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TITLE 511 INDIANA STATE BOARD OF EDUCATION

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**Proposed Rule**  
LSA Document #09-57**DIGEST**

Amends [511 IAC 7-32-92](#) to reflect that a parent's written revocation of consent for special education and related services terminates the student's classification as a student with a disability. Amends [511 IAC 7-40-3](#) to reflect that no evaluation is necessary when a student's eligibility for special education services is terminated due to parental revocation of consent. Amends [511 IAC 7-40-4](#) to reflect that a parent's request for an evaluation, subsequent to the parent's revocation of consent for special education services, will be treated as a request for an initial evaluation. Amends [511 IAC 7-42-8](#) to require the public agency to discontinue special education and related services on the eleventh instructional day after the public agency provides written notice to the parent when the parent revokes consent for services. Adds [511 IAC 7-42-15](#) to establish the requirements and procedures when a parent revokes consent for special education and related services. Amends [511 IAC 7-44-9](#) to reflect that the public agency will not be deemed to have knowledge that a student is a student with a disability when the parent has revoked consent for special education and related services. Amends [511 IAC 7-45-7](#) to reflect that any party to a due process hearing has the right to be represented by an individual who is not an attorney. Effective 30 days after filing with the Publisher.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)

[511 IAC 7-32-92](#); [511 IAC 7-40-3](#); [511 IAC 7-40-4](#); [511 IAC 7-42-8](#); [511 IAC 7-42-15](#); [511 IAC 7-44-9](#); [511 IAC 7-45-7](#)

SECTION 1. [511 IAC 7-32-92](#) IS AMENDED TO READ AS FOLLOWS:

**[511 IAC 7-32-92](#) "Student with a disability" defined**

**Authority:** [IC 20-19-2-8](#); [IC 20-19-2-16](#)

**Affected:** [IC 20-19-2](#); [IC 20-35](#)

Sec. 92. (a) "Student with a disability" means a student who has been evaluated in accordance with this article and determined eligible for special education and related services by a CCC.

(b) If, after an appropriate educational evaluation, it is determined that a student has one (1) of the disabilities identified in [511 IAC 7-41](#), and the CCC determines that the student needs a related service, but not special education, the student is not a student with a disability.

**(c) If a parent revokes consent for special education and related services in accordance with [511 IAC 7-42-15](#), the student is no longer a student with a disability.**

*(Indiana State Board of Education; [511 IAC 7-32-92](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#))*

SECTION 2. [511 IAC 7-40-3](#) IS AMENDED TO READ AS FOLLOWS:

**[511 IAC 7-40-3](#) Educational evaluations; in general**

**Authority:** [IC 20-19-2-8](#); [IC 20-19-2-16](#)

**Affected:** [IC 20-19-2](#); [IC 20-33-2-28.5](#); [IC 20-35](#)

Sec. 3. (a) This rule applies to educational evaluation procedures that enable a student's CCC to determine:

- (1) whether the student is eligible for special education and related services; and
- (2) if eligible, the special education and related services necessary to meet the educational needs of the student.

(b) These procedures do not apply to the following:

- (1) A test or other evaluation that is administered to all students unless, before administration of the test or evaluation, consent is required from parents of all students.
- (2) A screening of students by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation.
- (3) A review of existing data regarding a student.
- (4) The collection of progress monitoring data when a student participates in a process that assesses the student's response to scientific, research based interventions described in section 2 of this rule.

(c) The public agency shall establish, maintain, and implement written procedures regarding initial evaluations and reevaluations, including a description of the following:

- (1) The way in which a parent or the public agency may request an initial educational evaluation.
- (2) The methods used to assign a multidisciplinary team to conduct educational evaluations.
- (3) The procedures used for reevaluations.

(d) When referrals for any student from birth through the school year in which the student becomes twenty-two (22) years of age are made directly to the Indiana School for the Deaf, the Indiana School for the Blind and Visually Impaired, the Indiana Soldiers' and Sailors' Children's Home, or any other state-operated school by other than the designated representative of the student's public school corporation of legal settlement, the following procedures shall be implemented:

- (1) The state-operated school shall refer the person making the contact back to the public school corporation of legal settlement.
- (2) The referral, evaluation, and CCC meeting described in section 4 of this rule shall be the responsibility of the public school corporation of legal settlement.

