the U.S. Constitution and Indiana law.<sup>11</sup>

IDOE, along with other state stakeholders, are charged with developing a children’s social, emotional, and behavioral health plan. Ind. Code § 20-19-5-1. This plan concerns, specifically, “comprehensive mental health services, early intervention, and treatment services.” *Id.* This plan is geared toward collaboration between the Department of Child Services, Department of Correction, and the Division of Mental Health and Addiction to assess and treat children’s social, emotional, and mental health issues. *Id.* While this law allows IDOE and other agencies to develop the Plan, it does not require schools to implement it, authorize school staff to perform mental health practices prohibited under existing laws, or create any new authorities for school-based personnel regarding identifying, assessing, treating, or tracking SEL related mental health issues. IDOE must make recommendations to SBOE for the adoption of rules concerning the plan and conduct hearings on the implementation of the plan. *Id.* IDOE relies on this statute to support the application and integration of SEL competencies in schools.<sup>12</sup>

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<sup>10</sup> Christy Berger and Lisa Truitt, *Indiana’s Social-Emotional Learning Competencies: Serving the Whole Child*, Indiana Department of Education, (accessed September 22, 2021), <https://www.ckfindiana.org/wp-content/uploads/2021/10/IN-Social-Emptional-Learning-Competencies-Serving-the-Whole-Child.pdf>

<sup>11</sup> Robert Pondiscio, *The unexamined rise of therapeutic education: How social-emotional learning extends K-12 education’s reach into students’ lives and expands teachers’ roles*, p 9, (October 13, 2021), <https://www.aei.org/research-products/report/the-unexamined-rise-of-therapeutic-education-how-social-emotional-learning-extends-k-12-educations-reach-into-students-lives-and-expands-teachers-roles/>.

<sup>12</sup> Memorandum from Timothy Schultz to Indiana State Board of Education (May2, 2018) (on file with State Board of Education), <https://www.in.gov/sboe/files/Board-Memo-and-SEBH-Plan.pdf>



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### **Q: Is SEL mandatory in Indiana schools?\***

**A:** Certain curricula and recommendations made by IDOE, such as with SEL competencies, are discretionary. The law only tasks IDOE with making recommendations regarding school social, emotional, and behavioral health plans. Ind. Code § 20-19-5-2. There is no provision provided under Indiana Code § 20-19-5-1 mandating SEL competencies in Indiana classrooms. However, the IGA passed two laws that may enable schools to teach SEL through the Indiana Employability Skills Standards and to incorporate instruction similar to SEL into the Indiana Academic Standards.

The first is SEA 297 (2019), which requires school corporations to “include interdisciplinary employability skills...in the school’s curriculum.” This legislation requires schools to teach certain career readiness and career development standards in grades K-12 (“Indiana Employability Skills Standards”). Ind. Code § 20-30-5-14. These standards are in addition to the required academic standards developed by IDOE pursuant to Indiana Code § 20-31-3-2. IDOE worked with the Department of Workforce Development to draft the Employability Standards, and the SBOE adopted them. Ind. Code § 20-30-5-14(c).

IDOE included three of the seven SEL competencies (which are discretionary) in the Indiana Employability Standards (which are mandatory). This created a backdoor for IDOE to require schools to teach these three SEL competencies as part of the state’s adopted standards. Ind. Code § 20-19-5-1. These skills standards include 1) Regulation – being able to recognize and manage one’s emotions, 2) Connection – being able to demonstrate the ability to network with others through social awareness and cultural sensitivity, and 3) Collaboration – being able to work well with others in a team.

The second is HEA 1251 (2023), which requires SBOE to revise Indiana’s academic standards to align with the “traits and skills necessary for post-secondary success.” IDOE identified these traits and skills as Communication, Collaboration, Initiative and Self-advocacy, Problem Solving, Perseverance (Grit) and Adaptability, Integrity, Growth Mindset, and Information, Digital, and Financial Literacy.<sup>13</sup> These traits and skills for post-secondary success (often called “soft skills”) are very similar to the SEL competencies, which may lead schools to incorporate SEL into the curricula to meet these revised standards.

In sum, SEL competencies are not Indiana Academic Standards. However, three of these competencies have been approved by SBOE to meet Indiana’s Employability Skills Standards, which are required to be included by schools in the curricula.

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<sup>13</sup> Indiana Department of Education, *Presentation to Indiana State Board of Education on Indiana Academic Standards*, (June 28, 2023), [https://www.in.gov/sboe/files/6.7.2023-SBOE-slides\\_Standards-update\\_FINAL.pdf](https://www.in.gov/sboe/files/6.7.2023-SBOE-slides_Standards-update_FINAL.pdf)



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Additionally, HEA 1251 requires all academic standards to align with the traits and skills for post-secondary approved by SBOE. Because these traits and skills are similar to SEL competencies, it's possible that schools can incorporate instruction similar to SEL into the curricula for Indiana's academic standards. **If parents don't want Indiana's academic standards or Employability Standards to include SEL, they have the right to petition the IGA to prohibit IDOE from adopting SEL practices as a means of meeting these standards. Additionally, a model set of employment standards and curricula that are free of SEL practices could be selected by the IGA and inserted verbatim into Indiana Code § 20-30-5-14(c).**

### **Q: What are “culturally responsive methods” of teaching?**

**A:** Under Indiana Code § 20-28-3-0.3, “culturally responsive methods” refer to teaching methods that use the “cultural knowledge, experiences, *social and emotional learning needs*, and performance styles of diverse students to ensure that classroom management strategies and research-based alternatives to exclusionary discipline are appropriate and effective for the students.” (emphasis added). Indiana educators can use SEL as part of a culturally responsive method of teaching. See Ind. Code §§ 20-28-3-3.5; 20-31-6-1; 20-31-6-2. These competencies, however, must be taught and applied in the classroom in a non-discriminatory fashion. Parents have the right to petition the IGA to revise and further define “culturally responsive methods” to foster positive classroom relationships and school climates.

### **Q: Are CT, CRT, CGT, or other controversial theories allowed to be taught through SEL?**

**A:** No, but laws prohibiting such discriminatory teaching practices haven't stopped schools from teaching these controversial theories and concepts in SEL programs. According to complaints made to the OAG, discriminatory teachings, such as CRT and the 1619 Project, are consistently being backdoored into Indiana classrooms, contrary to state and federal law. It is important to understand that critical theory principles can be taught without being labeled as CT or CRT. For example, Indiana's Employability Skills Standards include a “Connection” standard requiring students to “have strong social awareness.” In grades nine and ten, students meet this standard if they “think critically about equity and social justice in a variety of environments and cultures.”<sup>14</sup> **If parents believe that SEL practices or the Employability Skills Standards allow schools to implement curricula based on the tenets of CRT, they have the right to petition the IGA to correct this practice under the SEL statute or to require the SBOE to modify questionable Employability Skills Standards. The Governor could also correct this deficiency since he appoints the Secretary of Education who oversees IDOE.**

<sup>14</sup> Grade Nine-Grade Ten Employability Standards, Indiana Department of Education, <https://www.in.gov/doe/files/grade-nine-grade-ten-employability-skills-standards-final.pdf>



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Indiana schools have witnessed an influx of SEL model practices utilized as a means of introducing distorted theories and activities aimed at making students feel bad about themselves. These methods are impermissible, encourage unequal treatment of students under the law, and are misaligned with the educational policy goals established by the IGA. At its core, SEL should teach students skills promoting self-awareness, professionalism, personal management, and taking responsibility for student learning. Theories that denigrate a class of students have no place in the classroom and cannot be utilized as an SEL practice. It is imperative that parents get involved and learn what is being taught in their classrooms. **If parents believe this to be discriminatory, they have the right to petition the IGA to tailor the SEL statutes to prevent the manipulation of SEL that allows controversial teachings and theories into Indiana schools. Moreover, the narrowing of this language would further support parents' rights to determine the religious and moral formation of their children.**

### **Q: Can a local school board independently adopt a curriculum that includes SEL?\***

**A:** Local school boards may also adopt locally approved curriculum, pursuant to Indiana Code § 20-26-3, provided it does not conflict with mandatory Indiana academic standards. This curriculum may not replace or amend any mandatory curriculum or otherwise supplement approved IDOE academic standards. If a school board adopts SEL as a locally approved curriculum, it has the option of making it mandatory. Local school boards decide the procedures for notice and options for parents to opt-out of locally approved curriculum. **If parents decide that a locally adopted curriculum should not be mandatory, they have the right to petition the IGA to legislatively prohibit schools from doing so. Moreover, the IGA could decide such locally approved curriculum should not be taught and legislatively prohibit the school district from teaching it.**

### **Q: Can parents opt their children out of certain curricula or SEL curricula?\***

**A:** Parents can opt out of evaluations or surveys on political affiliations, religious beliefs or practices, mental or psychological conditions, sexual behaviors, illegal behaviors, privileged or confidential relationships, and income if these evaluations and surveys are not related to academic instruction. Ind. Code § 20-30-5-17(b). Parents may also opt-out of an evaluation or survey provided by a third-party vendor that collects data about a student's personal beliefs or feelings (regardless of whether or not it is directly related to academic instruction). Ind. Code § 20-26-21-4 (2023). Moreover, if a public school uses a third-party vendor to provide a survey, the third-party vendor and the public school may not record, collect, or maintain results that identify the responses of an individual student. Ind. Code § 20-26-21-3 (2023). Unfortunately, many types of evaluations and surveys are exempted from this prohibition regarding third-party vendors, including those under Indiana Code § 20-30-5-17(b). Each public school must develop a grievance process for parents if the school violates the laws concerning evaluations and surveys provided by a third-party. Ind. Code § 20-26-21-6 (2023).



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While human sexuality instruction is prohibited in pre-kindergarten through grade three under Indiana Code § 20-30-17(a) (1) (2023), parents with students in grades four through twelve can opt their children out of instruction on human sexuality under Indiana Code § 20-30-5-17(c).

In sum, state law allows parents to opt out of instruction on human sexuality and personal analysis surveys. Ind. Code § 20-30-5-17(c), Ind. Code § 20-30-5-17(b), and Ind. Code § 20-26-21-4. Additionally, local school boards could allow parents to opt out of additional activities and curricula. Parents cannot opt out of mandatory curricula found at Indiana Code § 20-30-5. The mandatory curricula referenced in this code include all other courses and classes, such as math, science, government, English, history, etc. It also includes instruction in a variety of areas, including good citizenship, morals, bullying prevention, the Holocaust, Human Immunodeficiency Virus, safety, organ donation, and others.

As discussed above, school corporation powers (governed by local school boards) are broad and expansive, in part, because each school corporation is unique in its demographics and the populations they serve. As a result, school boards should provide additional opt-out provisions for locally adopted curricula to meet the needs of the populations they serve. Ind. Code § 20-26-3-3(b). **Moreover, the IGA could expand current law and allow parents to opt out of more types of surveys and evaluations or types of instruction. Parents also have the right to petition the IGA to allow for opting-out of surveys even if the topic, such as political affiliations and religious practices, is related to academic instruction. These requirements could also be changed to require parents to opt-in instead of putting the onus on parents to opt out.**



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### Access to Public Records and Indiana’s Open Door Law

#### **Q: How can parents obtain a copy of their child’s school curricula?\***

**A:** Contact your local school district. Indiana’s Access to Public Records Act (“APRA”), Indiana Code §5-14-3-1 et seq., also provides the framework for requesting information from a governmental agency. Moreover, APRA states that “it is the public policy of the state that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” Generally, school curricula can be requested through your child’s school district. School officials should provide you with a copy of approved curricula and address any concerns. You may also direct public record requests related to K-12 school academic standards to IDOE. However, some public records may not be disclosed under various exemptions or may be disclosed at the discretion of the Department. Some records are confidential by statute, while others may be protected by state or federal law. School districts have a statutory responsibility to tell you whether the records requested are “disclosable” or “non-disclosable.” You have the right to view and copy all disclosable records. Schools must properly reference a statutory basis for non-disclosure of all or part of a public record to you.

Beginning July 2023, public school corporations, including charter schools, are required to annually report on their website the name and publisher of the adopted reading and writing curricula by grade level, as well as information regarding related remedial programs provided by the school. Ind. Code § 20-26-5-44.2 (2023).

#### **Q: How do parents obtain their child’s lesson plans and activities in school?**

**A:** A parent may obtain lesson plans and records of activities by contacting school administrators and teachers directly. A parent may also obtain these materials through a public record request, pursuant to Ind. Code § 5-14-3-1 et seq. However, these records may not exist in many circumstances because not all schools require daily lesson plans to be submitted or maintained. As such, parents are encouraged to continue a dialogue with teachers on what is being taught and what activities and lessons are experienced at school.

#### **Q: How else can parents inquire about the curricula taught to their child?**

**A:** As a parent, you may have the opportunity to provide comment and express concerns at public school board meetings. A “meeting” is a public forum accessible under Indiana law to any interested member of the public. The Open Door Law, under Ind. Code § 5-14-1.5-1, states that government agencies must hold official meetings of a majority of their governing body, such as council or board meetings, publicly. This includes local school boards.





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Meetings occur whenever a majority of the school board meets for the purpose of taking “official action upon public business.” “Official action” includes receiving information, deliberating, making recommendations, establishing policy, making decisions, and taking final action. While currently not required under the law, local school boards often encourage public participation and consider public comments before taking official board action.

Parents can also participate and provide comment at advisory committees created by statute to advise the school board. Committees appointed directly by the school board or its president must follow the Open Door Law requirements.

### **Q: How can parents see the books offered in their child’s school library?\***

**A:** Indiana law requires a school board to develop a procedure for schools to catalog material “in the school library” and post the catalog on the school’s website. Ind. Code § 20-26-5.5-1(a) (2023).

### **Q: What recourse do parents have if the school offers books that contain obscene content or material harmful to minors in the school library?\***

**A:** Indiana law does not create a private right of action for parents if a school violates this law.

### **Q: Is it a violation of law for a school or school employee to make materials that are obscene or harmful to minors available in the school library?\***

**A:** Yes. A school corporation or charter school may not make available materials that contain obscene matter (as defined in Indiana Code § 35-49-2-1) or matter harmful to minors (as defined in Indiana Code § 35-49-2-2). Ind. Code § 20-26-5.5-3 (2023).

### **Q: Which entities have a statutory defense against prosecution for disseminating material harmful to a minor?\***

**A:** Indiana law provides that a person who knowingly or intentionally disseminates matter harmful to minors (as defined in Indiana Code ch. 35-49-2) commits a level 6 felony. Ind. Code § 35-49-3-3. However, entities and certain individuals have a defense against such prosecution under certain circumstances. Ind. Code § 35-49-3-4. It is a defense against prosecution for violations if “the matter was disseminated or the performance was performed for legitimate scientific purposes” or “by a bona fide college, university, museum, college library, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or university library, or by an employee of such a school, college, university, museum, college library, or public library, or university library acting within the scope of the employee’s employment.” Ind. Code § 35-49-3-4(a)(1)-(2) (2023).



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### **Q: Is public notice of a school board meeting required?**

**A:** Yes. Forty-eight (48) hours' advance notice is required. The posted notice should include the date, time, and place where a school board will convene. Notice must be posted at the meeting location. Lack of adequate notice constitutes a violation of the Open Door Law.

### **Q: Who can bring a complaint alleging a violation of the Open Door Law?**

**A:** Any person aggrieved by a public agency's action may make a complaint. Any person may also, prior to filing a lawsuit, seek an opinion from the Indiana Public Access Counselor on whether a meeting of a school board complied with the Open Door Law.

### **Q: Must a school board post its meeting agenda?**

**A:** Pursuant to the Open Door Law, a school board that uses an agenda must post a copy of the agenda at the entrance of the location of the meeting before the meeting begins. The use of an agenda is not mandatory and can be amended. In addition, a school board must describe each agenda item specifically during a meeting and may not refer solely to an agenda item by number. The Open Door Law does not prohibit a public agency from changing or adding to its agenda during the meeting.

### **Q: Can a parent request a modification to the agenda?**

**A:** Yes. A parent may request a school board modify its agenda to address a discussion item of particular concern. However, if the school board utilizes an agenda, the agenda must be posted outside the location of the meeting before the meeting begins. The school board may decide to consider requests to modify or add agenda items during the public comment portion of the meeting or as proposed by an individual board member. A majority vote is necessary to add or amend agenda items. A parent may also request a school board to consider a particular agenda item before the meeting commences by contacting the school board's president or secretary. The school board has the authority to decline this request and the law does not provide for an appeal of its decision. **If parents want more control over setting the agenda at school board meetings, they have the right to petition the IGA to create it legislatively.**



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### **Q: What is a consent agenda?**

**A:** A consent agenda is an exception to the requirement that the school board must describe each agenda item in detail on the agenda. A consent agenda is a board meeting practice that groups routine business and reports into one agenda item. The consent agenda can be approved in one action, rather than approving motions on each item separately. Past practices by some boards may have included items such as the approval of curriculum into a consent agenda, believing it to be a routine business item. As a result, it is important for parents to thoroughly review consent agenda items listed on a board meeting agenda.

