

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule
LSA Document #18-153

DIGEST

Amends [511 IAC 7-32-13](#), [511 IAC 7-32-54](#), [511 IAC 7-32-64](#), [511 IAC 7-32-71](#), [511 IAC 7-32-106](#), [511 IAC 7-34-1](#), [511 IAC 7-34-4](#), [511 IAC 7-34-5](#), [511 IAC 7-34-6](#), [511 IAC 7-34-7](#), [511 IAC 7-34-8](#), [511 IAC 7-34-10](#), [511 IAC 7-36-2](#), [511 IAC 7-36-3](#), [511 IAC 7-36-7](#), [511 IAC 7-36-10](#), [511 IAC 7-39-1](#), [511 IAC 7-39-2](#), [511 IAC 7-40-3](#), [511 IAC 7-40-5](#), [511 IAC 7-40-8](#), [511 IAC 7-41-1](#), [511 IAC 7-41-3](#), [511 IAC 7-41-6](#), [511 IAC 7-41-12](#), [511 IAC 7-42-3](#), [511 IAC 7-42-4](#), [511 IAC 7-42-7](#), [511 IAC 7-42-8](#), [511 IAC 7-42-13](#), [511 IAC 7-43-1](#), [511 IAC 7-43-4](#), [511 IAC 7-43-7](#), [511 IAC 7-45-1](#), [511 IAC 7-45-5](#), [511 IAC 7-45-7](#), [511 IAC 7-49-2](#), [511 IAC 7-49-4](#), [511 IAC 7-49-5](#), [511 IAC 7-49-7](#), [511 IAC 7-49-9](#), and [511 IAC 7-49-10](#) and adds [511 IAC 7-36-11](#), concerning special education, to update the regulatory language and to account for recently enacted legislation. Makes numerous technical changes. Repeals [511 IAC 7-32-21](#), [511 IAC 7-32-44](#), and [511 IAC 7-32-81](#). *NOTE: LSA Document #18-153, posted at [20180606-IR-511180153PRA](#), was revised and resubmitted for publication.* Effective 30 days after filing with the Publisher, applicable beginning with the 2018-2019 school year.

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

[511 IAC 7-32-13](#); [511 IAC 7-32-21](#); [511 IAC 7-32-44](#); [511 IAC 7-32-54](#); [511 IAC 7-32-64](#); [511 IAC 7-32-71](#); [511 IAC 7-32-81](#); [511 IAC 7-32-106](#); [511 IAC 7-34-1](#); [511 IAC 7-34-4](#); [511 IAC 7-34-5](#); [511 IAC 7-34-6](#); [511 IAC 7-34-7](#); [511 IAC 7-34-8](#); [511 IAC 7-34-10](#); [511 IAC 7-36-2](#); [511 IAC 7-36-3](#); [511 IAC 7-36-7](#); [511 IAC 7-36-10](#); [511 IAC 7-36-11](#); [511 IAC 7-39-1](#); [511 IAC 7-39-2](#); [511 IAC 7-40-3](#); [511 IAC 7-40-5](#); [511 IAC 7-40-8](#); [511 IAC 7-41-1](#); [511 IAC 7-41-3](#); [511 IAC 7-41-6](#); [511 IAC 7-41-12](#); [511 IAC 7-42-3](#); [511 IAC 7-42-4](#); [511 IAC 7-42-7](#); [511 IAC 7-42-8](#); [511 IAC 7-42-13](#); [511 IAC 7-43-1](#); [511 IAC 7-43-4](#); [511 IAC 7-43-7](#); [511 IAC 7-45-1](#); [511 IAC 7-45-5](#); [511 IAC 7-45-7](#); [511 IAC 7-49-2](#); [511 IAC 7-49-4](#); [511 IAC 7-49-5](#); [511 IAC 7-49-7](#); [511 IAC 7-49-9](#); [511 IAC 7-49-10](#)

SECTION 1. [511 IAC 7-32-13](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-32-13](#) "Caseload" defined

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

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

Sec. 13. "Caseload" means the total number of students assigned to a teacher, speech-language pathologist, or a related services provider. The caseload of each teacher, speech-language pathologist, or related services provider shall be limited in number to allow the teacher, speech-language pathologist, or related services provider to implement each assigned student's IEP and shall be determined by the following:

- (1) The nature and severity of the students' disabilities.
- (2) The type and intensity of services needed as specified in the IEP.
- (3) The chronological ages of the students.
- (4) The total number of students with and without disabilities for whom the teacher has instructional responsibility.