(e) The public agency must establish, maintain, and implement procedures to ensure the following:

(1) Assessments and other evaluation materials are as follows:

(A) Provided and administered in the:

- (i) student's native language or other mode of communication; and
- (ii) form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so.

(B) Selected and administered so as not to be discriminatory on a racial or cultural basis.

(C) Used for the purposes for which the assessments or measures are valid and reliable.

(D) Administered as follows:

- (i) By trained and knowledgeable personnel.
- (ii) In accordance with any instructions provided by the producer of the assessments.

(E) Technically sound instruments that may assess the relative contributions of cognitive and behavioral factors, in addition to physical or developmental factors.

(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those designed to provide a single general intelligence quotient.

(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level, or whatever other factors the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills, unless those skills are the factors that the test purports to measure.

(4) The student is assessed or information is collected in all areas related to the suspected disability, including, if appropriate, the following:

- (A) Development.
- (B) Cognition.
- (C) Academic achievement.
- (D) Functional performance or adaptive behavior.
- (E) Communication skills.
- (F) Motor and sensory abilities, including vision or hearing.
- (G) Available educationally relevant medical or mental health information.
- (H) Social and developmental history.

(5) Assessments of students with disabilities who transfer from one (1) public agency to another public agency in the same school year are coordinated with those students' prior and subsequent schools, as necessary and as expeditiously as possible, consistent with section 5(c)(2) of this rule, to ensure prompt completion of full evaluations.

(6) Assessment tools and strategies provide relevant information that directly assists the CCC in determining the special education and related service needs of the student.

(7) Educational evaluations are sufficiently comprehensive to identify all of the student's special education and related service needs whether or not commonly linked to the disability category in which the student has been classified.

(f) In conducting the educational evaluation, the multidisciplinary team must use a variety of assessment tools and strategies, as required in [511 IAC 7-41](#), to gather relevant functional, developmental, and academic information about the student, including information provided by the parent, to assist the CCC in determining the following:

- (1) Whether the student is eligible for special education and related services.
- (2) The content of the student's individual educational program, including information related to enabling the student to be involved in and progress in the general education curriculum (or for an early childhood student, to participate in appropriate activities).

(g) The public agency must evaluate a student with a disability in accordance with the requirements of this rule and [511 IAC 7-41](#) before a CCC can determine that the student is no longer a student with a disability, except when termination of the student's eligibility is due to:

- (1) graduation with a high school diploma as defined in [511 IAC 6-7.1-1\(e\)](#); or
- (2) exceeding the age eligibility under this article; or

**(3) a parent's revocation of consent for special education and related services in accordance with [511 IAC 7-42-15](#).**

(h) The public agency must provide the student with a summary of performance, as required in [511 IAC 7-43-7](#), under any of the following circumstances:

- (1) A student graduates with a high school diploma as defined in [511 IAC 6-7.1-1](#).
- (2) A student leaves high school with a certificate of completion.
- (3) A student exceeds the age eligibility for special education and related services under this article.

(i) A public agency may provide a student with a summary of performance when the:

- (1) student withdraws from high school after an exit interview is conducted; and
- (2) student's parent and principal consent to the withdrawal;

as specified in [IC 20-33-2-28.5\(b\)](#).

(Indiana State Board of Education; [511 IAC 7-40-3](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#))

SECTION 3. [511 IAC 7-40-4](#) IS AMENDED TO READ AS FOLLOWS:

**[511 IAC 7-40-4](#) Initial educational evaluation; public agency written notice and parental consent**

**Authority:** [IC 20-19-2-8](#); [IC 20-19-2-16](#)

**Affected:** [IC 20-19-2](#); [IC 20-35](#)

Sec. 4. (a) Either a parent of a student or a public agency may initiate a request for an educational evaluation to determine if a student is eligible for special education and related services under this article. **If a parent makes a request for an evaluation after revoking consent for special education and related services in accordance with [511 IAC 7-42-15](#), the public agency must treat the parent's request for evaluation as a request for an initial evaluation, and the evaluation must be conducted in accordance with this section.**

(b) If a student is suspected of having a specific learning disability because the student has not made adequate progress after an appropriate period of time when provided with appropriate instruction described in [511 IAC 7-41-12\(a\)\(3\)\(G\)](#), the public agency must initiate a request for an educational evaluation.