### **Q: Can the public prevent a consent agenda item vote?**

**A:** Typically, consent agendas are for routine items and exist for efficiency purposes. Agenda items known to be of great interest to parents and members of the local community should be placed on the full agenda to provide transparency and opportunity for comment. However, there is no state law that requires it. Individual board members can also object to the consent agenda and offer a motion to move consent agenda items to the full agenda. Parents and members of the public typically cannot prevent board votes regarding properly noticed and posted board agenda items, but certainly can voice any concerns during a public comment period. **Parents have the right to petition the IGA to place limitations on the use of consent agendas in the interest of public access.**

### **Q: Are school boards required to allow parents to speak at school board meetings and respond to their comments?**

**A:** Yes. The IGA passed Senate Bill 83 (P.L. 134-2022) and House Bill 1130 (P.L. 116-2022) during the 2022 legislative session. Both bills require local school boards to allow public comment periods at school board meetings by amending Indiana's Open Door Law to make public comment periods mandatory for in-person participation!<sup>15</sup> *See generally* Ind. Code § 5-14-1.5.

Despite this, current law provides no requirement that board members respond to public comments. Generally, school boards will not immediately respond in depth to public comments for efficiency reasons. The board may also want time to consider the comments before responding. However, sometimes the board votes on an item at the same meeting when accepting public comments. In those instances, the board members likely will not have adequate time to reflect upon comments before voting. Despite these considerations, parents should exercise this important right to be heard at school board meetings.

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<sup>15</sup> *Ind. Code § 5-14-1.5-3, effective July 1, 2022.*



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### **Q: What rights do I have as a parent to express concerns to school board members and school officials?\***

**A:** The Supreme Court has recognized the vital role that citizen participation in government plays and the guarantee of that participation, including the free discussion of governmental affairs, under the First Amendment. The First Amendment protects a parent's right to free speech when public comments are permitted at school board meetings. Public meeting policies typically include rules related to conduct and decorum and public comment parameters, such as time-limits and limiting comment to noticed agenda items. Indiana law requires Indiana school boards to allow public comments at school board meetings. *See generally* Ind. Code § 5-14-1.5 A parent cannot be thrown out of a school board meeting simply because he or she disagrees, antagonizes, or harshly criticizes a school board or its members during a public comment period. Board action censoring and suppressing parent comments made during a public comment period will ultimately raise free speech violation concerns under the First Amendment.

Parents' ability to question and address school officials and school board members is not limited to public comment periods at school board meetings. Parents can express concerns to school officials in-person, by letter, phone, or via other electronic communication like email, text, or social media. Civil and respectful dialogue is always encouraged when disagreements arise between school officials and parents. Any speech containing obscene language or that threatens, incites, or encourages others to violate the law will be subject to school censor and potentially reported to law enforcement. However, schools cannot constrain speech or expression simply because it is disagreeable. Specifically, regarding social media platforms, schools cannot act as policing forces of what speech is permissible and what speech is punishable by social media ban. To do so would constitute a violation of the First Amendment.

### **Q: Can a school block a parent from receiving information from social media or other releases of information?**

**A:** No. Generally, schools cannot block or prevent parents from receiving governmental information that is otherwise available to the public and from commenting on social media. Blocking parents from social media violates the Constitution because it prevents parents from receiving publicly available information and prevents them from participating in a government-sponsored public forum.



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### Parent Participation, Procedural Rights, and Remedies

#### **Q: How can parents impact academic standards and content?**

**A:** The standards revision process is a collaborative one. As such, parents interested in serving on IDOE committees should contact IDOE via their website. *See* “Additional Resources” for more details. Parents should maintain a record of the date of contact, whether a response was received, the date on which a reply was received, and if denied participation, the reason given. School curricula should reflect this collaborative approach, so students are exposed to contrasting or opposing viewpoints. Parents may also comment on academic standards by commenting at school board meetings during public comment periods, expressing concerns to school officials, contacting IDOE, and contacting their local legislators. Intrinsic to the legislature’s duty to enact mandatory and optional curricula studies is a duty to review and refine those standards, as well as identify subject matter requiring prior consent for a student’s participation under Indiana Code § 20-30-5-17(b). **Parents should review curricula adopted by local school boards and, if objectionable content is found, have the right to bring it to the attention of their legislators. As noted earlier, the IGA has the authority to enact the subjects, courses, and curricula students learn and do not learn at school.**

#### **Q: How can parents hold their local school board accountable regarding curricula and content?\***

**A:** Follow their social media accounts, review their public comments, and review school board meeting minutes. Contact your school board members directly and ask them their position on the issues parents care about and how they are preventing these issues from entering the classroom. Attending your local school board meetings and getting your elected officials on the record is helpful; however, it is imperative to understand the political undertones resonating within a school board itself. Grow your network of other parents and attend school board meetings as a group to share unified concerns. For example, if your school board has publicly opposed CRT and other controversial theories, continue to work with your school board to review curricula so that CRT teachings cannot be introduced or masked in other materials or SEL competencies. Using the same example, be sure that your school board is not allowing CRT or similar Marxist ideology to be taught under some other name, remembering that it’s not what it’s called that matters, but the pedagogy (method) and content being utilized. Parents should also continue to request copies of the curriculum and classroom content by contacting their child’s teacher or school administrator.

For public schools designated by the IDOE as an “Indiana Family Friendly School,” the IDOE must conduct an assessment of parent participation in the school if requested by 10 percent of the school’s parents. Ind. Code § 20-19-6.2-1. This

Updated August 2023

\*Vol. 4 update

**Bold and underlined content indicates that a change in law would be required to obtain an answer different from the one given**



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assessment could allow for the identification of obstacles that prevent parents from having access to and control over the curricula or educational activities conducted by the school.

### **Q: Does IDOE or a school corporation determine the metrics used for evaluating teacher performance?\***

**A:** A school corporation establishes the metrics used for teacher annual performance evaluations to determine if a teacher is “Highly Effective,” “Effective,” “Improvement Necessary,” or “Ineffective.” Ind. Code § 20-28-11.5-8. School corporations can cancel a teacher’s contract for “repeated ineffective performance, as determined by the school corporation.” Ind. Code § 20-28-7.5-1 (2023).

### **Q: Do parents have a right to be notified by a school if their child will be taught by an “ineffective” teacher for two consecutive years?\***

**A:** No. A school is not required to notify a parent if a student is to be instructed by a teacher who received a rating of ineffective on the school’s annual performance evaluation for two consecutive years. Ind. Code § 20-28-11.5-7 (2023).

### **Q: What metrics are used to determine the performance of schools?\***

**A:** IDOE is required to develop a proposal for a revised school performance designation that is based on data contained in the Indiana Graduates Prepared to Succeed (GPS) dashboard not later than December 1, 2024 for public schools and private schools that participate in the Choice Scholarship Program. In developing this proposal for revised school performance designations, IDOE must consider using certain metrics, including the number of students who had work-based learning experiences in grades 9 through 12; the percentage of students in a graduation cohort who earned a credential of value; the percentage of students earning each diploma type; the percentage of students who indicate their intent, upon graduation, to enlist in the military, pursue employment, begin an internship or apprenticeship, or attend a two or four year postsecondary educational institution. Ind. P.L. 2023-246-45 (2023).

### **Q: What other legal rights can I assert on behalf of myself or my child?**

**A:** Indiana law prohibits segregation, separation, or discrimination by a public school against any of its students on the basis of race, creed, or color. Ind. Code § 20-33-1-5. Three important legal rights exist for all Indiana parents:

- 1) The First Amendment right to protect your child from compelled government speech in a school setting,
- 2) The Fourteenth Amendment right for all students to receive equal protection under the law, and
- 3) The Civil Rights Act of 1964 prohibits public institutions from discriminating on the basis of race.



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In addition, parents should follow any available administrative processes provided by their school districts and seek written determinations. Parents may also have certain administrative rights under the Administrative Orders and Procedures Act (“AOPA”), which governs administrative proceedings and judicial review of certain decisions of IDOE and other State agencies. *See, e.g.,* Ind. Code § 4-21.5-2-0.1 to 6. AOPA includes procedural requirements for adjudications, sets out resolution of alleged violations of state rules or state statutes, and provisions for judicial review of agency actions. *Id.*

For complaints made with IDOE, an investigation may be conducted in accordance with Ind. Code § 4-21.5-2.5. The purpose of the investigation is to uncover facts with an eye toward a corrective plan or order and, if necessary, an enforcement action. *See* Ind. Code §§ 4-21.5-2.5-7 and -10. AOPA also provides for judicial review of a final agency decision or an “agency action,” which is defined as “(1) the whole or part of an order, (2) failure to issue an order, or (3) an agency’s performance of, or failure to perform, any other duty, function, or activity.” Ind. Code § 4-21.5-1-4. Final IDOE decisions can be judicially reviewed by an appropriate Indiana court of competent jurisdiction.

### **Q: How can parents protect their child’s free speech rights in school?**

**A:** In addition to protections afforded under the federal constitution, the IGA has established a strong interest in protecting the free speech rights of students. Courts have long acknowledged the freedom of political expression among students in the school setting. Simply put, students do not shed their constitutional rights to freedom of speech or expression at the school doors. Of equal importance, students should never be compelled to confirm or declare certain personal beliefs. For example, a student should never be compelled by a school or school official to declare religious beliefs or political affiliations.

Parents should also be cognizant that First Amendment rights are not absolute and school corporations may reasonably regulate them, consistent with fundamental constitutional safeguards designed to maintain equal access to education and control disruptive conduct in schools. However, the banning of expression of one particular opinion or display, at least without evidence that it is necessary to avoid material and substantial interference with schoolwork or discipline, is not constitutionally permissible. For more information on students’ First Amendment Rights, please see our advisory opinion on Black Lives Matter as a political organization.<sup>16</sup>

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<sup>16</sup> Ind. Att’y Gen. Op. 2021-02 (Nov. 2021), available at <https://www.in.gov/attorneygeneral/files/Official-Opinion-2021-2.pdf>.



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Any adopted school policy must be reasonable and implemented uniformly and consistently. A school should not arbitrarily select what political speech it wants to promote and what speech it wants to suppress. Parents should continue to advocate for school boards to adopt neutral policies. This uniform application will reduce concerns of First Amendment violations or potential claims about arbitrary school decision-making. Most importantly, the adoption of neutral policies helps support equality in education and the mission of all Indiana schools to provide the best education for all our children.

### **Q: What if parents have a complaint about the curricula taught at my child's school?**

**A:** Parents or community members having questions, concerns, and complaints about any aspect of the operation of a school corporation, including curricula, may contact the person having knowledge or responsibility of a particular situation. This would be the teacher first, then the school administrator closest to the situation in most cases. A school administrator may address a complaint related to curricula by examining teacher lesson plans, written materials provided to students, and classroom discussions. Ultimately, a school administrator will determine whether curricula is aligned with approved IDOE academic standards.

If a satisfactory response is not received, then the parent or community member should take the issue to the next higher level of administration at the district level. After exhausting efforts to find a satisfactory response at the administrative level, the individual may bring the matter in writing to the attention of the school board president.

IDOE implements and oversees Indiana law related to school curricula. Standards may be reviewed and altered as needed. Accordingly, interested parents may advocate why standards should be reviewed or modified through local school officials, board members, legislative representatives, and IDOE officials.

Written complaints regarding teacher conduct, including teaching curricula not related to the Indiana Academic Standards, and educator licensing can also be made after fulfilling the above steps. IDOE has not adopted a formalized complaint process regarding curricula but does maintain an online form with various topics parents can utilize, including "Student Education," "Student Learning," "Educator Licensing," and "Legal." IDOE will review and investigate upon receipt of a complaint submitted through this process. **If parents desire a different process to register complaints against licensed teachers administered by an entity independent of IDOE, they have the right to petition the IGA to create it.**<sup>17</sup>

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<sup>17</sup> To submit a complaint, see <https://www.in.gov/doe/about/contact/>.





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### **Q: What is Title VI of the Civil Rights Act, and why does it apply to education?\***

**A:** Title VI of the Civil Rights Act of 1964 (“Title VI”) protects students who attend federally funded institutions from discrimination and race-based harassment. Title VI prohibits any institution receiving federal funding from discriminating or excluding individuals on the basis of race, color, or national origin.

### **Q: How can Title VI be violated and how are complaints investigated?**

**A:** The U.S. Supreme Court has held that any discrimination found to violate the Equal Protection Clause committed by an institution accepting federal funds also violates Title VI. Harassment of students on the basis of race, color, or national origin cannot be tolerated. Any such incidents are a major concern of the OAG. Racial harassment denies students the right to an education free from discrimination.

Furthermore, schools receiving federal funds may not retaliate against any person or student because he or she opposed an unlawful educational practice or policy, or made charges, testified, or participated in any complaint action under Title VI. A school or school district found to have retaliated in any way is considered in violation of Title VI.

A violation of Title VI can also occur if a school or school district is found to be responsible for creating a racially hostile environment. To establish a violation of Title VI due to a hostile environment, there must be a determination that 1) a racially hostile environment existed, and 2) the recipient of federal funds had actual or constructive notice and failed to respond adequately to address the racially hostile environment. If a violation is found, the school or school district may be required to adopt new policies and procedures to address the incident. Title VI also allows for a private right of action alleging discrimination, where a complainant may seek monetary damages in court.

### **Q: How else can I file a complaint if I feel my civil rights were violated?**

**A:** You may file a complaint with the U.S. Department of Education’s Office of Civil Rights (“OCR”) or the Indiana Civil Rights Commission (“ICRC”). See “Additional Parent Resources” for more information about how to file a complaint.



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### **Q: What civil rights laws does the U.S. Department of Education's Office of Civil Rights oversee?**

**A:** The OCR investigates Title VI complaints to determine if an institution accepted, tolerated, or failed to correct instances of racial harassment, discrimination, or a racially hostile environment. The OCR enforces several federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the U.S. Department of Education.

Common OCR complaints of federal law relate to:

- 1) discrimination on the basis of race, color, and national origin as prohibited by Title VI of the Civil Rights Act of 1964;
- 2) discrimination on the basis of sex as prohibited by Title IX of the Education Amendments of 1972, and;
- 3) discrimination against persons with disabilities as prohibited by Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.

These civil rights laws extend to all federally funded school systems, including elementary and secondary school systems.

### **Q: Who can file an OCR discrimination complaint?**

**A:** Any person or organization can file an OCR discrimination complaint. The person or entity filing the complaint need not be a victim of the alleged discrimination. They may complain on behalf of another person or group but must first obtain written consent from the individual or individual's parent or guardian.

A complaint must be filed within 180 days of the last act of discrimination or demonstrate good cause for why a complaint was not filed within the 180-day period.

OCR recommends (but does not require) a potential complainant to use an institutional grievance process before filing a complaint with OCR. School grievance processes vary from district to district, and some may be more informal than others. If a complainant uses an available institutional grievance process and also chooses to file the complaint with OCR, the complaint must be filed with OCR within 60 days after completion of the institutional grievance process.



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### **Q: How can I file an OCR complaint?**

**A:** OCR provides an online form, which can be submitted online, mailed, or faxed: [www.ed.gov/about/offices/list/ocr/complaintintro.html](http://www.ed.gov/about/offices/list/ocr/complaintintro.html). Individuals or organizations can also write their own letter and include the following:

- The complainant's name, address and, if possible (although not required), a telephone number where the complainant may be reached during business hours;
- Information about the person(s) or class of persons injured by the alleged discriminatory act(s) (names of the injured person(s) are not required);
- The name and location (city and state) of the institution that committed the alleged discriminatory act(s); and
- A description of the alleged discriminatory act(s) in sufficient detail to enable OCR to understand what occurred, when it occurred, and the basis for the alleged discrimination.

### **Q: What potential damages/remedies are available?**

**A:** If OCR determines that a recipient failed to comply with applicable laws, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. A resolution agreement may include remedial actions, terms and conditions, and ways of addressing noncompliance identified by OCR. OCR will monitor the recipient's implementation of the terms and obligations of the resolution agreement to verify that the remedial actions agreed to by the recipient are properly implemented.

Failure to agree or correct noncompliance may result in OCR initiating proceedings to suspend, terminate, or refuse federal financial assistance to the recipient, or may refer the case to the DOJ.

### **Q: What civil rights laws does the Indiana Civil Rights Commission oversee?**

**A:** Among other things, the Indiana Civil Rights Law ("ICRL") explicitly conditions the ICRC's exercise of its enforcement powers to incidents where a person has engaged in an unlawful discriminatory education practice. Ind. Code § 22-9-1-3(1) and Ind. Code § 22-9-1-6(j)3.

Per Ind. Code § 22-9-1-2(b), the purpose of the law is to promote "equal opportunity without regard to race, religion, color, sex, disability, national origin, or ancestry through reasonable methods."



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The ICRL defines a discriminatory practice as follows:

- (1) The exclusion of a person from equal opportunities because of race, religion, color, sex, disability, national origin, ancestry, or status as a veteran;
- (2) A system that excludes persons from equal opportunities because of race, religion, color, sex, disability, national origin, ancestry, or status as a veteran;
- (3) The promotion of racial segregation or separation in any manner, including but not limited to inducing or attempting to induce for profit any person to sell or rent any dwelling by representations regarding the entry or prospective entry in the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, or ancestry; or
- (4) A violation of IC 22-9-5 that occurs after July 25, 1992, and is committed by a covered entity (as defined in IC 22-9-5-4) I.C. § 22-9-1-3(l).

### **Q: How can parents file an ICRC complaint?**

**A:** Complaints of discrimination can be submitted by phone, by mail, in person, or through an online complaint form. ICRC outlines its basic process in screening and reviewing claims on its website. See “Additional Parent Resources” for more information.

### **Q: Who can file an ICRC discrimination complaint?**

**A:** Similar to OCR complaints, anyone can file a complaint. Complaints are pre-screened for jurisdiction.

### **Q: What potential damages/remedies are available?**

**A:** If the ICRC determines that a person has committed an unlawful discriminatory practice, it shall order that person to “cease and desist from the unlawful discriminatory practice and require the person to take further affirmative action . . . .” Ind. Code § 22-9-1-6(j). The ICRC may order the person who committed unlawful discrimination to pay damages and post a notice of Indiana’s public policy concerning civil rights and the person’s compliance with that policy, among other actions.