(Indiana State Board of Education; [511 IAC 7-32-13](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 2. [511 IAC 7-32-54](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-32-54](#) "Intervention" defined

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

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

Sec. 54. "Intervener" "Intervention" means an individual with knowledge and skill in the mode of communication of a student who is deaf-blind who can communicate to the student what is occurring in the educational setting: educational program, product, practice, or policy aimed at improving student outcomes in a targeted skill area such as reading, math, or behavior/social and emotional skills.

(Indiana State Board of Education; [511 IAC 7-32-54](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 3. [511 IAC 7-32-64](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-32-64](#) "Mode of communication" defined

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

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

Sec. 64. "Mode of communication" means the method used by the parent or student to communicate, if the parent or student is deaf, hearing impaired, visually impaired, nonverbal, has no written language, or is a nonreader. Methods used may include, but are not limited to, the following:

- (1) Sign language.
- (2) Braille.
- (3) Oral communication.
- (4) ~~Other Augmentative devices~~ **and alternative communication.**

(Indiana State Board of Education; [511 IAC 7-32-64](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 4. [511 IAC 7-32-71](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-32-71](#) "Parentally-placed nonpublic school students with disabilities" defined

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

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

Sec. 71. "Parentally-placed nonpublic school students with disabilities" means students with disabilities who are enrolled by their parents in nonpublic, **including religious**, schools, home schools, or facilities, ~~including religious schools or facilities, that are day schools or residential schools providing that meet the definition of elementary school in section 33 of this rule or secondary education as determined under Indiana law. For students three (3) years of age through five (5) years of age, nonpublic schools are schools that meet the definition of an elementary school in section 33 82 of this rule. The term does not apply to students with disabilities who have been placed in a nonpublic school by a public agency.~~

(Indiana State Board of Education; [511 IAC 7-32-71](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 5. [511 IAC 7-32-106](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-32-106](#) "Weapon" defined

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

Affected: [IC 20-19-2](#); [IC 20-35](#); [IC 35-31.5-2-86](#); [IC 35-47-1-5](#)

Sec. 106. "Weapon" ~~has the meaning given:~~ **means:**

- (1) "dangerous weapon" under 18 U.S.C. 930(g)(2), which means:

- (A) a weapon;
- (B) a device;
- (C) an instrument;
- (D) a material; or
- (E) a substance;

animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that the term does not include a pocketknife with a blade of less than two and one-half (2 1/2) inches in length;

- (2) "deadly weapon" under [IC 35-41-1-8](#); [IC 35-31.5-2-86](#); and
- (3) "firearm" under [IC 35-47-1-5](#).

(Indiana State Board of Education; [511 IAC 7-32-106](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 6. [511 IAC 7-34-1](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-34-1](#) Special education and related services for parentally-placed students in nonpublic schools

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

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

Sec. 1. (a) As used in this rule, "Part B funds" means funds under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.

(b) This section and sections 2 through 9 of this rule apply to **parentally-placed nonpublic school** students with disabilities, ~~who have been unilaterally enrolled by the parent in a nonpublic school or facility in the state,~~ including students who reside outside of the state.

(c) This section and sections 2 through 9 of this rule do not apply to the following:

- (1) Students three (3) years of age through five (5) years of age, unless the student has been unilaterally enrolled by his or her parent in a nonpublic school that meets the definition of an elementary school in [511 IAC 7-32-33](#).
- (2) Students with disabilities who have been placed in or referred to a nonpublic school ~~or facility~~ by a public agency.

(d) Each public agency shall, with regard to any nonpublic school, ~~or facility~~, including any religious school or home school, within its boundaries:

- (1) locate, identify, and evaluate all students with disabilities as specified in [511 IAC 7-40](#);
- (2) consult, in accordance with section 3 of this rule, with nonpublic school representatives and representatives of parents of nonpublic school students with disabilities;
- (3) provide information, as specified in section 2(c) of this rule, to the division of special education related to parentally-placed nonpublic school students covered under this rule; and
- (4) make available special education and related services to all students with disabilities.

(Indiana State Board of Education; [511 IAC 7-34-1](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 7. [511 IAC 7-34-4](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-34-4](#) Consultation with nonpublic school representatives and representatives of parents

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

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

Sec. 4. (a) During the design and development of special education and related services for parentally-placed students with disabilities attending nonpublic schools, each public agency must consult with the following:

- (1) Nonpublic school representatives from the nonpublic schools located in the geographic boundaries of the public agency.
- (2) Representatives of parents of students with disabilities in nonpublic schools.

(b) The consultation described in subsection (a) must be timely, which means that it occurs during the design and development of special education and related services for students with disabilities in nonpublic schools. ~~or facilities.~~ Consultation must also be meaningful, which requires the public agency to:

- (1) afford all parties a genuine opportunity to express their views and have those views considered by the public agency; and
- (2) discuss the subjects set forth in subsection (c).