(c) If a request is made to conduct an educational evaluation, the public agency must, before conducting the evaluation, do the following:

- (1) Provide the parent of the student with written notice as specified in subsection (e).
- (2) Obtain parental consent as defined in [511 IAC 7-32-17](#).

(d) A parent's request for an evaluation must be made to licensed personnel, which is defined in [511 IAC 7-32-](#)

[58](#) to mean persons employed by the public agency who are:

- (1) teachers;
- (2) school counselors;
- (3) school psychologists;
- (4) school social workers;
- (5) building principals; and
- (6) other administrators.

A parent's request for an evaluation may be made verbally or in writing. After a parent makes a request, the public agency has ten (10) instructional days to provide the parent with written notice as specified in subsection (e).

(e) Written notice provided to the parent regarding an educational evaluation must include the following:

(1) A statement that the public agency is proposing or refusing to conduct the educational evaluation that includes a description of each:

- (A) evaluation procedure;
- (B) assessment;
- (C) record; or
- (D) report;

the public agency used as a basis for proposing or refusing to conduct the educational evaluation.

(2) A description of other factors relevant to the public agency's proposal or refusal to conduct the educational evaluation.

(3) If the public agency:

- (A) is proposing to conduct the educational evaluation, a description of any evaluation procedures the agency proposes to conduct; or
- (B) refuses to conduct the educational evaluation, an explanation of the parent's right to contest the agency's decision by requesting:
  - (i) mediation in [511 IAC 7-45-2](#); or
  - (ii) a due process hearing in [511 IAC 7-45-3](#).

(4) If a public agency is proposing to conduct an educational evaluation, the following:

- (A) The timeline for conducting the educational evaluation and convening the CCC meeting.
- (B) An explanation of how to request one (1) or both of the following:
  - (i) A copy of the educational evaluation report, at no cost to the parent, prior to the CCC meeting.
  - (ii) A meeting with an individual who can explain the results of the educational evaluation prior to the CCC meeting.

(5) A statement that a parent of a student with a disability has protection under the procedural safeguards described in [511 IAC 7-37-1](#). A copy of the notice of procedural safeguards must be provided to the parent with the written notice described in this section.

(6) A list of sources for parents to contact to obtain assistance with understanding the provisions of this article.

(f) The written notice required under subsection (e) must be as follows:

- (1) Written in language understandable to the general public.
- (2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure that:
  - (A) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
  - (B) the parent understands the content of the notice; and
  - (C) there is written evidence that the requirements in clauses (A) and (B) have been met.

(g) A parent may challenge the public agency's refusal to conduct an initial evaluation by requesting:

- (1) mediation in [511 IAC 7-45-2](#); or
- (2) a due process hearing in [511 IAC 7-45-3](#).

(h) After receiving the written notice described in subsections (e) and (f), the parent of the student must provide consent, as defined in [511 IAC 7-32-17](#), to licensed personnel before the public agency can conduct the initial educational evaluation. The parent may also, at the same time the parent provides consent for the educational evaluation, request one (1) or both of the following:

- (1) A copy of the educational evaluation report, at no cost to the parent, prior to the CCC meeting.
- (2) A meeting with an individual who can explain the results of the educational evaluation prior to the CCC meeting.

(i) Parental consent is not required for the following:

- (1) To review existing data as part of an educational evaluation.
- (2) To administer a test or other evaluation that is administered to all students unless, before administration of the test or evaluation, consent is required from parents of all students.
- (3) To screen students if a teacher or a specialist is using the information to determine appropriate instructional strategies for curriculum implementation.
- (4) To collect progress monitoring data when a student participates in a process that assesses the student's response to scientific, research based interventions as described in section 2 of this rule.

(j) The public agency must make reasonable efforts to obtain parental consent, as defined in [511 IAC 7-32-17](#), for the initial educational evaluation. To document reasonable efforts, the public agency must keep a record of its attempts to obtain parental consent, including the following:

- (1) Detailed records of:
  - (A) telephone calls made or attempted; and
  - (B) the results of the calls.
- (2) Copies of:
  - (A) correspondence sent to the parent; and
  - (B) any responses received.
- (3) Detailed records of:
  - (A) visits made to the parent's home or place of employment; and
  - (B) the results of those visits.