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### **Q: What if parents believe their child or they themselves have been the subject of retaliation based on a complaint of discrimination?**

**A:** Most civil rights statutes contain anti-retaliation provisions that protect individuals who complain about unlawful discrimination. For example, with respect to alleged race discrimination by schools, Title VI's implementing regulations state that no recipient of federal funding "shall intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by [Title VI] . . . because he has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under [Title VI]." 34 C.F.R. § 100.7(e). As discussed above, OCR has jurisdiction over complaints of retaliation under Title VI, or in the alternative, individuals may file suit in state or federal court.

Similar anti-retaliation provisions exist under Indiana law. With respect to complaints under Indiana's Civil Rights Laws, retaliation is specifically prohibited under the statute, "[t]he commission shall prevent any person from discharging, expelling, or otherwise discriminating against any other person because the person filed a complaint, testified in any hearing before this commission, or in any way assisted the commission in any matter under its investigation." Ind. Code § 22-9-1-6(g).

### **Q: How can I run for my local school board?**<sup>18</sup>

**A:** Accountability in our schools requires each parent to examine what content is being presented to children in the classroom and what elected officials and school administrators are doing to maintain the best interests of our children. Parents interested in running for their local school boards should be educated on CRT and other controversial theories and work to hold school officials accountable for the content being taught in their schools.

The ability to run for local school board depends on the local school corporation. The procedures for selecting school board members are usually set forth in the "school corporation organization plan" adopted by the school corporation during the school consolidation process of the 1950s and 1960s, and as subsequently amended. Ind. Code § 20-23. In certain school corporations, all or some of the school board members are appointed rather than elected by the voters. Ind. Code § 20-23-4-28. All school corporations that elect school board members elect those members at the same time as the general election. Some school board members are elected "at large" for the entire school corporation, while others are elected to represent specific districts that are only part of the school corporation's territory.

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<sup>18</sup> This answer was, in part, taken from and credited to the Indiana Election Division. 2020 Indiana Candidate Guide, (accessed August 11, 2021), <https://www.in.gov/sos/elections/files/2020-Candidate-Guide.MOVEDPRIMARY5.pdf>.



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In all cases, candidates for school board appear on the ballot without a party designation. Ind. Code § 20-23-4-29.1. **If parents want school board candidates' party affiliation to be displayed on the voting ballot, they have the right to petition the IGA to create a law requiring it.**

School board candidates in certain jurisdictions must consult state statute for specific and detailed candidate qualifications and election procedures: Gary, Hammond, Indianapolis, Lake Station, South Bend, Mishawaka, East Chicago. See generally Ind. Code §§ 20-23-12 through 17.2. In all other cases, candidates must 1) reside in the school corporation for at least one year before the election; 2) be registered to vote; and 3) not have committed a felony (with certain exceptions). See Ind. Code § IC 3-8-1. A candidate has numerous filing requirements outlined explicitly in the Indiana Election Division's Candidate Guide.

### **Q: What is the Secretary of Education's Role?**

**A:** The Secretary of Education is appointed by the governor and serves as the chief executive officer for the Department of Education. The individual appointed must 1) reside in Indiana for two years before the appointment, 2) demonstrate leadership and success in the administration of education, 3) possess an earned advance degree, and 4) is or has been a teacher, principal, or superintendent.

The Secretary is a new administrative role as the Superintendent of Public Instruction previously served in this capacity as a statewide elected official. The IGA passed a law in 2017 to transition from an elected Superintendent of Public Instruction to an appointed Secretary of Education but set the transition date at 2025. After the previous Superintendent announced she would not seek a second term, legislators accelerated the timeline to 2021.

### **Q: How does an individual become a member of the Indiana State Board of Education?**

**A:** The bipartisan board is composed of eleven members, including the Secretary of Education who was elected in 2021 by the Board to sit as the Board's chair. Eight members are appointed by the Governor and must include: 1) at least six appointees with professional experience in the field of education; 2) not more than one appointee from a particular congressional district; and 3) not more than five appointees belonging to the same political party. The remaining two board members are appointed by the Speaker of the Indiana House of Representatives and the President Pro Tempore of the Indiana Senate, respectively.



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### **Q: How can parents participate in the Indiana State Board of Education meetings?**

**A:** The State Board of Education shall, at its regular monthly business meetings, accept comment from any interested person on items that appear on the SBOE's agenda for that meeting as well as general public comment. A person who desires to speak must register on the meeting day before the meeting begins. Statements on agenda items are limited to five minutes, while general public comments are limited to three minutes in length. Written comments may be submitted to SBOE.

### **Q: If a school receives Title I funding, what rights does this provide?**

**A:** Title I funding from the federal Elementary and Secondary Education Act ("ESEA") provides financial assistance to local education agencies for children from low-income families to ensure that all children meet challenging state academic standards. This federal funding is allocated at the district level in each state. School districts in the highest poverty quarter have the highest total Title I allocations per formula-eligible child.

The ESEA, Section 1116, requires that parents be offered substantial and meaningful opportunities to participate in the education of their children and explicitly mandates parent consultation in all required planning, including the development of Title I applications, school-wide plans, and improvement plans for low-performing schools. Indiana schools receiving Title I funding should hold an annual meeting advising parents of their right to be involved in flexible meetings and planning of programs. Parents will also have an opportunity to develop policy in collaboration with the Title I school. Interested parents should work directly with school officials to assure transparency and adequate opportunity for their voices to be heard.



## Questions and Answers

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### Student Safety and Discipline

#### **Q: Can a school discipline a student for conduct that a parent permits?\***

**A:** Yes. Indiana law generally provides that a school corporation has the duty and power to supervise student conduct in “carrying out school purposes” and “the right to take any disciplinary action necessary to promote student conduct that conforms with an orderly and effective education system.” Ind. Code ch. 20-33-8. As long as the disciplinary action is “taken in good faith and is reasonable,” the school corporation has qualified immunity. Individual teachers and school staff “may take any action that is reasonably necessary to carry out or to prevent an interference with an educational function” for students under their charge. *Id.*

#### **Q: Can a student be disciplined for violating dress code policies?\***

**A:** Yes. Indiana law allows a school corporation to adopt a policy concerning “student dress code or distracting behavior” and provides teachers qualified immunity with respect to disciplinary action taken for violations. Ind. Code § 20-33-8-8(d) (2023).

#### **Q: What safety measures must schools take to protect students from school violence, including from a school shooter?\***

**A:** School safety measures are determined at the school corporation or school building level. Public schools are required to establish a “school safety plan” created by a “school safety specialist” and a “safe school committee” in consultation with local law enforcement and fire department representatives. Ind. Code §10-21-1-10 (2023). The “school safety plan” is confidential and does not require the approval of the school governing board. Still, a school board member may review the “school safety plan” during an executive session.

#### **Q: What elements does a “school safety plan” protect against?\***

**A:** A “school safety plan” is intended to include policies, strategies, and programs that protect against “outside and inside threats,” including “unsafe conditions, crime prevention, school violence, bullying and cyberbullying, criminal organization activity, child abuse, mental health and behavioral health, suicide awareness and prevention, and other issues that prevent the maintenance of a safe school.” Ind. Code §10-21-1-10 (2023).





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### **Q: Is a school responsible for informing parents that their child was bullied at school?\***

**A:** Yes. Indiana law requires a school to report bullying incidents to the parents of both the targeted student and the alleged perpetrator within five days of the incident. Ind. Code § 20-33-8-13.5(a)(2)(iv) (2023). It also requires that public schools “document acts of bullying and abusive behaviors” against a victim. Ind. Code § 20-33-8-35 (2023).

### **Q: How is a “bullying prevention program” defined?\***

**A:** A “bullying prevention program” is required for inclusion in a public school’s safety plan. Ind. Code §10-21-1-10 (2023). The law provides two options on what the program must include. The first option is a program that “offers students and school personnel opportunities to develop the skills and strategies to prevent bullying and potential bullying situations in digital and physical spaces.” Ind. Code §10-21-1-1(a)(5)(A) (2023). The other option allows schools to implement programs in addition to bullying prevention, including programs that address school violence, human trafficking, and self-harm mitigation programs; bullying and cyberbullying investigation, intervention, and reporting procedures; and the integration of programs into wider school efforts to promote educational progress and the physical safety and well-being of school students, families, faculty, and staff. Ind. Code §10-21-1-1(a)(5)(B) (2023).

### **Q: Can a parent review a public school’s bullying prevention or suicide prevention program?\***

**A:** Yes. Schools must allow a parent to review “any bullying prevention or suicide prevention program.” Ind. Code § 20-33-8-13.5(d) (2023). However, a “school safety plan” required under Indiana Code §10-21-1-10 is confidential and cannot be disclosed to parents. Ind. Code § 10-21-1-11 (2023).

### **Q: What is a “multi-disciplinary threat assessment team?”\***

**A:** A “school safety plan” must show the school has established a “multi-disciplinary threat assessment team” composed of members selected by the superintendent, including individuals with expertise in school physical security, school administration, educational instruction, youth counseling, mental health and behavioral health, and law enforcement. This assessment team must conduct threat assessments and inform the policies adopted by the school corporation or charter school, including school safety plans and the policies of a safe school committee for a particular school. Ind. Code § 10-21-1-1(a)(10) (2023). A threat assessment includes procedures to, among other items, assess, identify, and intervene with individuals (does not exempt students or staff) whose behavior may pose a threat to safety. Ind. Code § 10-21-1-10 (2023).



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### **Q: Can a school hire an individual who has been convicted of a crime?\***

**A:** Yes. Indiana law prohibits public, charter, and state-accredited private schools from hiring (and requires them to fire) an employee or contractor “convicted” of certain criminal offenses, including, among other offenses, murder, causing suicide, voluntary manslaughter, kidnapping, a sex offense, and an offense relating to material or a performance that is harmful to minors or obscene under Indiana Code ch. 35-49-3. Ind. Code § 20-26-5-11.2(b) (2023). However, the law allows a school to hire individuals convicted of other serious crimes if the majority of the local school board approves the hire, including, but not limited to, reckless homicide, battery, criminal confinement, contributing to the delinquency of a minor, and an offense relating to controlled substances (excludes a marijuana offense). Ind. Code §20-26-5-11.2(c) (2023).

Indiana law also requires the majority of the local school board to approve the hiring of an individual who was not criminally convicted of certain acts but entered into a civil agreement to settle an allegation of “misconduct” related to the health, safety, or well-being of a student. Ind. Code §20-26-5-11.2 (h) (2023). The law defines “misconduct” to include, among other acts, sexual advances or requests for sexual favors; sexual or oral intercourse; displaying or transmitting pornographic or sexually explicit materials; physical exposure of a sexual nature. Ind. Code §20-26-5-11.2(i) (2023).

### **Q: Is a school required to disclose that a teacher was involved in criminal or other acts that could affect the safety of students when such information is requested by another school as part of an employment reference?\***

**A:** Yes. A school corporation, charter school, or state-accredited nonpublic school is required to disclose (despite the existence of a confidentiality agreement executed after June 30, 2023) to a school requesting an employment reference any incident known by the school in which the employee was arrested, charged with a criminal offense, convicted of a criminal offense, is under court supervision, the subject of a protection order, or named as a defendant in a civil action if the civil action could affect the safety of students. Ind. Code § 20-26-5-11.5(c) (2023).

### **Q: What duty does a school have to report information regarding school employees' involvement in criminal activity during their employment?\***

**A:** The superintendent of a school corporation must inform all school board members within five days of receiving information that certain possible criminal activity by school personnel was committed on school grounds (or with a current or former student) or concluded personnel matter investigations that could or have resulted in suspension or termination. Ind. Code § 20-26-5-42.3 (2023). Additionally, the superintendent must report to the school board any matters involving legal expenses to the school corporation over a certain amount. Ind. Code § 20-26-5-44 (2023).



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Importantly, any criminal activity that a school employee is aware of in, which there is reason to believe that a child is a victim of child abuse or neglect must, make a report to the Department of Child Services or local law enforcement as required under Indiana Code § 31-33-5-1.

# PARENT MEDICAL RIGHTS

Provided by Indiana Attorney General Todd Rokita



A roadmap for Hoosier parents and caregivers  
to exercise their legal right to direct their  
children's education • Volume II





## Questions and Answers

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### Volume II: Parent Medical Rights - Medical Decisions

#### **Q: Who has the authority to make medical decisions for children?**

**A:** Parents are best situated to understand the unique needs of their children and to make decisions in their best interest. Accordingly, a parent or legal guardian has the right to make medical decisions for his or her child, including the right to refuse treatment except in life-threatening situations. The Fourteenth Amendment to the U.S. Constitution provides a parent or legal guardian with this fundamental right to make decisions regarding their minor children's care, custody, and control. In Indiana, an adult is considered to be a person at least 18 years of age. Ind. Code § 1-1-4-5(a)(1). Otherwise, consent must be obtained from the minor child's parent or legal guardian before receiving medical treatment.

#### **Q: Are there instances when students' medical care at school does not require parental consent?**

**A:** Yes. Parental consent is not required in instances where students need emergency nursing care or when an illness or accident occurs during school hours or on or near school property. Ind. Code § 20-34-3-6. Also, when a parent is not available to give consent and delay in treatment would be life-threatening or cause the child serious harm, consent is presumed. Consent must be obtained for any ongoing treatment.

#### **Q: What medical care can children receive at the nurse's office at school without parental knowledge?**

**A:** A school may appoint physicians or nurses who are registered to practice nursing in Indiana with the responsibility of providing emergency care for students when an illness or accident occurs. Ind. Code § 20-34-3-6. This medical care may be provided during school hours on or near school property. Id. The governing body of a school corporation may provide for inspection of students by the school physician to determine if a child suffers from disease, disability, decayed teeth, or other defects that may affect the student's efficiency in schoolwork. Ind. Code § 20-34-3-4. However, if a parent furnishes an examination from an Indiana certified physician at the beginning of the school year, the child is exempt from the exam. Ind. Code § 20-34-3-5.

#### **Q: When can parental authority to make medical decisions for their children be challenged?**

**A:** Medical caretakers have an ethical and legal duty to advocate for the best interests of the child when parental decisions are potentially dangerous to the child's health, imprudent, neglectful, or abusive. As a general rule, parental decisions are challenged when decisions place the child at significant risk of serious harm. More specifically, parental decisions may be challenged under Indiana law when seriously endangering a child's physical or mental health. See Ind. Code § 31-34-1-2.



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### **Q: When can the State make medical decisions for a child?**

**A:** The State’s authority to intervene in medical decisions is found in State law permitting a court to declare that a child is neglected for various circumstances under which a child becomes a child in need of services. *See* Ind. Code § 31–34–1. Generally, a child needs additional government services if, before the child becomes 18 years of age, the child is subjected to neglect, physical or emotional abuse, endangerment, or is the victim of a crime. In Indiana, the Department of Child Services files juvenile court cases when abused children are in need of services (“CHINS”). *Ind.* Code § 31-34-9. A CHINS adjudication under Indiana Code § 31–34–1–1 requires three basic elements: 1) that the parent’s actions or inactions have seriously endangered the child, 2) that the child’s needs are unmet, and 3) that those needs are unlikely to be met without State coercion. *Id.* Trial court adjudications can be appealed to the Indiana Court of Appeals.

### **Q: Is gender dysphoria a mental disorder?\***

**A:** Yes. The American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM 5) classifies gender dysphoria as a mental disorder in which there is a “marked incongruence between their experienced or expressed gender and the one they were assigned at birth,” which is “associated with clinically significant distress or impairment in social, occupational, or other important areas of functioning.”<sup>19</sup>

### **Q: Can a school provide treatment to a student for gender dysphoria without parental consent?\***

**A:** No. A school must notify at least one parent in writing within five business days of a request made by a student to change the student’s name, pronouns, title, or word to identify the student. Ind. Code § 20-33-7.5-2 (2023). If a federal law or rule prohibits schools from disclosing such student requests, a school psychologist, school nurse, school counselor, or school social worker is exempt from the requirement to notify the parent. Ind. Code § 20-33-7.5-4 (2023).

Treatment and diagnosis for gender dysphoria, including a plan to socially transition a student to the opposite sex, is generally considered a health care service. Indiana Code § 16-36-1-1 defines “health care services” as “any care, treatment, service, or procedure to maintain, diagnose, or treat an individual’s physical or mental condition.” As such, the diagnosis and treatment of gender dysphoria can only be performed by a person licensed to do so under Indiana law.

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<sup>19</sup> *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, Text Revision (DSM-5-TR)*. American Psychiatric Association. 2022, (Accessed June 29, 2023)



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With minor exceptions, this includes a psychologist (Ind. Code § 25-33-1-2), a physician (Ind. Code § 25-22.5-1-1.1), a physician assistant (Ind. Code § 25-27.5-5-2), and a nurse practitioner (Ind. Code § 25-23-1-19.4(c)).

An individual licensed as a clinical social worker, marriage and family therapist, mental health counselor, or clinical addiction counselor can also make a mental health diagnosis if they meet the following criteria: have at least sixty clock hours of graduate studies in mental health diagnosis; training that includes diagnostic categories from the most current version of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Health Disorders (DSM 5) and the most current version of the International Classification of Diseases (ICD); and experience that includes at least one thousand hours of supervised practice by an appropriately licensed supervisor. Ind. Code § 25-23.6-11-4.

