

**Proposed Rule**  
LSA Document #13-28

DIGEST

Amends [511 IAC 7-40-8](#) to align the consent requirements for special education reevaluations with the federal requirements. Effective 30 days after filing with the Publisher.

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

**[511 IAC 7-40-8](#)**

SECTION 1. [511 IAC 7-40-8](#) IS AMENDED TO READ AS FOLLOWS:

**[511 IAC 7-40-8](#) Reevaluation**

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

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

Sec. 8. (a) Once a student is eligible for special education and related services, any subsequent evaluation of the student is reevaluation, even if the student is being evaluated because a different or additional eligibility category is suspected.

(b) A public agency must consider reevaluation for each student receiving special education and related services:

- (1) at least once every three (3) years; however, reevaluation need not occur if the parent and the public agency agree that it is unnecessary;
- (2) if the public agency determines, at any time during the three (3) year cycle, that additional information is needed to address the special education or related services needs of the student; and
- (3) if the student's parent or teacher requests reevaluation.

(c) The following procedures are not reevaluation:

- (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.

(d) If a CCC determines at an annual CCC meeting that reevaluation is necessary to reestablish eligibility for special education and related services, reevaluation must occur by the next annual CCC meeting. Reevaluation to reestablish eligibility may not occur more than once a year, unless the parent and the public agency agree otherwise.

(e) If the CCC determines or the parent or teacher requests that a reevaluation be conducted to:

- (1) determine that the student is eligible for special education and related services under a different or additional eligibility category; or
- (2) inform the CCC of the student's needs, such as the student's need for assistive technology or a related service;

the reevaluation must occur and the CCC convened within fifty (50) instructional days of the date that written parental consent is received by licensed personnel, in accordance with subsection (i).

(f) Before a public agency can reevaluate a student, or refuse to reevaluate a student, the public agency must provide the student's parent with written notice that includes the following:

- (1) A statement that the public agency is proposing or refusing to reevaluate the student 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 reevaluate the student.

- (2) A description of other factors relevant to the public agency's proposal or refusal to reevaluate the student.
- (3) If the public agency:
  - (A) is proposing to reevaluate the student, a description of the reevaluation process; or
  - (B) refuses to reevaluate the student, 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 reevaluate the student, the timeline for conducting the reevaluation and convening 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](#), including information regarding how a copy of the written notice of procedural safeguards can be obtained.
- (6) A list of sources for parents to contact to obtain assistance with understanding the provisions of this article.

(g) The written notice required under subsection (f) must meet the requirements of section 4(f) of this rule.

(h) A parent may challenge the public agency's refusal to reevaluate the student by requesting:

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

(i) If the public agency proposes to reevaluate the student in the written notice described in subsections (f) and (g), the parent of the student must provide consent, as defined in [511 IAC 7-32-17](#), to licensed personnel before the public agency can reevaluate the student.

(j) If the parent refuses to consent to reevaluation, the public agency may, but is not required to, pursue reevaluation by requesting:

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

The public agency does not violate its obligation to reevaluate the student if it declines to request mediation or a due process hearing.

(k) Parental consent for reevaluation does not need to be obtained if the public agency makes reasonable efforts to obtain consent and the parent fails to respond. 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.

(l) ~~After a parent consents to~~ **In considering the need for** reevaluation, ~~or fails to respond to a request for consent under subsection (k),~~ the CCC and other qualified professionals, as appropriate, must do the following:

- (1) Review existing evaluation data on the student, including the following:
  - (A) Evaluations and information provided by the parents of the student.
  - (B) Current classroom based, local, or state assessments, and classroom based observations.
  - (C) Observations of teachers and related services providers.
- (2) On the basis of that review, and input from the student's parent, identify what additional data, if any, are needed to determine the following:
  - (A) Whether the student continues to have a disability as described in [511 IAC 7-41](#) and the special

education and related service needs of the student.

(B) The present levels of academic achievement and functional performance and related developmental needs of the student.

(C) Whether the student continues to need special education and related services.

(D) Whether any additions or modifications to the special education and related services are needed to:

- (i) enable the student to meet the measurable annual goals set out in the student's IEP; and
- (ii) participate, as appropriate, in the general education curriculum.

(m) The review described in subsection (l) may be conducted without a meeting.

(n) If the CCC and other qualified professionals, as appropriate, after reviewing existing evaluation data as described in subsection (l), determine that no additional data are needed to determine whether the student continues to be eligible for special education and to determine the student's special education and related service needs, the public agency must do the following:

(1) Notify the parent of the following:

(A) The determination and the reasons for the determination.

(B) The right to request an assessment to determine the following:

- (i) Whether the student continues to be eligible for special education.
- (ii) The student's special education and related service needs.

(2) Not be required to conduct such an assessment unless requested to by the student's parent.

(o) If the CCC and other qualified professionals, as appropriate, after reviewing existing evaluation data as described in subsection (l), determine that additional data are needed, the public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under subsection (l).

*(Indiana State Board of Education; [511 IAC 7-40-8](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#))*

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

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