(k) Parental consent for an initial educational evaluation must not be construed as consent for initial provision of special education and related services.

(l) For initial educational evaluations only, if the student is a ward of the state and is not residing with the student's parent, the public agency is not required to obtain consent as defined in [511 IAC 7-32-17](#), from the parent for an initial evaluation to determine whether the student is a student with a disability if:

- (1) despite reasonable efforts to do so, the public agency cannot discover the whereabouts of the parent of the student;
- (2) the rights of the parents of the student have been terminated in accordance with state law; or
- (3) the rights of the parent to make educational decisions have been subrogated by a judge in accordance with state law and consent for an initial evaluation has been given by an individual appointed by the judge to represent the student.

(m) If the parent of a student enrolled in public school or seeking to be enrolled in public school does not provide consent for an initial educational evaluation under subsection (i), or the parent fails to respond to a request to provide consent, the public agency may, but is not required to, pursue the initial educational evaluation of the student by:

- (1) utilizing mediation in [511 IAC 7-45-2](#); or
- (2) requesting a due process hearing in [511 IAC 7-45-3](#).

The public agency does not violate its obligations under this rule if it declines to pursue the educational evaluation.

(n) If a parent of a student who is parentally-placed in a nonpublic school, including a home school, does not provide consent for the initial evaluation or the reevaluation, or the parent fails to respond to a public agency's efforts to obtain consent, the public agency:

- (1) may not pursue the initial educational evaluation of the student by:
  - (A) utilizing mediation in [511 IAC 7-45-2](#); or
  - (B) requesting a due process hearing in [511 IAC 7-45-3](#); and
- (2) is not required to consider the student as eligible for special education and related services under [511 IAC 7-34](#).

(Indiana State Board of Education; [511 IAC 7-40-4](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#))

SECTION 4. [511 IAC 7-42-8](#) IS AMENDED TO READ AS FOLLOWS:

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**[511 IAC 7-42-8](#) Individualized education programs; implementation; termination due to revocation of consent**

**Authority:** [IC 20-19-2-8](#); [IC 20-19-2-16](#)

**Affected:** [IC 20-19-2](#); [IC 20-33-2-10](#); [IC 20-35](#)

Sec. 8. (a) The services identified in an IEP must be provided **as soon as the necessary arrangements are completed, but not later than the following:**

- (1) ~~No later than~~ Ten (10) instructional days after parental consent to the student's initial IEP is received.
- (2) ~~On the eleventh~~ **Ten (10) instructional day days** after a public agency provides written notice described in section 7 of this rule regarding a student's proposed IEP. ~~that is subsequent to the initial IEP, unless the parent consents in writing to an earlier implementation date.~~ **However**, the public agency must continue to implement the current IEP if the parent challenges the proposed IEP prior to its implementation by:
  - (A) requesting and participating in a meeting with an official of the public agency who has the authority to facilitate the disagreement between the parent and the public agency;
  - (B) initiating mediation under [511 IAC 7-45-2](#); or
  - (C) requesting a due process hearing under [511 IAC 7-45-3](#).
- (3) For students transitioning from early intervention services to early childhood special education, on the student's third birthday in accordance with [511 IAC 7-43-2](#).
- (4) The initiation date stated in the student's IEP in all other circumstances.

(b) An IEP must be implemented as it is written.

(c) The student's teacher of record must do the following:

- (1) Monitor the implementation of the student's IEP.
- (2) Ensure that each of the student's teachers, related service providers, paraprofessionals, and any other service providers, who are responsible for implementing the student's IEP:
  - (A) have access to a copy of the IEP;
  - (B) are informed of their specific responsibilities related to implementing the IEP; and
  - (C) are informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the student's IEP.
- (3) Ensure that the CCC is informed of any modifications made to the student's IEP in accordance with section 9(e)(2) and 9(g) of this rule.
- (4) Be responsible for all other activities identified in [511 IAC 7-32-97](#).