In all cases, the person licensed to diagnose or treat minor individuals with gender dysphoria must have the consent of the parent before doing so. Ind. Code § 16-36-1-3. Failure to obtain such parental consent violates the standards of practice under Indiana Code § 25-1-9-4 and could result in disciplinary action by the appropriate licensing board.

**If there is reason to believe that a minor has received health care services of any type without the consent of a parent or from an individual who is not licensed to do so, a complaint can be submitted to the Attorney General by following this link.**

**Q: Can a doctor medically transition my child to the opposite sex?\***

**A:** No. Indiana law prohibits the use of surgical procedures and hormone therapies to transition children to the opposite sex to treat gender dysphoria. Ind. Code § 25-1-22-13 (2023). The law does not prevent transgender children from receiving mental health services or counseling to treat gender dysphoria.<sup>20</sup>

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<sup>20</sup> After legal challenge, the provisions concerning hormone therapies are preliminary enjoined. The provisions that prohibit surgical procedures on minors remain in effect. With parent's consent, a doctor may prescribe hormones or puberty blockers to transition your child but may not transition a child using surgical procedures.



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### Student Education and Health Records

**Q: Under the Family Educational Rights and Privacy Act (“FERPA”), what information must be disclosed to parents?**

**A:** FERPA is a federal law that governs the privacy of student education records. FERPA’s privacy protections extend to “education records” and “personally identifiable information” contained therein, with such protections held by the parent/guardian until the student reaches the age of 18 or enrolls in postsecondary education (thereby becoming an “eligible student”). 34 CFR § 99.3; 34 CFR § 99.5(a)(1). “Education records” are broadly defined to include records “directly related” to a student maintained by an educational agency or institution or by a person acting for such agency or institution. 20 USC § 1232g(a)(4); 34 CFR § 99.3. As such, parents are entitled to documents and records directly related to the student that are maintained in the school’s possession.

School policies regarding the sharing of student information (as opposed to a document or record) should reflect a transparent approach to keep parents informed of a child’s social, mental, and educational progress. Teachers and administrators should communicate concerns about matters which may adversely affect a student’s education and a student’s home environment directly with parents.

**Q: Under FERPA, what other information regarding my child’s medical history can be disclosed to third parties without my consent?**

**A:** FERPA permits disclosures necessary to protect the health and safety of students or other individuals. A school district may consider the totality of the circumstances pertaining to a threat to the health or safety of a student or other individuals. If the educational agency or institution determines that there is an articulable and significant threat to the health or safety of a student or other individuals, it may disclose information from education records to any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals. 34 CFR § 99.36.

Alternatively, if an educational official determines that a disclosure must be made but also determines that the health and safety exception (or other applicable exception) does not apply, then the official should obtain written consent from a parent, guardian, or adult student prior to the disclosure. This “health or safety emergency” exception to FERPA’s general consent requirement is limited in time to the period of the emergency and generally does not allow for a blanket release





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of personally identifiable health information, otherwise known as “protected health information” or “PHI,” from student education records.

In addition to the health and safety exception, FERPA allows schools and educational agencies to disclose personally identifiable information, including mental, physical, and medical health information, to teachers and other “school officials,” without parental consent, if these “school officials” have been determined to have “legitimate educational interests” in the education records. See 20 U.S.C. § 1232g(b)(1)(A); 34 CFR §§ 99.7(a)(3)(iii) and 99.31(a)(1)(i)(A). This language is broad and allows for disclosures of this personal health information to be shared widely without parental consent. **FERPA is a federal law; thus, the IGA cannot change it. However, parents wanting control over the disclosure of their child’s mental, physical, and medical health information collected by the school have the right to petition the IGA to prohibit schools from including such information in the student’s education record.**

Finally, it is worth noting that educational records maintained on children with disabilities may be covered under both FERPA and the Individuals with Disabilities Education Act (IDEA), a federal law that provides heightened protection to students with disabilities. *See generally* 34 CFR part 300. IDEA’s confidentiality provisions are similar to FERPA but broader. The IDEA governs how states and public agencies provide early intervention, special education, and related services to children with disabilities. As such, it is critical for parents to understand how to advocate for their child when a school fails to provide services related to their child’s unique needs. See “Additional Resources” for more information on how to file an IDEA complaint on behalf of students with disabilities. Unlike the IDEA, FERPA has been interpreted to not include a private cause of action, and therefore individuals cannot file a civil lawsuit based on an alleged FERPA violation. However, parents and students over 18 years old can submit a complaint directly to the U.S. Department of Education. Violations of FERPA, such as an educational institution failing to allow a parent access to their child’s education record or refusing to correct inaccurate information included in the record can be resolved through the complaint process. *See* “Additional Parent Resources” for information on how to file a FERPA complaint.



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### **Q: What is HIPAA, and does it apply to my child's information in a school setting?**

**A:** The Health Insurance Portability and Accountability Act (“HIPAA”) is a federal law that governs the privacy of PHI. HIPAA applies to “covered entities,” which is a term used to describe health care providers, health plans, and healthcare clearinghouses. In addition, HIPAA requirements may extend to insurance carriers and business associates. *See* 45 C.F.R. § 160.102(b).

In most cases, schools are not entities covered by HIPAA, and therefore HIPAA requirements generally do not apply to schools. In addition, education records covered by FERPA are explicitly excluded from the definition of PHI. This is true even if PHI happens to be contained within an education record. As a result, schools and their on-site nursing services are generally not required to comply with the HIPAA privacy protections because the school maintains health information only in student health records that are ‘education records’ under FERPA and, thus, not ‘protected health information’ under HIPAA. **As noted above, the IGA could prohibit schools from including medical, physical, or mental health information in the student’s education record. While this would not make the information protected by HIPAA, it could not be shared as part of an education record.**

### **Q: What rights do parents have to provide consent for and access to their child’s medical information under state and federal law?\***

**A:** There are instances where Indiana law does permit minors to consent to their own health care, but these are exceptions to an otherwise steadfast rule. Unless a minor child meets the exceptions under Indiana law, a parent must consent to the health care and treatment for the child, including mental health services. This means parents have access to their child’s medical records. The exceptions to parents consenting to health care include if the minor is emancipated; is or has been married; is in the United States military; is at least fourteen years old, not dependent on a parent or guardian for support, living apart from the minor’s parents or individual in loco parentis, and managing their own affairs; or is authorized to consent to health care by any other statute.<sup>21</sup> Ind. Code § 16-36-1-3. A minor who is at least sixteen years old and pregnant, in labor, or up to sixty days postpartum may consent to her own “medical or hospital care and treatment with

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<sup>21</sup> Ind. Code § 16-18-2-235 defines a “minor” as “an individual who is less than eighteen (18) years of age.”



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respect to the pregnancy, delivery, and postpartum care of the minor.” Ind. Code § 16-36-1-3.5. However, the statute does require the provider to attempt to contact the minor’s parent or guardian prior to treatment. Persons authorized to consent for minors in the state of Indiana are a judicially appointed guardian, a parent or individual in loco parentis, an adult sibling, or a grandparent, respectively. See Ind. Code § 16-36-1-5.

Other state statutes that allow for a minor to consent to their own health care include substance abuse treatment (Ind. Code § 12-23-12-1), HIV testing (Ind. Code § 16-41-6-1), STI treatment (Ind. Code § 16-36-1-3(d)), and forensic services for rape, incest, and sexual abuse (Ind. Code §§ 16-21-8-1, -3).

### **Q: Are there federal laws that preempt state laws on the disclosure of a minor’s medical records?\***

**A:** No. Similar to Indiana law, HIPAA requires that if the individual is an unemancipated minor, covered entities must treat a person as a personal representative and disclose Personal Health Information (PHI) to the personal representative. See 45 CFR 164.502(g)(3)(i). When a state has separate rules on disclosure, HIPAA allows covered entities to disclose, or refrain from disclosing, PHI to a personal representative by deferring to state law. Federal regulations indicate that a state law may allow more disclosure, or a state may provide for more restrictive measures where a covered entity is prohibited from disclosing PHI. 45 CFR 164.502(g)(3)(ii). Where a state does not have requirements on such disclosures, the general rules and exceptions in HIPAA apply.

### **Q: Can a hospital refuse a parent access to his or her child’s medical records if the child is between the ages 14 and 17?\***

**A:** No. Healthcare systems cannot claim that HIPAA, the 21st Century Cures Act, and “state laws” allow them to deny a parent access to their adolescent’s medical records to withhold important confidential medical information from parents. State and federal laws do not require minors to grant access to parents prior to parents accessing records. In fact, it requires parents to have access to their children’s records and for parents to consent to health care for their children in most cases. These exceptions are few. Health care systems may not use exceptions as blanket policies to exclude all parents, contrary to state and federal laws.



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**Q: In regard to COVID-19, what student information can be shared by my child’s school or school district to local health officials without parental consent?**

**A:** In addition to reporting requirements implemented by the State Department of Health, a school or school district may determine that a real and significant threat exists to the health or safety of a student or greater student population related to COVID-19. Ind. Code § 16-41-2-1. As a result, under FERPA it is permitted by law to disclose, without prior written consent, PHI from student education records, positivity tests, and contract trace data to appropriate officials at a public health department who need the information to protect the health or safety of the student (or another individual). Public health department officials may be considered “appropriate parties” by an educational agency or institution under FERPA’s health or safety emergency exception, even in the absence of a formally declared health emergency. Generally, public health officials are considered appropriate parties to whom PHI from education records may be non-consensually disclosed under FERPA’s health or safety emergency exception.

**Q: Can a school include a student’s immunization history in a student’s high school transcript?\***

**A:** No. Indiana law does not permit the inclusion of immunization information in an official high school transcript. Ind. Code § 20-33-2-13(a)(4) (2023).

**Q: If a child is sick for an extended period of time, will the school consider the student a “habitual truant?”\***

**A:** A student is a “habitual truant” if they are absent ten days or more within a school year without being excused or without being absent under a parental request that has been filed with the school. Ind. Code § 20-18-2-6.5 (2023).



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### Vaccinations in School

**Q: Can vaccinations of minors be mandated?**

**A:** Indiana law does not require COVID-19 vaccination for Indiana’s K-12 students. However, Indiana law requires that every child enrolled in an accredited K-12 school be immunized against certain diseases unless the parent objects on religious grounds or the immunization would be detrimental to the health of the student. Ind. Code § 20-34-4-2. Mandatory immunizations are determined by the Indiana State Department of Health and adopted by IGA. Id. The Department may also expand or modify the list of communicable diseases that require documentation of immunity as medical information becomes available that would warrant the expansion or modification in the interest of public health. Before November 30 of each year, the Department is required to publish a two (2) year calendar of immunization requirements and recommendations. The calendar must include: (1) the immunization requirements for the following school year; and (2) recommendations for immunization requirements for the year subsequent to the following school year. Ind. Code § 20-34-4-2(c). The calendar timeframe described above may not apply in the event of an emergency as determined by the state health commissioner. Ind. Code § 20-34-4-2(d). In addition, public schools (elementary and secondary) are required by Indiana Code § 20-34-4-1 to keep an immunization record for each student.

**Q: Can a school district perform COVID-19 testing without parental consent?**

**A:** No. Indiana schools cannot conduct virus testing on children without permission from a child’s parent or legal guardian. Administering virus testing without parental consent would violate a child’s constitutional rights; specifically, the Fourteenth Amendment to the U.S. Constitution, which provides a fundamental right for a parent or legal guardian to make decisions regarding their minor children’s medical care and treatment.

**Q: Can children be vaccinated without parental permission?**

**A:** No. As discussed above, minor children must have permission from parents or legal guardians regarding health care decisions, including vaccinations. See Ind. Code § 16-36-1-3(a).

**Q: What is an Emergency Use Authorization (EUA)?**

**A:** An Emergency Use Authorization (EUA) is a mechanism to facilitate the availability and use of medical countermeasures, including vaccines, during public health emergencies, such as the current COVID-19 pandemic. Under an EUA, the U.S. Food and Drug Administration (“FDA”) may allow the use of unapproved medical products, or unapproved uses of approved



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medical products, in an emergency to diagnose, treat, or prevent serious or life-threatening diseases or conditions when certain statutory criteria have been met, including that there are no adequate, approved, and available alternatives.

Once submitted, FDA will evaluate an EUA request and determine whether the relevant statutory criteria are met, considering the totality of the scientific evidence about the vaccine that is available to FDA. *See generally*, 21 U.S.C. § 360.

### **Q: What does full FDA approval of the COVID-19 vaccine mean, and what does it mean for schools?**

**A:** Vaccine development is a complex science. Different than an EUA request, full FDA approval of vaccines is granted over time. Generally, full approval is granted when the FDA has compiled and reviewed additional scientific data and evidence to support the use of vaccines. Full approval is granted following a comprehensive review of data, vaccine efficacy, and safety standards showing that the benefits of the vaccine are greater than its risks. Ultimately, the FDA's endorsement of the COVID-19 vaccine is its full endorsement that the vaccine can be manufactured reliably, safely, and with consistent quality.

Any additional vaccine requirements for Indiana school-aged children would require legislative approval and a determination by the Indiana State Department of Health that additional vaccine requirements are in the interest of public health. Ind. Code § 20-34-4-2(b). In addition, the Department would be required to adopt rules under Ind. Code § 4-22-2 specifying certain immunization requirements, required ages, dosages, and methodology for documenting proof of immunity. Ind. Code § 20-34-4-2(e). The Department of Health must follow the requirements of Ind. Code § 4-22-2 in issuing these rules, including public notice and comment and the submission of the rule to the OAG for approval. In addition, a public hearing is required for rule adoption. Parents may attend and comment on the proposed rule “through the presentation of oral and written facts or argument.” Ind. Code § 4-22-2-26(c). The attorney general can disapprove the rule for a variety of reasoning, including that the rule was (1) adopted without statutory authority; (2) adopted without complying with the requirements concerning the adoption of rules; or (3) violates another law. Ind. Code § 4-22-2-32. **The IGA has the authority to prohibit vaccine mandates for school-aged children. If parents believe a vaccine, such as the COVID-19 vaccine, should not be required for school-aged children, they have the right to petition legislators to create legislation to prohibit it.**

### **Q: What must the Indiana Department of Health and schools include in parent notification regarding immunizations required for school enrollment?\***

**A:** In any notification distributed by the Indiana Department of Health or a school to a parent of a student regarding immunizations must clearly delineate immunizations that are required for school enrollment and immunizations that are only recommended. Ind. Code §20-34-4-3(e) (2023).

Updated August 2023

\*Vol. 4 update

**Bold and underlined content indicates that a change in law would be required to obtain an answer different from the one given**



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### Educational Accommodations

#### **Q: What is required in schools for children with qualified disabilities?**

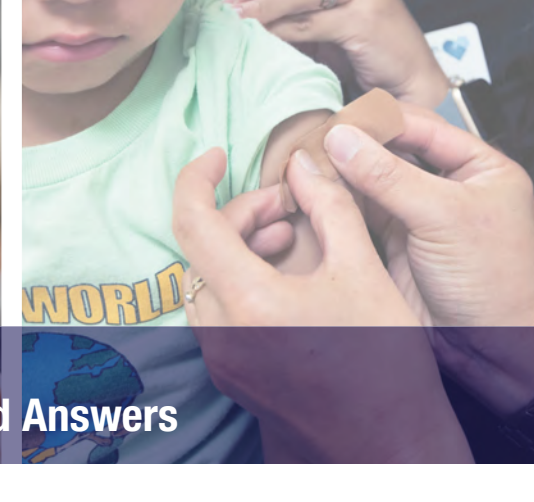
**A:** Parents of students with disabilities are entitled to certain protections under the law. Title II of the Americans with Disabilities Act (“ADA”) prohibits state and local governments (such as public school districts, public colleges, and universities) from discriminating against persons with disabilities. In part, Title II provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” *See* 42 U.S.C. § 12132. Indiana public schools are required to provide accommodations and auxiliary services for students with qualified disabilities.

Indiana public schools must also assure every student with a disability receives a free appropriate public education (FAPE) guaranteed by the Rehabilitation Act of 1973 and the Individuals with Disabilities Education Act (IDEA). If you feel your child is not being granted his or her rights by not having his or her disability recognized or not being provided reasonable accommodations, parents and guardians may request a due process hearing according to their school’s Section 504 procedures or file a complaint with the OCR. For more information, *See* “Additional Resources.”

#### **Q: Are there exceptions for students with disabilities if masks are mandated?**

**A:** Yes. Public schools must make accommodations for students with disabilities, who because of their disability, cannot safely wear a mask.

The ADA protects qualified individuals with disabilities from discrimination by state and local government entities. Section 504 of the Rehabilitation Act applies to entities that receive public funds, and requires public schools to provide reasonable accommodations, so students with a disability receive similar educational services as their peers. Under Section 504, a student with a disability who cannot safely wear a mask because of their disability should not be required to wear one. For example, a person who would be physically unable to remove their mask if their breathing became obstructed should be able to obtain a medical exemption. Another example would be a person who would have respiratory distress issues if a mask were to be worn over the mouth and nose. Students requiring an assistive device for mobility or communication that prevents the person from wearing a mask may be entitled to an exemption. Furthermore, students with sensory disabilities or mental health conditions may be eligible for an exemption from the mask mandate due to a legally qualified disability.



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It's likely every school district will have its own policies regarding medical and disability exemptions from masks. Please communicate with your child's school for specific guidance on complying with its procedures for recognizing mask exemptions. A public school may be in violation of the ADA and Section 504 by failing to make reasonable modifications to its mask policies. Parents of children with disabilities should consult with an attorney regarding whether their child is entitled to an accommodation or modification of school policy. Such modifications are necessary to allow immunocompromised students equal access under the law to educational services.