(d) At the beginning of each school year, a public agency must have in effect, for each student with a disability within its district:

- (1) an IEP as specified in section 5 of this rule; or
- (2) a service plan as described in [511 IAC 7-34-5](#) if the student is parentally-placed in a nonpublic school within the jurisdiction of the public agency.

(e) If a newly enrolled student received special education services from another public agency within the state, and enrolls in a new public agency within the same school year, the new public agency, in consultation with the student's parent, must immediately provide the student with a free appropriate public education, including services comparable to those described in the student's IEP from the previous public agency, until the new public agency either:

- (1) adopts the student's IEP from the previous public agency; or
- (2) develops, adopts, and implements a new IEP that meets the applicable requirements of this rule.

(f) If a newly enrolled student received special education services in another state, and enrolls within the same school year, the new public agency, in consultation with the student's parent, must immediately provide the student with a free appropriate public education, including services comparable to those described in the student's IEP from the previous public agency, until the new public agency:

- (1) conducts an educational evaluation under [511 IAC 7-40](#), if the new public agency determines that this is necessary; and
- (2) develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in this rule.

- (g) To facilitate the transition of students described in subsections (e) **(d)** and (f), **(e)**, the:
- (1) new public agency in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP, supporting documents, and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled, under [511 IAC 7-38-1\(r\)\(2\)](#); and
  - (2) previous public agency in which the student was enrolled must take reasonable steps to promptly respond to the request from the new public agency, as required by [IC 20-33-2-10](#).

**(h) If a parent revokes consent for special education and related services in accordance with section 15 of this rule, the public agency must terminate the implementation of a student's IEP on the eleventh instructional day after the public agency provides the parent with the written notice required by section 15(b) of this rule, unless the parent consents in writing that the services will be terminated prior to the eleventh day.**

(Indiana State Board of Education; [511 IAC 7-42-8](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#))

SECTION 5. [511 IAC 7-42-15](#) IS ADDED TO READ AS FOLLOWS:

**[511 IAC 7-42-15](#) Revocation of consent for special education and related services**

Authority: [IC 20-19-2-8](#); [IC 20-19-2-16](#)

Affected: [IC 20-19-2](#); [IC 20-33-2-10](#); [IC 20-35](#)

**Sec. 15. (a) At any time after the parent gives consent for the initiation of special education and related services, the parent may revoke that consent by doing the following:**

- (1) Putting the revocation of consent in writing.**
- (2) Signing the revocation.**
- (3) Submitting the written revocation to licensed personnel.**

**(b) Within ten (10) instructional days of the date licensed personnel receive the parent's written revocation, the public agency must provide the parent with a copy of the written notice described in section 7 of this rule.**

**(c) The public agency is not required to convene a CCC or develop an IEP when the public agency receives the parent's written revocation.**

**(d) The public agency may ask the parent why the parent is revoking consent, but the public agency may not require the parent to provide an explanation, either orally or in writing, as a condition of terminating the provision of special education and related services. The public agency may not use the inquiry to delay or deny the termination of special education and related services.**

**(e) A parent's revocation of consent covers all instruction, services, and supports included in the student's IEP, including, but not limited to, the following:**

- (1) Specialized instruction.**
- (2) Related services.**
- (3) Accommodations.**
- (4) Adaptations.**
- (5) Modifications.**
- (6) Supports for the student or personnel on behalf of the student.**
- (7) Assistive technology devices and services.**
- (8) Placement outside of a general education classroom.**

**(f) A parent may not revoke consent for fewer than all of the special education and related services included in the student's IEP.**

**(g) The public agency may not terminate special education and related services until ten (10)**

instructional days after the parent receives the written notice described in subsection (b) unless the parent provides written consent for services to be terminated prior to the expiration of ten (10) instructional days after receipt of the written notice.

(h) The public agency may not use mediation or a due process hearing to override the parent's revocation of consent for services.

(i) Upon revocation of consent and termination of special education and related services, the student is no longer eligible as a student with a disability and is not entitled to the protections of this article, except as permitted in [511 IAC 7-44-9](#).

(j) The public agency is not required to amend the student's educational records to remove any reference to the student's special education and related services when the parent revokes consent for services. This does not preclude a parent from requesting that the student's educational record be amended in accordance with the procedures contained in [511 IAC 7-38-2](#).

(k) The public agency shall not be considered to be in violation of the requirement to make a free appropriate public education available to the student when the public agency terminates the special education and related services to the student subsequent to the parent's revocation of consent in accordance with this section.

(l) If, after revoking consent, a parent wants the student to receive special education and related services, the parent must request an initial evaluation in accordance with [511 IAC 7-40-4](#) and the CCC must determine, in accordance with [511 IAC 7-40-6](#), if the student is eligible for special education and related services as a student with a disability as defined in [511 IAC 7-32-92](#).

(Indiana State Board of Education; [511 IAC 7-42-15](#))

SECTION 6. [511 IAC 7-44-9](#) IS AMENDED TO READ AS FOLLOWS:

**[511 IAC 7-44-9](#) Protections for students not yet eligible for special education and related services**

**Authority:** [IC 20-19-2-8](#); [IC 20-19-2-16](#)

**Affected:** [IC 20-19-2](#); [IC 20-35](#)

Sec. 9. (a) A student who has:

- (1) not been determined eligible for special education and related services under this article; and
- (2) engaged in behavior that violated any rule or code of conduct of the public agency, including any behavior described in this rule;

may assert any of the protections provided for in this article if the public agency had knowledge, as described in subsection (b), that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

(b) A public agency shall be deemed to have knowledge that a student is a student with a disability if any of the following have occurred:

- (1) The parent of the student has expressed concern in writing to licensed personnel of the appropriate public agency, or a teacher of the student, that the student is in need of special education and related services.
- (2) The parent of the student or the public agency has requested an evaluation of the student under [511 IAC 7-40-4](#).
- (3) The teacher of the student, or other personnel of the public agency, has expressed specific concern about a pattern of behavior demonstrated by the student directly to supervisory personnel of the public agency.

(c) A public agency shall not be deemed to have knowledge under subsection (b) if any of the following has occurred:

- (1) The parent of the student has not allowed an evaluation of the student under [511 IAC 7-40](#).
- (2) The parent of the student has refused services under this article or the Individuals with Disabilities

Education Act. ~~20 U.S.C. 1400 et seq.~~

(3) The public agency:

- (A) conducted an educational evaluation;
- (B) determined that the student was not a student with a disability under this article; and
- (C) provided notice to the student's parents of the determination consistent with [511 IAC 7-42-7](#).

**(4) The parent of the student has revoked consent for special education and related services in accordance with [511 IAC 7-42-15](#).**

(d) If a public agency does not have knowledge, in accordance with subsections (b) and (c), that a student is a student with a disability prior to taking disciplinary measures against the student, the student may be subjected to the same disciplinary measures as measures applied to students without disabilities who have engaged in comparable behaviors, subject to subsections (e) and (f).

(e) If a referral is made for an initial educational evaluation of a student during the time period in which the student is subjected to:

- (1) suspension;
- (2) expulsion; or
- (3) placement in an interim alternative educational setting;

the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

(f) As used in this rule, "expedited evaluation" means that the public agency conducts the evaluation and convenes the CCC within twenty (20) instructional days from the date of the parent's written consent for the evaluation. A copy of the educational evaluation report shall be provided to the parent at the CCC convened to consider the student's identification and eligibility for special education services.

(g) If the student is determined to be a student with a disability, taking into consideration information:

- (1) from the educational evaluation conducted by the public agency; and
- (2) provided by the parents;

the public agency shall provide special education and related services in accordance with this article.

(Indiana State Board of Education; [511 IAC 7-44-9](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#))

SECTION 7. [511 IAC 7-45-7](#) IS AMENDED TO READ AS FOLLOWS:

### **[511 IAC 7-45-7](#) Conducting the hearing**

**Authority:** [IC 20-19-2-8](#); [IC 20-19-2-16](#)

**Affected:** [IC 4-21.5-3-15](#); [IC 20-19-2](#); [IC 20-35](#)

Sec. 7. (a) If the due process hearing is requested by the public agency:

- (1) due process hearings shall be conducted;
- (2) a final written decision reached; and
- (3) a copy of the written decision mailed to each of the parties;

not later than forty-five (45) calendar days after the request is received by the parent.