### **Q: How can parents object to masks in schools?**

**A:** Parents can make their grievances known by addressing their school board members at publicly designated meetings during public comment periods and at the ballot box when a school board seat is up for election. Parents may also exercise their First Amendment right by communicating their concerns through electronic mail, letters, and other forms of communication. In Indiana, the absence of specific directions and/or limitations from the IGA leaves elected school boards the power to determine their respective school district's policy on mask-wearing. **If parents are unhappy with this decision-making process, they have the right to petition the IGA to pass legislation prohibiting mask mandates.**

School districts should also consider the long-term effects mask mandates have on young children, both socially and academically. Indiana school districts should be data-driven and not mandate masks arbitrarily. In considering the decision to mask children, there are no official guidelines that local school boards must follow. In general, local school board members consider several factors, including reliance on their own judgement, guidance from public health officials, the infection rates among children and community spread, and changing circumstances that merit lessening of restrictions. Although this is not always the case, it is best practice for school board decisions to reflect parent input and feedback from the communities they serve.





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### **Q: How can parents request an Individualized Education Plan “IEP” on behalf of their child?**

**A:** An “IEP” means a written document developed, reviewed, and revised by a case conference committee, which includes parents and school personnel, in accordance with 511 IAC 7-42. The plan describes how a student with a disability shall access the general education curricula, if appropriate, and the special education and related services needed to participate in the educational environment.

A parent can initiate a request to the school principal or special education administrator for an educational evaluation, either verbally or in writing, to determine if a student is eligible for special education services. After a parent makes a request, the school district has ten (10) instructional days to provide the parent with written notice that includes a statement and other factors relevant to their determination for proposing or refusing to conduct an educational evaluation. The required components of an IEP are contained in 511 IAC 7-42-6. They require schools to consider the strengths of the student, concerns of the parent for enhancing the education of the student, the results and instructional implications of the initial or most recent educational evaluation, and other assessments of the student, and the academic, developmental, communication, and functional needs of the student. 511 IAC 7-42-6(b). Schools must also consider special factors such as positive behavioral interventions and supports and other strategies to address any of the student’s behaviors that impede the student’s learning or the learning of others.

### **Q: Can a school modify the requirements of an IEP?**

**A:** Schools must meet with parents periodically, but not less than annually, to review the student’s IEP and determine whether the student’s annual goals are being achieved. 511 IAC 7-42-9. Additional parent rights and remedies are outlined in rules and provide in part the right of parents to challenge proposed actions and changes to an IEP. *See generally* 511 IAC 7-42. Indiana law requires parent participation in meetings with school personnel implementing the IEP. In the event of disagreement, the process is outlined for parents to initiate mediation to resolve disputes and/or participate in a due process hearing. *See* “Additional Resources” for a link to the SBOE’s special education rules outlining the IEP process.



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### **Q: Can parents revoke consent for the Special Education services their child is receiving?**

**A:** Yes. Parents can revoke consent at any time when their school is providing special education services to their child. Specifically, an IEP can be reviewed and revised or terminated by a parent who revokes consent for special education and related services. *See generally* 511 IAC 7-42. For revocation to occur, it needs to be in writing and provided to school staff. However, before a school can stop providing the services, it must first provide the parent with written materials explaining the consequences of such a revocation. Once the parent receives the written notice describing the potential consequences of revoking the services, the school must then end the services to the student. The student will then be placed in a general education classroom and receive education services as a non-disabled student. When the student is placed in general education classes, the student's safeguards under Article 7 and the Individuals with Disabilities Education Improvement Act will cease. Indiana's special education rules can be read in their entirety at Title 511 IAC 7-32 through 47.

### **Q: What is homebound education?**

**A:** Homebound education focuses on the rights of students to receive an education where circumstances may preclude them from physically attending school. Homebound instruction is defined as "instruction provided by a licensed teacher to students, in accordance with 511 IAC 7-42-11 and 511 IAC 7-42-12, including students without disabilities, who are unable to attend school." Homebound instruction may be provided: 1) at a student's home, 2) at a hospital, or 3) at another site. Homebound instruction may be provided "in person or by any other technology systems." 511 IAC 7-32-45.

### **Q: In what circumstances must a school offer homebound education when a student is unable to attend in person?**

**A:** The IGA (and by delegation the SBOE) has recognized three general circumstances where students may be unable to attend school but are entitled to some form of homebound instruction:

1. Students with long-term or permanent disabilities who are entitled to receive services under the Individuals with Disabilities Education Act, 20 U.S.C.A. § 1400 et seq.;
2. Students with injuries and temporary or chronic illnesses who are entitled to receive services under § 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794; and
3. Students without disabilities who are nevertheless unable to attend school. 511 IAC 7-32-45.



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**Q: Can parents request homebound instruction if their child becomes ill for an extended period of time?**

**A:** Yes. The SBOE adopted a rule requiring all students with injuries and temporary or chronic illnesses that preclude their attendance in school, including students who are not eligible for special education and related services, to be provided with instruction.

Pursuant to 511 IAC 7-42-12(b), in order to be eligible for services, the parents of the student must do the following: Before instruction for a student unable to attend school can begin, the parent must provide the school corporation with a written statement from a physician (which includes a doctor of osteopathy) with a valid, unlimited license to practice medicine, or a Christian Science practitioner, that states one (1) of the following:

1. The student has a temporary illness or injury that will require the student's absence from school for a minimum of twenty (20) consecutive instructional days. If the:
  - (A) illness or injury occurs less than twenty (20) instructional days prior to the end of the school year; and
  - (B) student needs instruction to meet promotion or graduation requirements; the physician's statement must indicate that the student will be unable to attend school through the end of the current school year.
2. The student has a chronic illness or other medical condition that will require the student's absence for an aggregate of at least twenty (20) instructional days over the period of the school year.



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### Sexual Behaviors and Abortion

**Q: Can a school teach my child about human sexuality?\***

**A:** Yes. Human sexuality instruction is permitted in grades 4-12. However, human sexuality instruction is prohibited in pre-kindergarten through grade three unless such instruction is required by academic standards instruction. Ind. Code § 20-30-17(a)(1)-(3) (2023). At the time of publication, neither the standards nor instruction require it to be taught to students in pre-kindergarten through grade three.

Pursuant to Indiana law, human sexuality instruction is limited to teaching abstinence-based instruction. Instruction on human sexuality or sexually transmitted diseases requires a teacher to teach abstinence from sexual activity outside of marriage as the expected standard for all school-age children. In addition, instruction will focus on abstinence from sexual activity as the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems. By law, school instruction will also include the best ways to avoid sexually transmitted diseases and other associated health problems by establishing a mutually faithful monogamous relationship in the context of marriage. Ind. Code § 20-30-5-13.

Indiana Code § 20-30-5-13 does not authorize “comprehensive” sex education, including curricula aligned to the National Sex Education Standards<sup>22</sup> endorsed by Planned Parenthood. States, such as California, have passed legislation requiring “comprehensive” sex education, which includes curricula requiring teachers to “affirmatively recognize different sexual orientations and be inclusive of same-sex relationships in discussions,” and “teach about gender, gender expression, gender identity, and the harm of negative gender stereotypes.”<sup>23</sup> While Indiana law does not authorize “comprehensive” sex education or curricula aligned to the National Sex Education Standards, it does not explicitly prohibit them. However, it should be noted that schools are prohibited from asking students about their gender identity or sexual behaviors or attitudes in sex education classes, or any other classes, under Indiana Code § 20-30-5-17(b). **If parents want to ensure sex education classes do not teach concepts outside of those specifically authorized in law, they have the right to petition the IGA to pass legislation updating Indiana Code § 20-30-5-13 to specify what is not permitted in sex education classes.**

<sup>22</sup> *National Sex Education Standards: Core Content and Skills, K-12, Second Edition*, Future of Sex Education, (2020), <http://www.advocatesforyouth.org/wp-content/uploads/2020/03/NSES-2020-web.pdf>.

<sup>23</sup> AB 329 Pupil Instruction: sexual health education, California State Legislature, (2016), [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB329](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB329).

Updated August 2023  
\*Vol. 4 update

**Bold and underlined content indicates that a change in law would be required to obtain an answer different from the one given**



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**Q: Can a public school employee or staff member answer a student’s question about human sexuality if the student is in pre-kindergarten through grade three?\***

**A:** Yes. Despite a restriction on providing human sexuality instruction to students in pre-kindergarten through grade three, a school employee may answer an individual student’s question about human sexuality. Ind. Code § 20-30-17(a)(4) (2023).

**Q: Can a school teach my child about human sexuality without parental consent?**

**A:** No. Consent is required. Before a school may provide a student with instruction on human sexuality, the school must provide the parent of the student with a written request for consent of instruction. Ind. Code § 20-30-5-17(c). The parental consent form must accurately summarize the contents and nature of the instruction on human sexuality. Parents have the right to review and inspect all material related to instruction on human sexuality. If parents do not respond to the notice concerning the instruction on human sexuality, the child will receive the instruction. **Parents must formally opt out to remove their child from the instruction. Ind. Code § 20-30-5-17(d). Parents have the right to petition the IGA to amend this statute to require schools to request parents to opt-in to certain instruction on human sexuality, rather than putting the onus on parents to opt out.**

**Q: Can my child be prescribed birth control without parental consent?**

**A:** No. Parents must provide consent for their unemancipated minor child to be prescribed any form of contraception.

**Q: Can minors get access to abortions without parental consent?**

**A:** No. Indiana law requires a minor seeking an abortion to receive the notarized written consent of the parent for the performance of an abortion. Ind. Code §§ 16-34-2-4; 16-18-2-267.

**Q: Can my child be referred to or counseled on abortions at school?**

**A:** No. Referral and counseling for abortions require parental consent, just as all other medical treatments. School corporations that enroll in a program to use federal funds under the Medicaid program are prohibited by Indiana law from providing abortions, abortion counseling, abortion referrals, abortifacients, or contraceptive services. Ind. Code § 12-15-1-16.

# LIBERTY IN EDUCATION: SCHOOL CHOICE

Provided by Indiana Attorney General Todd Rokita



A roadmap for Hoosier parents and caregivers  
to exercise their legal right to direct their  
children's education • Volume III





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### Volume III: Liberty In Education - Public Schools

#### **Q: What are the various options for public education in Indiana?**

**A:** There are a variety of options within the public school system, including brick-and-mortar traditional schools, brick-and-mortar charter schools, virtual schools (public and charter), magnet schools, and learning pods. Consistent with the Indiana Constitution Art. 8, §1, all types of public schools are open to all students and free of tuition.

#### **Q: What is a traditional public school?**

**A:** Traditional public schools include brick-and-mortar schools that are under the control of a school corporation, subject to the authority of the Indiana Department of Education (“IDOE”) and serve some combination of grades Pre-K to12. Ind. Code § 20-18-2-14.3.

#### **Q: What is a magnet school?**

**A:** Magnet schools are traditional public schools with specialized courses or curricula that allow kids to focus on specialized themes, such as performing arts. The “magnet” refers to how the specialty offered by the school draws students from across traditional public school district boundaries. Magnet schools are voluntary.

#### **Q: What is a charter school?**

**A:** Charter schools are public schools. The term “charter” refers to the agreement between the school and the organization that authorizes both the establishment and operation of the school. Under Indiana Code § 20-24, charter schools are established to serve the different learning styles and needs of public-school students, to offer appropriate and innovative choices, to afford varied opportunities for professional educators, to allow freedom and flexibility in exchange for exceptional levels of accountability, and to provide parents, students, community members, and local entities with an expanded opportunity for involvement in the public school system. An individual charter school is considered to be its own local educational agency (LEA), meaning it is treated as an autonomous entity independent from a school district. For some purposes, including funding and other topics specified in law, charter schools can be treated as their own school corporations.



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Although public charter schools are exempt from some state and district regulations, they are held to high levels of accountability. In addition to meeting state and federal accountability requirements (Public Law 221, Indiana's Accountability Model, and The Every Student Succeeds Act- 20 U.S.C. § 6301), charter schools must also meet the requirements set out in their charter. An authorizer may revoke a school's charter at any time if the school is not fulfilling the terms of its charter. Charter schools are nonreligious. Charter schools have more flexibility to set curricula, school hours, and rules than traditional public schools. Charter schools can be either brick-and-mortar or virtual. Ind. Code § 20-24-1-4; Ind. Code § 20-24-1-10.

### **Q: What is a virtual school?**

**A:** Virtual schools can be private or public and offer an education program in which more than fifty percent of student instruction is provided in an interactive learning environment created through technology in which the student is separated from a teacher by time or space, or both. Ind. Code § 20-19-9-1.

Public virtual schools are operated by the school district and must follow the same rules and standards as all other Indiana public schools. Charter virtual schools are public but operate with more flexibility than public virtual schools. Ind. Code § 20-24-7-13.

Virtual schools provide instruction in different ways. Instruction defined as synchronous learning is teacher-led instruction where the student and teacher/class interact in real-time via the computer. Asynchronous learning includes instruction in which the student and teacher are separated by time and occurs via email or online discussion forums. Blended learning provides a hybrid model where students receive instruction both in-person at a school facility and online with students retaining some degree of control over time, location, and pace. For a listing of virtual schools in Indiana, see "Additional Parent Resources."

### **Q: What is a learning pod?**

**A:** During the pandemic, many families chose to gather their children together with neighbors or friends for on-line learning as a group, or pod. Learning pods take a variety of legal forms and formats, including learning support pods and self-directed pods.





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Learning support pods (public school option) differ from a self-directed pod (private option) in that parents keep their child enrolled in the public school during a period of remote learning. Under the supervision of a parent, several parents, or a guardian, students work together on lessons, classes, and activities provided by the children's existing schools. Indiana law does not define learning support pods. They evolved as a solution to remote learning during the COVID-19 pandemic. If your child is enrolled in a public school that moves to remote learning and is supervised by an adult in your learning pod, you do not need to notify your public school. Learning support pods could also serve as an option for parents with children enrolled in a public virtual school if permitted by the student's school. See "Additional Parent Resources" for a listing of online public virtual schools that may permit learning pods. Self-directed learning pods involve unenrolling your child from a public school as discussed in the private school section.

### **Q: What determines a student's public school district?**

**A:** A student's public school district is where the student has legal settlement. Generally, legal settlement is the location where the student's parents reside. Ind. Code § 20-26-11-1. If the student's mother and father divorce or separate, the legal settlement of the student is the residence of the parent with custody of the child. Even though custody is awarded to one parent, the parents can agree outside of court that legal settlement is with the other parent (the student needs to be living with this other parent). If a court order has not been made establishing custody of the child, the student's legal settlement is with the parent with whom the student lives. Ind. Code § 20-26-11-2.5.

### **Q: Do children have to attend school in the public school district where they reside?**

**A:** No. Indiana has open enrollment policies that allow for public school choice to exist beyond moving to another school district. Ind. Code § 20-26-11. Any school district in Indiana may voluntarily enact a policy for accepting or rejecting applications for a transfer to another school that lies within or outside the boundaries of the district. If school districts do not voluntarily enact a policy, Indiana law allows parents to request a transfer from a district where the student is a resident to another school if the student may be better accommodated in the public school of the transferee corporation. Ind. Code § 20-26-11-5. The decision whether to grant the transfer depends on the crowd conditions of the transferee school and curricular offerings at the high school level that are important to the vocational or academic aspirations of the student. *Id.* The school corporation has 30 days to respond to the request. If after 30 days the school corporation fails to act, the transfer is considered approved. If the transfer is denied, an appeal may be taken to the SBOE within 10 days of the denial and the SBOE shall hold a hearing. Ind. Code § 20-26-11-15.



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### **Q: How do parents withdraw their child from school?**

**A:** A parent may withdraw their student from school at any time for the purpose of transferring that student to another public school, private school, or homeschool. Local school districts may have their own form and procedure for doing this. It is best practice to provide a written withdrawal letter to the school. It is important to note that attending school is compulsory in Indiana. Ind. Code § 20-33-2-4. The law requires students to attend from the fall semester of the school year the student turns 7 years old until the student graduates or becomes 18 years of age, with some exceptions made after the age of 16 years. Students shall attend a public school or another school taught in the English language (private school or homeschool). Ind. Code § 20-33-2-6.

### **Q: Do public schools charge tuition?**

**A:** No. Public schools do not charge tuition. Public schools are primarily funded through a combination of state funding, local property taxes, and federal grants.

### **Q: Do parents have to pay for their child's textbooks in public schools?\***

**A:** No. Schools must cover the cost of curricular materials, including textbooks. Schools may, however, charge a fee for lost or damaged curricular materials. Ind. Code § 20-26-12-1 (2023).

### **Q: What is the average total amount of state spending (not including local or federal funds) per student in a traditional public school?\***

**A:** The average total per-pupil payment from the state to public schools, also referred to as “state tuition support,” is \$7,726 for the 2023-2024 school year and \$8,135 for the 2024-2025 school year. This amount does not include local or federal funding which varies depending on the school. See “Additional Parent Resources” for more detailed information on the Indiana State Budget.



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### **Q: What percent of state funding to schools goes to pay public school teachers?\***

**A:** Indiana law requires a school corporation to expend at least 62 percent of the school corporation's state tuition support on teacher "compensation," including salaries and other benefits, for part-time and full-time teachers, school counselors, adjunct teachers, and full-time substitute teachers. Ind. Code § 20-28-9-28(a) (2023). Prior law required a school corporation to expend at least 45 percent, but only included "salaries," not "compensation," and did not include salaries for part-time teachers, school counselors, adjunct teachers, and full-time substitute teachers. Ind. Code § 20-18-2-22.

### **Q: Does the state provide different levels of funding to public schools?\***

**A:** Yes. State tuition support includes a foundation grant and a complexity grant. While the per-pupil amount of the foundation grant is the same for all students in all schools, the per-pupil amount of the complexity grant varies depending on each school's demographics. The per-pupil amount of the foundation grant to public schools is \$6,590 for the 2023-2024 and \$6,681 for the 2024-2025 school year. Ind. Code § 20-43-3-8. The amount of the complexity grant varies depending on school demographics, such as the number of enrolled foster children and families receiving income-based public assistance. Ind. Code § 20-43-6-3. Of note, the amount of state tuition support to virtual schools is 15% less than brick-and-mortar schools.

In addition to the foundation and complexity grants, state tuition support is awarded to schools based on the number of students who participate in career and technical education programs (\$179,211,060), have special education needs (\$703,737,801), are non-English speaking (\$26,497,314), and academic performance grants (\$29,143,700). Ind. Code § 20-43-7-1; Ind. Code § 20-43-10-4; Ind. Code § 20-43-8-15; and Ind. Code § 20-43-10.5. Special education dollars are distributed to schools for each eligible student based on the level of disability: \$10,575.00 for severe disabilities, \$2,657.00 for mild/moderate disabilities, and \$500 for a communication disorder. Ind. Code § 20-43-7-6.

### **Q: Is there a way to compare how much each school spends on student learning and classroom instruction versus non-academic expenses, such as debt financing and overhead costs?\***

**A:** Yes. The Office of Management and Budget (OMB) is required under Indiana law to publish a report titled "Dollars to the Classroom," which includes the ratio of student instructional expenditures (academic achievement and instructional supports) to non-instructional expenditures (overhead, operations, and debt financing). Ind. Code § 20-42.5-3. From 2006 to the 2020-2021 school year (most recent year reported), the statewide average of dollars going directly to student



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academic achievement declined by roughly 3.5%. While this may not seem like a large percentage, it represented \$474,295,191 fewer dollars spent on academic achievement in the 2020-2021 school year. Parents wishing to compare the budgets of individual schools and districts in the school selection process can view more detailed information via the “Dollars to the Classroom” report available on the OMB website. See “Additional Parent Resources” for this report.



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### Private Schools

#### **Q: What qualifies as a private school?**

**A:** A school not maintained by a school corporation. Ind. Code § 20-18-2-12. Indiana law refers to private schools as non-public schools.

#### **Q: What are the various private school options in Indiana?**

**A:** Private schools are either accredited or non-accredited and encompass traditional brick and mortar schools, virtual schools, learning pods, and homeschools.

#### **Q: What is a traditional private school?**

**A:** Traditional private schools are brick-and-mortar and take a variety of forms. Traditional private schools can be religious or secular schools. Depending on the mission and goals of the school, they can be accredited or non-accredited and operate with various levels of state government regulations.

#### **Q: What is a private virtual school?**

**A:** Virtual schools can be private or public schools. Private virtual schools operate similarly to a traditional private school, but the program is offered online. Some virtual private schools are accredited and participate in the Indiana Choice Scholarship Program, which allows students to use state vouchers to pay tuition costs.

Virtual schools provide instruction in different ways. Instruction defined as synchronous learning is teacher-led instruction where the student and teacher/class interact in real-time via the computer. Asynchronous learning includes instruction in which the student and teacher are separated by time and occurs via email or online discussion forums. Blended learning provides a hybrid model where students receive instruction both in-person at a school facility and online with students retaining some degree of control over time, location, and pace. See “Additional Parent Resources” for a listing of virtual schools in Indiana.



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### **Q: Are learning pods considered private schools?**

**A:** During the pandemic, many families adjusted to school closures by getting their children together with their neighbors or friends to do on-line learning as a group, or pod. “Learning pods” are not explicitly defined under Indiana law, but pods that are not under the control of a public school (as discussed in the public-school section) are considered private schools that are either accredited or non-accredited by the State of Indiana. In a learning pod, or a microschool as they are often referred to, a group of parents may serve as teachers or pool resources to hire teachers, tutors, or instructors. The rules that a private microschool/pod must follow depend on its accreditation status, which is discussed below. A distinct difference between homeschool parents getting their children together for activities and a private microschool/pod is that the homeschool parent makes all educational decisions for the student; whereas in a private learning pod, the authority is shared.

### **Q: Does the State of Indiana require accreditation of private schools?**

**A:** No. The State of Indiana does not require private schools to be accredited unless the school elects to participate in one of Indiana’s school choice programs. Ind. Code § 20-31-4.1. However, private schools wishing to participate in the Indiana High School Athletic Association (IHSAA) must be accredited.

### **Q: What rules must a non-accredited private school follow in Indiana?**

**A:** A non-accredited private school is exempt from state regulations regarding curriculum and the content of education programs. Ind. Code § 20-33-2-12. However, a non-accredited private school is required under Indiana law to adhere to the regulations below:

- The school must provide an “equivalent education” to that offered by the state. Ind. Code § 20-33-2-28. Although, an “equivalent education” is not defined under Indiana law.
- Instruction must be offered for the number of days that the local school corporation is in session, which is generally 180 days each year. Ind. Code § 20-33-2-6; Ind. Code § 20-30-2-3.
- Instruction must be in the English language. Ind. Code § 20-33-2-4.
- Attendance records must be kept. Ind. Code § 20-33-2-8.



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### **Q: How does a private school become accredited in Indiana?**

**A:** The State Board of Education (SBOE) accredits schools in two ways. A private school may file an application with the SBOE for accreditation under Indiana’s performance-based accreditation system. Ind. Code § 20-21-4.1. A private school may also be accredited through a third-party accreditation organization recognized by the SBOE, including Accrediting Association of Seventh-day Adventist Schools, Colleges, and Universities (AASDAS); American Association of Christian Schools (AACS); Association of Christian Schools International (ACSI); Christian Schools International (CSI), Independent Schools Association of the Central States (ISACS); International Christian Accrediting Association (ICAA), National Lutheran Schools Accreditation (NLSA); and North Central Association (NCA)/AdvancED. *See* “Additional Parent Resources” for IDOE guidance. A school that seeks state accreditation or a third-party accreditation agency that seeks to be recognized by SBOE must complete and submit an application form established by SBOE. SBOE must approve or deny the application within six months and, if denied, must provide the reasons for the denial. Ind. Code § 20-19-2-10.5 (2023).

### **Q: What rules must private schools follow if accredited through Indiana’s performance-based accreditation system?**

**A:** In 2020, the state legislature passed Indiana Code § 20-31-4.1 requiring the SBOE to develop a performance-based accreditation system to which all public schools must adhere and private schools may voluntarily apply. As determined by the SBOE, private schools that apply for accreditation shall be accredited under this system if the school meets all applicable legal standards.

### **Q: What are the legal standards established by the SBOE that accredited private schools must meet under Indiana’s performance-based accreditation system?**

**A:** Accredited private schools and public schools must adhere to all legal standards established by the SBOE under Title 511 Indiana Administrative Code Article 6. Accredited private schools must provide 180 days of instruction each year, follow health and safety requirements, offer certain curricula required under Indiana law, follow teacher-student ratios, conduct criminal background checks on employees, administer the Indiana state test, and report to the state data for A–F ratings, including state assessment scores and graduation rates. Accredited private schools may not discriminate on the basis of race, color, or national origin and must grant the state full access to its premises for observing classroom instruction and reviewing any instructional materials and curricula. *See* “Additional Parent Resources” for the full list of regulations.



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**Q: What rules must private schools follow if accredited by a third-party accreditation organization?**

**A:** Each accreditation organization recognized by the SBOE establishes their own guidelines for accreditation. In general, accreditation organizations follow a thorough evaluation process that considers how the school is governed, financed, and operated, as well as standards for school safety, academic performance, curricula, teacher training, teacher licensing, and other criteria.

**Q: If a child attends a private school, does the child qualify for special education services offered by a public school?**

**A:** Yes. For students with disabilities who have been placed in private schools by their parents, public schools have a duty to locate, identify, and evaluate all students with disabilities; consult with non-public school representatives and representatives of the parents of non-public school students with disabilities; and make available special education and related services to all students with disabilities. Ind. Code § 20-19-2-8; Ind. Code § 20-19-2-16; 511 Ind. Admin. Code 7-34-1. It is the public school's responsibility to evaluate the student and conference with the student's parents to determine a plan for the student. A parent may initiate the special education process through the public school district of the student's legal settlement or the public school district in which the private school is situated, if different. *See generally* 511 Ind. Admin. Code 7-34.

**Q: Does a student in a private school receive the same level of special education services as a student in public school?**

**A:** No. A private school student with a disability receives special education and related services in accordance with a Service Plan (SP), not an Individualized Education Program (IEP). The full array of services required under an IEP are not required to be made available as part of a SP for a student in a private school. For example, the length and frequency of services to be provided may be less than the student would receive through an IEP; alternatively, the SP may provide consultative services in the private school where, were the student enrolled in a public-school program, the services may be more direct. If the public school decides to provide the services at a location other than the non-public school, it must provide transportation for the student to and from the location. *See generally* 511 Ind. Admin. Code 7-34. *See also* "Additional Parent Resources" for the IDOE guidance on special education services for private school students.





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### Homeschool

#### **Q: Do parents have a right to homeschool their children?**

**A:** Yes. Near the turn of the 20th century, the Indiana Court of Appeals recognized home study as an educational option. *State v. Peterman*, 70 N.E. 550, 552 (Ind. App. 1904). The United States Supreme Court recognizes that parents have a fundamental right to direct the upbringing and education of children under their control. *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Yoder v. Wisconsin*, 406 U.S. 205 (1972). Parents have a right to educate their children in facilities other than those provided in the public schools.

#### **Q: How does Indiana define homeschooling?**

**A:** Indiana has a functional definition of homeschooling as non-accredited and non-public schools with less than one employee. Ind. Code § 20-32-4-4. Ind. Code § 31-33-8-7.

#### **Q: What laws govern and regulate homeschoolers in Indiana?**

**A:** The IGA has enacted several homeschool laws:

- Children ages 7-17 must be educated. Ind. Code § 20-33-2-5.
- The Indiana school year begins after June 30 of the school year and concludes before July 1 of the same school year. Ind. Code § 20-18-2-17.
- Home educated students must be instructed for the same number of days as their local school system is in session. This is typically 180 days. Ind. Code § 20-33-2-6; Ind. Code § 20-30-2-3.
- Parents must begin keeping attendance records the date the child turns 7. Ind. Code § 20-33-2-8.
- The local superintendent and the State Secretary of Education may ask to see a parent's attendance sheet. Ind. Code § 20-33-2-20.
- Parents must provide an equivalent education. Ind. Code § 20-33-2-28. Although, "equivalent education" is not defined.
- Home educators are not bound to curriculum and content requirements in Ind. Code Art. 20; Ind. Code Art. 21; or Ind. Code § 20-33-2-12.



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- The education must be taught in English. Ind. Code § 20-33-2-4.
- The parents of a high school student withdrawing to home educate must fill out a form developed by IDOE and approved by the SBOE that explains the legal requirements of attending a non-accredited, non-public school located in Indiana. Ind. Code § 20-33-2-28.6.

### **Q: Do I have to register my homeschool children with the state?**

**A:** No. Homeschool registration does not exist in the State of Indiana.

### **Q: Do homeschools have to keep attendance?**

**A:** Indiana law requires a non-public school to keep “an accurate daily record of the attendance of each student who is subject to compulsory school attendance,” which is required to be kept solely “to verify the enrollment and attendance of a student upon request of the (1) secretary of education; or (2) superintendent of the school corporation in which the non-public school is located.” Ind. Code § 20-33-2-20.

Public school districts or the IDOE should not request that all homeschool families report their school attendance. This general and continuous request does not meet the standard in either of these provisions of the law.

### **Q: What options do parents have to choose curricula for their homeschool children?**

**A:** Indiana law gives home educators the flexibility to choose the curriculum and textbooks they believe will most benefit their children. Parents are not required to follow the same program or curricular requirements of Indiana public schools. The state does not require that you register your child with the state or approve the homeschool programs or curricula. However, parents should maintain good records of the courses taught through high school so that transcripts may be provided to colleges and prospective employers. *See* “Additional Parent Resources” for educational choice resources.

### **Q: Is there funding from the state to cover homeschool expenses?**

**A:** No. Home education is privately funded per the definition of non-public and non-accredited schools. Many options exist for free or low-cost private curricula. Indiana does offer a tax deduction of \$1,000 for educational expenses related to private education.



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**Q: Are virtual school options offered through public school systems considered homeschooling?**

**A:** No. Students enrolled in a virtual public-school program are public school students. A homeschool is, by definition, a non-public and non-accredited school.

**Q: Are homeschool students eligible for special education services provided by public schools?**

**A:** Yes. Homeschools are considered non-accredited private schools in Indiana and students are eligible for special education services in the same manner as other private school students.

**Q: Does a homeschool student receive the same level of special education services as a student in public school?\***

**A:** No. A homeschool student with a disability receives special education and related services from the public school in accordance with a Service Plan (SP), not an Individualized Education Plan (IEP). Students generally receive a different level of service under a SP than students receive under an IEP. The full array of services required under an IEP are not required to be made available as part of a SP for a homeschool student. For example, the length and frequency of services to be provided may be less than the student would receive through an IEP at a public school; alternatively, the SP may provide consultative services for a homeschool student where, were the student enrolled in a public-school program, the services may be more direct. If the public school decides to provide the services at a location other than the location of the homeschool, it must provide transportation for the student to and from the location. *See generally* 511 Ind. Admin. Code 7-34.



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### Individual State Tax Credits and Grants for Parents

**Q: What state tax deductions are available to offset private school costs?**

**A:** Parents may claim a deduction up to \$1,000.00 per child on their state tax returns for unreimbursed educational expenditures for a dependent child in a private school, including homeschools.

**Q: What educational costs can be deducted?**

**A:** Deductible expenses include parents' expenditures on unreimbursed costs, such as private school tuition, homeschooling costs, textbooks, fees, software, tutoring, and supplies.

**Q: What is an Indiana Education Enrichment Grant?\***

**A:** The Indiana General Assembly passed a law in 2022 authorizing the IDOE to establish a grant program to which parents of K-12 students in public or private schools may apply for a grant to pay for the cost of tutoring or other services (approved by IDOE) designed to improve student performance in math or English. The grants will be offered from June 30, 2022, through October 1, 2024. The amount and number of grants provided will depend on the availability of funds. Ind. Code § 20-52-4-1.



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### Indiana Choice Scholarship Program

#### **Q: What is the Indiana Choice Scholarship Program?**

**A:** The Indiana Choice Scholarship Program (“Choice Scholarship Program”), commonly referred to as the voucher program, provides scholarships to eligible Indiana students to offset tuition costs at participating private schools. Ind. Code ch 20-51-4. During the 2022-2023 school year, there were 50,000 students participating in the Choice Scholarship Program. With recent legislative changes to the income levels required for eligibility, approximately 97% of Indiana students are now eligible for the program.

#### **Q: How do parents apply to the Choice Scholarship Program?**

**A:** For parents interested in applying for the Choice Scholarship Program, the Indiana Department of Education has an online resource that guides parents through each step of the application process. Parents may also work with the private school that the student wishes to attend to start the application process. A link to the application is available in “Additional Parent Resources.”

#### **Q: How many private schools in Indiana participate in the Choice Scholarship Program?\***

**A:** Indiana has 317 private schools participating in the Choice Scholarship Program. See “Additional Parent Resources” for the listing of schools.

#### **Q: Who qualifies for scholarships under the Choice Scholarship Program?\***

**A:** Per Indiana Code § 20-51-4-2, all eligible students will qualify for the Choice Scholarship Program for each school year that the eligible Choice Scholarship Program student enrolls in an eligible school. To be eligible, a student must be a resident of Indiana, be accepted for enrollment at a participating school, and be between the ages of 5 and 22 no later than October 1 of the school year. The student’s family must also meet annual income requirements of no more than 400% of the amount for federal free or reduced price lunch (\$222,000 for a family of four in 2023).



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### ***Who qualifies for scholarships under the Choice Scholarship Program? - continued***

<b>Persons in Household</b>	<b>Annual house hold income limit for "90%" Choice Scholarship</b>
1	\$107,892
2	\$145,928
3	\$183,964
4	\$222,000
5	\$260,036
6	\$298,072
7	\$336,108
8	\$374,144
9	\$412,180
10	\$450,216

**Q: How is the Choice Scholarship Program funded?\***

**A:** The program is funded by state taxpayer dollars appropriated by the IGA. The Choice Scholarship Program receives no local funds and only a negligible amount from federal funds dedicated to public education.



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### **Q: What is the value of a Choice Scholarship Program scholarship?\***

**A:** Choice Scholarship Program scholarships equal 90% of state tuition support to the public school the child would otherwise attend, or the amount of tuition posted by the private Choice Scholarship Program school, whichever is lesser. Ind. Code § 20-51-4-4. State tuition support is equal to the foundational and complexity grants. The average award amount for the 2023-2024 school year is \$5,854.34, but the amount varies depending on the per pupil amount of state tuition support received by the school district. If a student is eligible for special education funds and the private school provides such services to the student, the voucher would include an *additional* amount depending on the student's disability. Ind. Code § 20-43-7-6. *See* also "Additional Parent Resources" for voucher amounts by school district.