(b) If the due process hearing is requested by a parent, the hearing shall be conducted, a final written decision reached, and a copy of the written decision mailed to each of the parties not later than forty-five (45) calendar days after:

- (1) the thirty (30) day resolution period in section 6(f) of this rule; or
- (2) one (1) of the events in section 6(f)(1) through 6(f)(3) of this rule.

(c) An independent hearing officer may grant specific extensions of time beyond the forty-five (45) day timeline at the request of either party. Any extension of time granted by the independent hearing officer shall be:

- (1) in writing to all parties; and
- (2) included in the record of the proceedings.

(d) Any party to a due process hearing has the right to the following:

(1) Be accompanied and advised by legal counsel and by individuals with special knowledge or training with respect to special education or the problems of students with disabilities.

**(2) Be represented by an individual who is not an attorney as permitted by [IC 4-21.5-3-15\(b\)](#).**

~~(2)~~ **(3)** Present evidence and:

(A) confront;

(B) cross-examine; and

(C) compel the attendance of;

witnesses.

~~(3)~~ **(4)** Conduct discovery in accordance with [IC 4-21.5-3](#), Indiana Rules of Trial Procedure, and this section.

~~(4)~~ **(5)** Prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) business days prior to the hearing.

~~(5)~~ **(6)** A separation of witnesses who are not parties to the dispute.

~~(6)~~ **(7)** Obtain a written or, at the option of the parents, an electronic verbatim transcript of the hearing.

~~(7)~~ **(8)** Obtain written or, at the option of the parents, electronic findings of facts and decision.

~~(8)~~ **(9)** Be provided with an interpreter, if any party to the hearing has a hearing or speaking impairment or other difficulty in communicating, or whose native language is not English.

(e) A parent, or the parent's representative, involved in a due process hearing has the right to the following:

(1) Have the student who is the subject of the hearing attend.

(2) Have the hearing opened or closed to the public.

(3) Inspect and review, prior to the hearing, any records pertaining to the student maintained by the public agency, its agents, or employees, including all tests and reports upon which the proposed action may be based.

(4) Recover reasonable attorney's fees if a court determines the parent ultimately prevailed at the:

(A) due process hearing;

(B) administrative appeal; or

(C) judicial review.

(5) Obtain a written or electronic verbatim transcript of the proceedings at no cost.

(6) Obtain written or electronic findings of fact and decisions at no cost.

(f) The independent hearing officer has the discretion and authority to do the following:

(1) Issue subpoenas.

(2) Determine whether individuals are knowledgeable with respect to special education in order to assist in the proceedings.

(3) Frame and consolidate issues in the hearing to provide clarity.

(4) Rule on any other matters with respect to the conduct of a due process hearing, subject to administrative or judicial review of abuse of such discretion or authority, mistake in law as to exercise of such discretion or authority, or that such authority was exercised in an arbitrary or capricious manner.

(5) Bar any party that fails to comply with subsection (h) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

(6) Order a student with a disability to be placed in an interim alternative educational setting for not more than forty-five (45) instructional days under [511 IAC 7-44-7](#).

(g) The party requesting the due process hearing may not raise issues at the hearing that were not raised in the due process hearing request unless the other party agrees otherwise. However, nothing in this rule shall be construed to preclude a party from filing a separate due process hearing request on an issue separate from the due process hearing already requested.

(h) At least five (5) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without consent of the other party.

(i) The party requesting the due process hearing:

(1) shall present evidence and testimony first regarding the appropriateness of the proposed or refused action; and

(2) has the burden of persuading the hearing officer of its position.

(j) The independent hearing officer shall render a written or, at the option of the parents, an electronic decision. The decision shall be dated and must include the following:

- (1) Findings of fact and conclusions of law.
- (2) A decision and orders, if necessary.
- (3) A notice of the right and the process to appeal the decision and orders.
- (4) A notice that an action for attorney's fees must be filed in a civil court within thirty (30) calendar days after receipt of the independent hearing officer's final decision if no request for review is filed with the board of special education appeals.