### **Q: Does state funding for the Choice Scholarship Program drain public school resources?\***

**A:** No. It saves the state money. The state pays the private school 90% of the state tuition support and the state saves the other 10% of funding. The Choice Scholarship Program saved the state \$67 million in 2021 state education costs. Moreover, Choice Scholarship Program students do not receive any share of local funding and an insignificant amount of federal funding directed to public schools. On average, these students are educated at less than 50% of the cost of a public-school student. *See* "Additional Parent Resources" for more details on the finances of the Choice Scholarship Program.

### **Q: Are Indiana Choice Scholarship Program schools required to take statewide assessments?**

**A:** Yes. Ind. Code § 20-51-1-4.7 requires schools that accept Choice Scholarships to administer statewide testing to all students enrolled. This is also a requirement for any state accredited private schools.



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### **Q: Do schools participating in the Indiana Choice Scholarship Program have more regulations than private schools that do not participate?**

**A:** Yes. Non-accredited private schools have the fewest regulations. Accredited private schools must follow the legal standards established through the state performance-based accreditation system or the standards established by a third-party accreditation organization (See Private school accreditation section). In addition to the regulations for state accreditation, participating Choice Scholarship Program schools must follow regulations established under Ind. Code 20-51-4. Choice Scholarship Program schools are also required to develop a plan for annual performance evaluations for each certificated employee. Ind. Code § 20-28-11.5-4. See “Additional Parent Resources” for IDOE regulatory guidance for non-public schools.

### **Q: Is an Indiana Choice Scholarship Program school required to provide special education services?**

**A:** No. The level of special education services provided by the Choice Scholarship Program school is based on their ability to provide them. Parents can elect to have the special education services provided by the public school if not available through the Choice Scholarship Program school.

### **Q: Are Indiana Choice Scholarship Program students eligible to receive special education services provided by public school districts?**

**A:** Yes. If a Choice Scholarship Program school provides special education services, the parent must decide whether he or she wants the Choice Scholarship Program school or the public school district to provide the student’s special education services. If the parent selects to have the services provided by the public school, the student will receive the same special education services provided by a public school district to all private school special education students. 511 IAC 7-49.

If the parent selects to have the special education services provided by the private Choice school, the private school staff will meet with the parents and develop a Choice Special Education Plan (CSEP), similar to a Service Plan (SP) developed for non-Choice private school students. The CSEP describes the special education and related services that the school is required to provide to the Choice Scholarship Program student. Parents can change their mind if they find their child’s special education services would be better provided through the public school. Of note, the Choice Scholarship Program school will receive any special education funding made available for the student. 511 IAC 7-49.





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### Scholarship Granting Organizations

**Q: What is a Scholarship Granting Organization and how is it funded?**

**A:** Certified Scholarship Granting Organizations (SGO) provide scholarships (vouchers) to income eligible students to offset tuition costs at partnering schools. SGOs are part of the School Scholarship Tax Credit Program. Ind. Code § 20-51-1-7. Qualified SGOs receive funding from private, charitable donations for private school scholarships. Those who have donated to an SGO approved by the IDOE will then be eligible to take advantage of a 50 percent credit against their individual or corporation state tax liability.

**Q: What are the differences between SGO scholarships and Choice Scholarship Program scholarships?\***

**A:** The Choice Scholarship Program provides state-funded scholarships to eligible Indiana students to offset tuition costs at participating schools. SGO scholarships are different in that they are funded by private, charitable donations and awarded by a certified SGO, not the state of Indiana. While the value of a Choice Scholarship Program scholarship is tied to the amount of state tuition support, the amount of an SGO scholarship is determined by the SGO. An SGO school scholarship may also be used to pay for tuition and expenses for students in pre-kindergarten. Ind. Code § 20-51-1-5.

**Q: How does a parent apply for an SGO scholarship?**

**A:** A parent should contact the partnering school they wish their children to attend to start the application process. The Indiana Department of Education provides a list of partnering schools. See “Additional Parent Resources.”

**Q: What regulations do schools that accept SGO scholarships have to follow?**

**A:** Private schools that accept SGO scholarships must be accredited and administer the statewide assessments or another nationally recognized assessment to the schools’ students. Ind. Code § 20-51-1-6.



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### **Q: What are the eligibility requirements for a student to receive an SGO scholarship?\***

**A:** For SGO scholarship eligibility, the state requires that the student 1) has legal settlement in Indiana; 2) is between four and 22 years of age; 3) either has been or is currently enrolled in a participating school; and 4) is a member of a household with an annual income equal to or less than 400% of the amount for the individual to qualify for federal free or reduced lunch (\$222,000 for a family of four in 2023). Ind. Code § 20-51-1-5. See “Additional Parent Resources” for a list of SGOs.

### **Q: What is the amount of a scholarship from an SGO?**

**A:** There is no amount established by state statute that an SGO must award to an eligible student. However, the maximum amount can't exceed the cost of tuition at the school to which the scholarship applies. The average amount awarded is \$2,350.

### **Q: How many SGO scholarships are awarded each year?\***

**A:** It depends. But there were 14,256 SGO scholarships awarded in the 2021-2022 school year.

### **Q: Can a student be awarded a scholarship from an SGO and be awarded an Indiana Choice Scholarship?**

**A:** A student who meets the requirements for a Choice Scholarship Program scholarship may also qualify for an SGO Scholarship in the same year provided that the combination of the two scholarships does not exceed tuition and fees.



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### Education Scholarship Accounts

#### **Q: What is the Indiana Education Scholarship Account Program?**

**A:** The Indiana Education Scholarship Account Program (INESA) offers Education Scholarship Accounts (ESA) to qualified parents of special education students to cover the costs of education activities and materials approved under the program. The list of approved educational expenses covers a variety of options, such as private school tuition, public school courses, approved educational services, testing fees, special needs services and therapies, individual classes, school-sponsored extracurricular activities, and occupational therapy. Students may also use up to \$750 of their ESA funds annually for transportation services. See generally Ind. Code § 20-51.4.

#### **Q: Who is eligible for an ESA?\***

**A:** Students are eligible for an ESA if they 1) are not enrolled in a public school; 2) have either an Individualized Education Plan (IEP), Service Plan (SP), or Choice Special Education Plan (CSEP) for special needs; and 3) are from a family with a household income up to 400 percent of the eligibility level for the federal free and reduced-price lunch program (\$222,000 for a family of four). Ind. Code § 20-51.4-2-4.

#### **Q: How is an ESA different than an Indiana Choice Scholarship Program scholarship?**

**A:** Both ESAs and Choice Scholarships are paid for with funds appropriated by the IGA. However, scholarships through the Indiana Choice Scholarship Program must be used to pay for tuition at a participating private school. ESAs may be used, not only for private school tuition, but also for a variety of other qualified education expenses. Importantly, only students with a diagnosed disability requiring special education services are eligible for ESAs. Ind. Code § 20-51.4-2-4.

#### **Q: What types of qualified education services can ESAs support?**

**A:** ESAs can be used to pay for tuition and fees at an approved private school or qualified courses through a public school. Parents may also use ESA funds to tailor a child's education through the use of tutors, therapies, services, and other pre-approved educational expenses, as long as the parent of the eligible student uses part of the money in the account in the following areas of study: reading, grammar, mathematics, social studies science, or other area as determined in the student's IEP, SP, or CSEP. Ind. Code § 20-51.4-2-9.



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### **Q: How does a parent apply for an ESA account?**

**A:** Applications to participate in the ESA program are provided through the Office of the Indiana State Treasurer. *See* “Additional Parent Resources” for a link to the application and other resources.

### **Q: Can a student be awarded both an ESA and a Choice Scholarship Program scholarship?**

**A:** No. A student may not be awarded both during the same school year. Ind. Code § 20-51.4-4-1.

### **Q: How much money does an ESA provide per student?**

**A:** ESAs are worth 90% of state tuition support provided to the public school the student would otherwise attend. This amount will vary year-to-year and from school-to-school based on the state tuition support amount. Parents may roll over up to \$1,000 of unused funds in a given year to be used in subsequent years. Ind. Code § 20-51.4-4-4. If special education services are provided outside of the local public school, the ESA will include 100% of special education funding in addition to the ESA.

### **Q: What parent responsibilities are required under an ESA?**

**A:** Parents must sign an agreement with the state, use funds for qualified expenses, ensure studies in the subjects of reading, grammar, mathematics, social studies, and science, and have the student take the state test of the student’s grade level or the assessment determined by his or her IEP, SP, or CSEP. Ind. Code § 20-51.4-4-1.

### **Q: How much money does the state make available for ESAs?**

**A:** The Indiana General Assembly capped the total annual amount available for ESAs at \$10 million dollars. This amount will pay for no more than 2,000 students to receive ESA funds each year.

# RELIGIOUS FREEDOM

Provided by Indiana Attorney General Todd Rokita



A roadmap for Hoosier parents and caregivers  
to exercise their legal right to direct their  
children's education • Volume IV



## Questions and Answers

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### Vol. IV: Religious Freedom - Religious Expression

#### **Q: Do students have a First Amendment right to express their religious beliefs at school?\***

**A:** Yes. Students retain their First Amendment liberties while at school. Religious speech must be treated just as all other speech. In school, students are free to pray, discuss their faith, read the Bible or other religious texts, and invite others to share and participate in such activities.

Public schools are required to reasonably accommodate the religious beliefs and practices of students, and school officials are prohibited from showing any degree of hostility toward religious viewpoints. *Good News Club v. Milford Cent. Sch.*, 533 U.S. 98 (2001). School districts are to remain neutral toward religion. *Everson v. Bd. of Ed. of Ewing Twp.*, 330 U.S. 1, 18 (1947). Indiana law prohibits discrimination on the basis of religious viewpoint or expression in school. Ind. Code §20-33-12-2. Students may also express their religious beliefs in school work free from discrimination. *Id.* at §3.

To be protected by law, religious expression must be student-led, student-initiated, and voluntary. School officials may not prohibit student expression during non-instructional time unless it (1) materially and substantially interferes with the operation of the school or (2) infringes on the rights of other students. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 509 (1969). A school may not prohibit student expression solely because others might find it offensive—often, political and religious speech is perceived as offensive to some.

However, public schools cannot require children to adopt particular ideological beliefs. *West Virginia State Bd. Of Educ. v. Barnette*, 319 U.S. 624, 642 (1943) (held that public school students cannot be required to recite the Pledge of Allegiance).

#### **Q: Do students have a First Amendment right to speak freely at school?\***

**A:** Yes. Students do not “shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Students have a First Amendment right to free speech on-campus, but schools have a special interest in regulating speech that “materially disrupts classwork or involves substantial disorder or invasion of the rights of others.” *Id.* at 513. In *Tinker*, the Supreme Court’s landmark case, the Court found that a school suspension of students for wearing black armbands in protest of the Vietnam War violated their freedom of speech.



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In a recent case, the Supreme Court held that a school violated a student's freedom of speech when the school suspended her from cheerleading activities for posting two vulgar Snapchat messages—while off campus and after school hours—that were critical of the school and the cheerleading team. *Mahanoy Area Sch. Dist. v. B. L. by & through Levy*, 141 S. Ct. 2038, 2040 (2021). Of course, “the leeway the First Amendment grants to schools in light of their special characteristics is diminished” when speech occurs off campus. *Id.* at 2046. However, the Supreme Court explained that schools may still regulate certain kinds of off-campus speech when the speech includes “serious or severe bullying or harassment targeting particular individuals; threats aimed at teachers or other students; the failure to follow rules concerning lessons, the writing of papers, the use of computers, or participation in other online school activities; and breaches of school security devices.” *Id.* at 2045. In this specific case, “the school’s interest in teaching good manners” was insufficient to “overcome [the student’s] interest in free expression.” *Id.* at 2047.

Also, a school policy may restrict speech that promotes illegal activities. *Morse v. Frederick*, 551 U.S. 393 (2007) (held that a school could suspend a student for bringing a large banner that read, “BONG HITS 4 JESUS” to a school event).

### **Q: Can students pray at school?\***

**A:** Yes. The U.S. Supreme Court observed “nothing in the Constitution . . . prohibits any public school student from voluntarily praying at any time before, during, or after the school day.” *Santa Fe Independent School Dist. v. Doe*, 530 U.S. 290, 313 (2000). Because prayer is private speech, students are allowed to pray at school during non-instructional time so long as the prayers are not disruptive or appear to be endorsed by the school or school officials. Indiana law requires a moment of silence each day of school so that each student may exercise their religion by praying or meditating during that moment. Ind. Code § 20-30-5-4.5.

### **Q: Can students express their religious beliefs in classroom discussion or in an assignment?\***

**A:** Yes, so long as the religious beliefs are related to the classroom discussion or meet the requirements of the assignment. In 2017, the Indiana General Assembly passed HEA 1024, led by Rep. John Bartlett, that codified religious liberty for children in public schools.<sup>24</sup> Ind. Code ch. 20-33-12. Under Indiana law, schools may not discriminate against students

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<sup>24</sup> Representatives Arnold, Borders, and Burton co-authored the legislation and Senators Kruse, Randolph, Taylor, Merritt, Crane, and Koch sponsored the legislation.



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based on the student's religious viewpoint or religious expression, Indiana Code §20-33-12-2, nor may a school penalize students based on religious content or viewpoint expressed in school assignments, *id.* at §3. School officials and employees cannot prohibit religious expression in class without a legitimate educational purpose for doing so. *Hazelwood Sch. Dist. v. Kuhlmeier*, 484 U.S. 260, 266 (1988).

### **Q: Can students read or distribute religious material at school?\***

**A:** Yes, provided that the material is distributed during non-instructional time. A student may not interfere with his own or other students' learning activities, whether he or she is distributing religious or non-religious material. *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503 (1969) ("conduct by the student, in class or out of it, which for any reason—whether it stems from time, place, or type of behavior—materially disrupts classwork or involves substantial disorder or invasion of the rights of others" may be prohibited by school officials).

### **Q: Can students advertise or promote religious events at school?\***

**A:** Yes. Students should have the same ability to promote religious events occurring outside of the school in the same way that students advertise other non-religious events that are not school activities or functions. Otherwise, the school would be discriminating against students based on the content of their speech—which the First Amendment forbids. *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819, 828 (1995) ("Discrimination against speech because of its message is presumed to be unconstitutional."). However, the religious events to be advertised or promoted should not involve the direct or indirect participation or approval of the school or its employees.

### **Q: Can students wear religious clothing, symbols, or jewelry at school?\***

**A:** Yes. In *Tinker v. Des Moines Independent Community School Dist.*, the Supreme Court held that school officials could not prohibit students from wearing black armbands to protest the Vietnam War in violation of the students' First Amendment rights. 393 U.S. 503 (1960).

A student's liberty to wear religious symbols and jewelry as a personal expression of their faith is at least as strong as the liberty possessed by the students in *Tinker*. The First Amendment provides a double layer of protection to students' private religious expression by guaranteeing "freedom of speech" as well as "the free exercise" of religion. *Id.*





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Indiana expressly allows students to wear clothing, accessories, and jewelry displaying religious messages or symbols. Ind. Code §20-33-12-4(d). However, Indiana public schools and charter schools may still require school uniforms and dress codes. *Id.*

### **Q: Can a school recognize religious holidays such as Christmas or Easter?\***

**A:** Yes, as long as the purpose is not to advance a particular religion. A public school can recognize a legal public holiday and teach the history or cultural heritage of that holiday.

In *Freedom from Religion Foundation, Inc. v. Concord Community Schools*, the U.S. Court of Appeals for the Seventh Circuit found that a school's "Christmas Spectacular" concert, featuring traditional Christmas songs such as "O Holy Night" and a briefly appearing nativity scene did not constitute an establishment of religion prohibited under the First Amendment. 885 F.3d 1038 (7th Cir. 2018). The court concluded that the Christmas Spectacular was "primarily a non-religious seasonal celebration" and that "a reasonable audience member, sitting through the 90-minute Spectacular, would not understand the production to be ratifying a religious message." *Id.* at 1047.

In sum, schools can recognize religious holidays for the purpose of teaching its history or culture, but the purpose may not be to advance a particular religion.

### **Q: Can the Bible and other religious texts be used appropriately in a public school classroom?\***

**A:** Yes. The study of the Bible for its literary and historic qualities and study of religion, "when presented objectively as part of a secular program of education, may [ ] be effected consistently with the First Amendment." *School Dist. Of Abington Tp., Pa v. Schempp*, 374 U.S. 203, 225 (1963); *See also Stone v. Graham*, 449 U.S. 39, 42 (1980) ("[T]he Bible may constitutionally be used in an appropriate study of history, civilization, ethics, comparative religion, or the like.")

However, schools cannot advance a particular religion. *Engel v. Vitale*, 370 U.S. 421 (1962) (students and teachers may not recite a state-composed non-denominational prayer); *Stone*, 449 U.S. 39 (state may not require the posting of the Ten Commandments in a classroom); *Abington*, 374 U.S. 203 (school may not recite student-led Bible readings to begin the school day).



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**Q: Can students leave campus during the school day to participate in religious instructional activities?\***

**A:** Yes. Courts have held that schools may allow students to leave campus for “released time” to attend private, voluntary religious activities and programs. *Zorach v. Clauson*, 343 U.S. 306 (1952). Under Indiana law, a parent may request that a student be released from his or her public school for up to 2 hours each week to attend outside religious instruction “conducted by a church, an association of churches, or an association that is organized for religious instruction and incorporated under Indiana law.” Ind. Code §20-33-2-19(a). A student receiving religious instruction is entitled to “the same attendance credit that the student would receive for attendance in the public schools for the same length of time.” *Id.* at §19(d). The student may also receive academic credit for attending outside religious instruction provided that the local school board adopted a policy allowing for academic credits and certain other conditions specified in the statute are met. *Id.* at §19(e).