(k) The decision of the independent hearing officer shall be based solely upon the oral and written evidence presented at the hearing. In addition, an independent hearing officer's determination of whether a student received a free appropriate public education must be based on substantive grounds. In matters alleging a procedural violation, an independent hearing officer may find that a student did not receive a free appropriate public education only if the procedural inadequacies:

- (1) impeded the child's right to a free appropriate public education;
- (2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parent's child; or
- (3) caused a deprivation of educational benefit.

(l) Nothing in subsection (k) shall be construed to preclude an independent hearing officer from ordering a public agency to comply with procedural requirements under this rule and [511 IAC 7-37](#).

(m) The independent hearing officer shall mail a copy of the hearing decision via certified mail, return receipt requested, to each party involved in the hearing. The independent hearing officer's decision is a final order unless appealed under section 9 of this rule.

(n) Any party involved shall have thirty (30) calendar days from the date the independent hearing officer's written decision is received to:

- (1) implement the order or orders in the hearing decision; or
- (2) initiate an appeal as described in section 9 of this rule.

(o) A verbatim transcript of the hearing shall be made. The independent hearing officer is responsible for:

- (1) ensuring the hearing is transcribed; and
- (2) determining from the parents at the outset of the hearing whether the transcription will be written or electronic.

The transcript shall be made available by the division of special education at no cost and upon the request of any party to the hearing at the conclusion of the hearing.

(p) Due process hearings under this section shall be:

- (1) conducted under [IC 4-21.5-3](#) and this section; and
- (2) held at a time and place reasonably convenient to all parties to the hearing.

The notice of time and place shall be in writing to all parties.

(q) The public agency shall bear all costs pertaining to the conduct of a hearing whether or not a hearing is ultimately held, including transcription and hearing officer fees and expenses. Funds under Part B of the Individuals with Disabilities Education Act 20 U.S.C. 1400 et seq., may be used to pay the costs of conducting the hearing, but the funds shall not be used to pay attorney's fees or costs of a party.

(r) Class action due process hearings are not permitted. If the parties and the independent hearing officer agree to a hearing involving two (2) or more students, a separate decision with specific findings of fact, conclusions of law, and orders, if necessary, shall be written for each student.

(s) If the issue of the proceedings involves initial enrollment in a public school, the student, with the consent of the parent, shall be placed in the public school program until the completion of the proceedings. If the parties

cannot agree to the student's placement during the proceedings, the independent hearing officer shall determine the student's placement as a preliminary matter to the conduct of the due process hearing.

(t) If the issue of the proceedings involves initial enrollment in a public school for a student who is transitioning from Part C of the Individuals with Disabilities Education Act to Part B of the act, and the student is no longer eligible for Part C services because the student has become three (3) years of age, the public agency is not required to provide the Part C services that the child had been receiving. If the:

- (1) child is found eligible for special education and related services under Part B; and
- (2) parent consents to the initial provision of special education and related services;

the public agency must provide those special education and related services that are not in dispute between the parent and the public agency.

(u) Except as provided in [511 IAC 7-44-8](#), the student shall remain in the student's current educational placement during a due process hearing, administrative appeal, or judicial proceeding, unless the parties agree otherwise. If the:

- (1) proceedings extend beyond the end of the school year; and
- (2) placement includes normal grade advancement;

that advancement shall proceed unless normal grade advancement is at issue. If the last agreed-upon placement cannot be determined, the independent hearing officer shall determine the student's educational placement.

(v) The division of special education shall maintain the following for the duration of the hearing, any appeal, and any subsequent civil action:

- (1) The original hearing decision.
- (2) The transcript of the hearing.
- (3) The exhibits admitted by the independent hearing officer.
- (4) All:
  - (A) notices;
  - (B) pleadings;
  - (C) exceptions;
  - (D) motions;
  - (E) requests; and
  - (F) other papers;filed in the hearing.

(w) The division of special education shall, after deleting personally identifiable information from copies of the due process hearing findings, conclusions, and orders, do the following:

- (1) Transmit a copy of the document to the state advisory council on the education of children with disabilities.
- (2) Maintain a copy of the document for public review in its offices for at least five (5) years after administrative remedies have been exhausted and any litigation completed.

(Indiana State Board of Education; [511 IAC 7-45-7](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#))

### [Notice of Public Hearing](#)

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