## Questions and Answers

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### Student Organizations

#### **Q: Can schools fund religious clubs?\***

**A:** Yes, provided no public funds are used. The Establishment Clause prohibits the use of public funds for religious activity. *Rosenberger v. Rector and Visitors of University of Virginia*, 515 U.S. 819 (2015). However, if a school collects activities fees from parents and students and distributes those funds for use by other school clubs, it cannot discriminate against student religious clubs.

In *Rosenberger*, the Supreme Court held that a university policy prohibiting a Christian student newspaper from accessing a Student Activities Fund to cover printing costs amounted to “viewpoint discrimination” and thus a denial of the Christian newspapers’ freedom of speech. See also *Prince v. Jacoby*, 303 F.3d 1074 (9th Cir. 2002) (a school policy denying a Bible club the ability to use student body funds accessed by non-religious clubs violates the Equal Access Act).

#### **Q: Can a religious club require specific qualifications for membership?\***

**A:** Yes. Religious clubs have a constitutional right to select members and leaders who share their beliefs and agree to abide by a code of faith. “The forced inclusion of an unwanted person in a group infringes the group’s freedom of expressive association if the presence of that person affects in a significant way the group’s ability to advocate public or private viewpoints.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648(2000); *Christian Legal Society v. Walker*, 453 F.3d 853 (7th Cir. 2006)(concluding a university violated the First Amendment when it derecognized a Christian organization for excluding homosexuals from voting membership); *Hsu By and Through Hsu v. Roslyn Union Free School Dist. No. 3*, 85 F.3d 839, 848 (2nd Cir. 1996) (school Bible club’s Christian-only requirement for certain officers was permissible since it was “essential to the expressive content of the [club] meetings and to the group’s preservation of its purpose and identity”). Moreover, courts repeatedly emphasize that nothing in the Equal Access Act authorizes discrimination based on race or sex. *Id.*

Nevertheless, if a school has a nondiscrimination or “all-comers” policy that is viewpoint neutral and generally applicable, it “does not transgress [First Amendment] limitations.” See *Christian Legal Soc. Chapter of the Univ. of California, Hastings Coll. of the L. v. Martinez*, 561 U.S. 661, 669 (2010). In *Martinez*, the Court upheld the school’s open-access policy, which prevented the Christian Legal Society from excluding members who hold religious convictions different from those in their Statement of Faith. *Id.*



## Questions and Answers

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### **Q: What can be discussed during a religious club meeting?\***

**A:** Students in a religious club enjoy the freedom to worship and to speak freely and openly. When meetings take place during non-instructional time, the school does not control the content. Students may pray, sing, read and study the Bible, share in testimonials, and engage in any other activities as the club sees fit. A school may not censor the religious conversations of the club. Religious worship and discussion constitute “forms of speech and association protected by the First Amendment.” *Widmar v. Vincent*, 454 U.S. 263, 269 (1981).

### **Q: Can a school sponsor a religious club?\***

**A:** No, schools may not sponsor a religious club. This non-sponsorship requirement ensures that schools are not promoting or officially sanctioning religion. Of course, a school does have inherent authority to maintain order and supervise its students. Thus, the presence of a school employee is permitted, but only in a non-participatory capacity. 20 U.S.C. §4071 (c)(3).

### **Q: Can a religious club invite outside speakers to meetings?\***

**A:** Yes, but only if doing so will not interfere with the orderly and safe operation of the school. Schools cannot restrain speech when a specific motivating opinion or ideology of the speaker is the reason for restricting the speaker. Generally, “a viewpoint-discriminatory regulation is presumed to be unconstitutional.” *Wigg v. Sioux Falls Sch. Dist.* 49-5, 382 F.3d 807, 828 (8th Cir. 2004). The Equal Access Act provides that outside speakers may not control or regularly attend school club meetings. 20 U.S.C. 4071 (c)(5).

### **Q: What can a religious club do if a school refuses to recognize the club?\***

**A:** If parents believe that a school has improperly denied the option of forming or fully participating in a religious club at school, parents should bring the matter to appropriate school personnel and/or your local school board. Remember, parents are their child’s best advocates. Reach out to other parents who may be in a similar situation to gather facts, compare notes, and discuss ideas and strategies.

If this does not resolve the situation, parents may want to seek legal counsel to discuss potential violations of their child’s First Amendment rights. Attorneys who practice in the areas of educational law and parents’ rights may be willing to evaluate the case.



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### Organization and Teacher Involvement

**Q: What is the extent of teachers' and school employees' participation in religious expression or club meetings?\***

**A:** Public school officials cannot promote or disparage any religious belief or non-belief in any of its programs or services. School officials and employees may only attend student religious clubs in a non-participatory capacity. 20 U.S.C. §4071 (c)(5).

However, outside of school, school employees are permitted to exercise their own freedom of speech and religious expression and may discuss religion with students to the same extent they may discuss any other topic. "[T]here is a crucial difference between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech and Free Exercise Clauses protect." *Wigg v. Sioux Falls Sch. Dist.* 49-5, 382 F.3d 807, 813 (8th Cir. 2004) (finding that an elementary school teacher could participate in religious group meetings held on school property after the school day because the activity constituted private speech).

**Q: Can teachers or school employees have a prayer group or Bible study?\***

**A:** Yes. Teachers and school employees may meet together for prayer or Bible study during non-instructional time (before school, at lunch, after school) to the same extent they may engage in non-religious discussion and activities. Since schools must remain neutral toward religion during instructional time, teachers may only discuss religion when it is relevant and appropriate to a classroom topic or the secular program of education. The prayer or Bible group constitutes private speech (in which case it may be considered constitutionally protected expression) as opposed to government speech (which can be regulated by a government employer). See generally *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022); *Garcetti v. Ceballos*, 547 U.S. 410 (2006).

However, if the prayer or Bible group interfered with the school's responsibilities of ensuring an orderly environment, the school likely would be well within its rights to disallow the group.



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### **Q: Are school employees allowed to discuss religion with students?\***

**A:** No. Any discussion which goes beyond relevant and appropriate classroom discussions or study of religion in history, art, music, and culture, as part of the secular educational mission of the schools would be legally problematic. Schools must remain neutral on religious matters during instructional time.

The government may control the content of an employee's speech where the employee is speaking on behalf of the government. *Kennedy*, 142 S. Ct. at 2423. Of course, government employees do not automatically forfeit their ability to speak as private citizens on matters of public concern. Outside of school, school employees are permitted to exercise their freedom of speech and religious expression.

Under the Establishment Clause, no government employee may coerce students to participate in a religious exercise or religious speech. A school employee's communication of the tenets of one's faith to students would likely be challenged as being coercion to a captive audience of one or more students. *Id.*

### **Q: Can teachers and school employees wear religious clothing or jewelry at school?\***

**A:** Yes. "[T]he First Amendment's protections extend to 'teachers and students,' neither of whom 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.'" *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407, 2423 (2022) (citations omitted).

In many respects, teachers and school employees work for the government and are paid in part to convey the government's intended message. *Id.* Yet, a school policy banning religious clothing or jewelry would likely be viewed as singling out religious employees for their speech or expression, in violation of the employee's First Amendment rights to freedom of speech and the free exercise of religion. *Nichol v. ARIN Intermediate Unit 28*, 268 F.Supp.2d 536 (W.D. Pa. 2003) (court invalidated a policy that prevented a teacher from wearing a cross necklace).



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### **Q: May coaches lead prayer at practices or games with students?\***

**A:** No. Under existing Supreme Court precedent, a court would likely view such activity as impermissible support for religion in violation of the Establishment Clause.

In *Kennedy*, the Court sided with a high school football coach who was suspended after offering a brief prayer of thanks at the 50-yard line following each game. *Kennedy v. Bremerton School District*, 142 S. Ct. 2407 (2022). According to the school, the coach's only option was to pray behind closed doors in a location "not observable to students or the public" because a member of the public who observed the coach's prayer might believe that the school approved of his religious expression.

The Supreme Court held that the school burdened the coach's rights under the free exercise clause, and the coach engaged in private speech when he uttered personal, private prayers. The Court distinguished the coach's prayer from a prayer "publicly broadcast or recited to a captive audience," emphasizing that none of the students participated. *Id.* at 2432. On the other hand, a teacher or coach-led prayer involving students would be legally problematic.



## Additional Parent Resources

### School Curriculum and Parent Rights

- Indiana academic standards information:  
<https://www.in.gov/doe/students/indiana-academic-standards/>
- Indiana graduation pathways information:  
<https://www.in.gov/doe/students/graduation-pathways/>
- IDOE guide for Social-Emotional Learning:  
<https://www.ckfindiana.org/wp-content/uploads/2021/10/IN-Social-Emptional-Learning-Competencies-Serving-the-Whole-Child.pdf>
- Indiana graduation pathways information:  
<https://www.in.gov/doe/students/graduation-pathways/>
- Indiana employability skills standards information:  
<https://www.in.gov/doe/students/indiana-academic-standards/employability-skills/>
- IDOE newsletters:  
<https://www.in.gov/doe/about/news/newsletters/>
- Statement from Secretary of Education Katie Jenner:  
<https://drive.google.com/file/d/1S8gkMemR5BrRLxPJH3VcfrxniEw7CRNQ/view>
- Resource on culturally responsive teaching:  
<https://democracyeducationjournal.org/cgi/viewcontent.cgi?referer=https://scholar.google.com/&httpsredir=1&article=1023&context=home>
- Title I schools and parent rights information:  
<https://www.in.gov/doe/grants/title-i/>
- Title I list of schools (2019):  
<https://www.in.gov/doe/files/2023-Eligible-Title-I-Schools-3-2-2023.pdf>
- Indiana Code Title 20 Education:  
<http://iga.in.gov/legislative/laws/2021/ic/titles/020>

### Parent Procedural Rights and Remedies

- Indiana Public Access Counselor contact:  
<https://www.in.gov/pac/contact-us/>
- Handbook on Indiana's Access to Public Records:  
<https://www.in.gov/pac/files/PAC-Handbook-2017.pdf>





## Additional Parent Resources

- Indiana’s Administrative Rules and Procedures Act, Ind. Code § 5-14-3:  
<http://iga.in.gov/legislative/laws/2021/ic/titles/005#5-14-3>
- Indiana’s Open Door Law, Ind. Code § 5-14-1.5:  
<http://iga.in.gov/legislative/laws/2021/ic/titles/005#5-14-1.5>
- Indiana Election Division’s candidate guide:  
<https://www.in.gov/sos/elections/files/2023Candidate-Guide.Final.pdf>
- Indiana State Board of Education meeting and materials:  
<https://www.in.gov/sboe/board-meetings-and-materials/board-meetings-and-materials/>
- Indiana State Board of Education meeting instructions:  
[https://www.in.gov/sboe/files/SBOE\\_Public\\_Comment\\_Procedures\\_08\\_05\\_15.pdf](https://www.in.gov/sboe/files/SBOE_Public_Comment_Procedures_08_05_15.pdf)
- Office of Civil Rights complaints:  
<https://www2.ed.gov/about/offices/list/ocr/complaints-how.html>
- United States Department of Education FERPA complaint form:  
<https://studentprivacy.ed.gov/file-a-complaint>
- Individuals with Disabilities Act (“IDEA”) complaint process:  
<https://sites.ed.gov/idea/regs/b/b/300.153>, *see also*:  
<https://www.in.gov/doe/students/special-education/special-education-complaint-511-iac-7-45-1/>
- Indiana civil rights complaints:  
<https://secure.in.gov/apps/icrc/discrimination>

### Medical Rights

- Information about how student health information may be shared:  
<https://www.in.gov/doe/it/ferpa/>
- General information regarding student privacy:  
<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- General information regarding student privacy:  
<https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>



## Additional Parent Resources

- Information about medical record privacy in elementary and secondary schools:  
<https://www.hhs.gov/hipaa/for-professionals/faq/513/does-hipaa-apply-to-an-elementary-school/index.html>
- Indiana Code concerning student health and safety, Ind. Code § 20-34:  
<http://iga.in.gov/legislative/laws/2021/ic/titles/020#20-34>
- IDOE student health services rule, 511 Ind. Admin. Code 4-1.5-6:  
[http://iac.iga.in.gov/iac/iac\\_title?iact=511](http://iac.iga.in.gov/iac/iac_title?iact=511)
- FDA's Emergency Use Authorization for Vaccines Explained:  
<https://www.fda.gov/vaccines-blood-biologics/vaccines/emergency-use-authorization-vaccines-explained>
- Guidance from the US Department of Ed regarding the comparisons between FERPA and IDEA:  
[https://studentprivacy.ed.gov/sites/default/files/resource\\_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf](https://studentprivacy.ed.gov/sites/default/files/resource_document/file/FERPA%20and%20Coronavirus%20Frequently%20Asked%20Questions.pdf)
- To file a disability due process hearing request electronically with IDOE, parents can visit I-CHAMP (<https://ichamp.doe.in.gov/>).
- Information regarding IDOE's Special Education Due Process Hearing procedures:  
<https://www.in.gov/doe/students/special-education/special-education-due-process-hearing-511-iac-7-45-3-through-7-45-7/>.
- Information regarding IEP rules and procedures:  
[http://iac.iga.in.gov/iac/iac\\_title?iact=511](http://iac.iga.in.gov/iac/iac_title?iact=511)
- File a licensing complaint with the Office of the Attorney General:  
<https://inoag.my.salesforce-sites.com/ConsumerComplaintForm?licensing=true>

### Public Schools

- Transfer Request Application Instructions:  
<https://www.in.gov/doe/home/other-legal-forms/>
- Enroll Indy website:  
<https://enrollindy.org/>
- Office of Management and Budget "Dollars to the Classroom" website:  
[https://datavizpublic.in.gov/views/DollarstotheClassroom2019-2020/DollarstotheClassroom?:showAppBanner=false&:display\\_count=n&:showVizHome=n&:origin=viz\\_share\\_link&:toolbar=n&:isGuestRedirectFromVizportal=y&:embed=y](https://datavizpublic.in.gov/views/DollarstotheClassroom2019-2020/DollarstotheClassroom?:showAppBanner=false&:display_count=n&:showVizHome=n&:origin=viz_share_link&:toolbar=n&:isGuestRedirectFromVizportal=y&:embed=y)
- Indiana virtual school listing:  
<https://www.digitalllearningcollab.com/state-profiles/indiana>



## Additional Parent Resources

- Indiana State Budget:

<https://iga.in.gov/pdf-documents/123/2023/house/bills/HB1001/HB1001.06.ENRS.pdf>

- Indiana Department of Education state tuition support financial report:

<https://www.in.gov/doe/files/2022-Tuition-Support-Report-FY-2022-FINAL-with-Appendices.pdf>

### Private Schools

- Indiana State Board of Education legal standards for state accreditation:

[Initiate-Rule-Making-Performance-Based-Accreditation-Memo-to-SBOE-and-Proposed-Rule.pdf](#)

- Indiana Department of Education resources for third-party accreditation:

<https://www.in.gov/doe/it/school-accreditation/>

- United States Department of Education regulatory guidance for Indiana non-public schools:

<https://www2.ed.gov/about/inits/ed/non-public-education/regulation-map/indiana.html#:~:text=A%20school%20must%20comply%20with,F%20Indiana%20Statewide%20Testing%20For>

- Indiana Department of Education guidance for special education (*see* pages 40-47 for private school info):

<https://www.in.gov/doe/files/navigating-course-art-7-revisions-2019.pdf>

### Indiana Choice Scholarship Program

- Indiana Choice Scholarship Program and application process:

<https://www.in.gov/doe/students/indiana-choice-scholarship-program/>

- Indiana Choice Scholarship Program information:

<https://www.edchoice.org/school-choice/what-is-school-choice/>

- Indiana Department of Education listing of School Choice Scholarship Program participating private schools:

<https://www.in.gov/doe/students/indiana-choice-scholarship-program/2023-2024-participating-choice-schools/>

- Indiana Department of Education list of 2023-2024 Choice Scholarship Program (voucher) amounts by school district:

<https://www.in.gov/doe/files/2023-2024-Period-1-Estimated-Award-Amounts.pdf>

- Indiana Department of Education report on finances of Choice Scholarship Program:

<https://www.in.gov/doe/files/2022-2023-Annual-Choice-Report-0504.pdf>

- Indiana Department of Education guidance on special education services provided to Choice Scholarship students:

<https://www.in.gov/doe/files/6-choice-special-education-faq-1.pdf>



## Additional Parent Resources

### Scholarship Granting Organizations

- List of Indiana Scholarship Granting Organizations:

<https://www.in.gov/doe/students/indiana-choice-scholarship-program/school-scholarships/>

### Educational Scholarship Accounts

- Indiana State Treasurer website for Education Savings Account application:

<https://www.in.gov/tos/inesa/>

### Homeschool

- Home School Legal Defense Association:

<https://hsllda.org/>

- Indiana Association of Home Educators:

<https://iahe.net/>

### Religious Freedom

- Full texts of United States primary documents, including the Constitution, Bill of Rights, Articles of Confederation, The Federalist Papers: <https://billofrightsinstitute.org/primary-psources>

- Information on student rights and the freedom of expression:

<https://billofrightsinstitute.org/e-lessons/student-rights-and-the-freedom-of-expression>