(c) The following subjects must be discussed during a consultation:

- (1) The child find process, including the following:
 - (A) How nonpublic school students suspected of having a disability will be:
 - (i) located;
 - (ii) identified; and

(iii) evaluated.

(B) How:

(i) parents;

(ii) teachers; and

(iii) nonpublic school officials;

will be informed of the child find process.

(2) The determination of the proportionate amount of federal funds, as specified in section 7 of this rule, available to serve nonpublic school students, including how the proportionate amount of those funds was calculated.

(3) An explanation of how the consultation process between the:

(A) public agency;

(B) nonpublic school representatives; and

(C) parent representatives of nonpublic school students;

will operate throughout the school year to ensure that nonpublic school students with disabilities identified through the child find process can meaningfully participate in special education and related services.

(4) How, where, and by whom, in accordance with sections 8 and 9 of this rule, special education and related services will be provided for nonpublic school students with disabilities, including a discussion of the following:

(A) The types of services, which may include direct services and alternate service delivery mechanisms.

(B) How special education and related services will be offered to all nonpublic school students with disabilities if the proportionate amount of Part B funds, as specified in section 7 of this rule, is insufficient to serve all nonpublic school students with disabilities.

(C) How and when those decisions will be made.

(5) If the public agency disagrees with the views of the nonpublic school officials on the provision of services or the types of services, whether provided directly or through a contract, the public agency must explain how it will provide to the nonpublic school officials a written explanation of the reasons why the public agency chose not to accept the views of the nonpublic school officials.

(d) When consultation required in subsections (a) through (c) has occurred, the public agency must obtain a written affirmation, signed by the representatives of participating nonpublic schools, affirming that the public agency engaged in consultation that met the requirements of subsections (b) and (c). A public agency does not need to obtain written affirmation from nonpublic schools that do not participate in the consultation process.

(e) If the representatives of the participating nonpublic schools do not provide the written affirmation to the public agency within twenty (20) instructional days of the date the consultation occurred, the public agency must forward documentation of the consultation process to the division of special education.

(f) A nonpublic school official has the right to submit a complaint to the division of special education alleging that the public agency did not:

(1) engage in consultation that was timely and meaningful as required in subsections (b) and (c); or

(2) give due consideration to the views of the nonpublic school official.

(g) Complaints submitted under subsection (f) must:

(1) be filed with the division of special education according to the complaint procedures set forth in [511 IAC 7-45-1](#);

(2) specify how the public agency failed to comply with the consultation requirements set forth in subsections (b) and (c); and

(3) contain appropriate documentation related to the complaint.

(h) If the nonpublic school official is dissatisfied with the decision of the division of special education, the official may submit a complaint to the Secretary of the United States Department of Education by providing the information on noncompliance described in subsection (g)(2) and (g)(3). The division of special education must forward appropriate documentation to the Secretary of the United States Department of Education.

(Indiana State Board of Education; [511 IAC 7-34-4](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 8. [511 IAC 7-34-5](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-34-5](#) Decisions regarding services provided by the public agency and service plans

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

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

Sec. 5. (a) After consulting with nonpublic school representatives and representatives of parents as described in section 3 of this rule, the public agency must make final decisions with respect to the services that will be provided to nonpublic school students with disabilities.

(b) If the public agency, when making final decisions in subsection (a), disagrees with the views of the nonpublic school officials on the provision of services or the types of services, whether provided directly or through a contract, the public agency must provide to the nonpublic school officials a written explanation of the reasons why the public agency chose not to accept the recommendations of the nonpublic school officials.

(c) For each parentally-placed student in a nonpublic school ~~or facility~~ that has been determined eligible to receive special education and related services from the public agency, the public agency must initiate and conduct CCC meetings to develop and implement service plans. A service plan must describe the specific special education and related services that the public agency will provide to the student in light of the services that the public agency has determined, through the consultation process described in section 3 of this rule, it will make available to parentally-placed nonpublic school students with disabilities.

(d) When conducting a CCC meeting to develop, review, and revise a service plan, the public agency must comply with the following:

- (1) [511 IAC 7-42-2](#) regarding notice of CCC meetings.
- (2) [511 IAC 7-42-3](#) regarding CCC participants, which requires the public agency to ensure that a representative of the nonpublic school or facility attend the CCC meeting. If the representative cannot attend, the public agency must use other methods to ensure participation of the representative, such as individual or conference telephone calls.

(e) Parentally-placed nonpublic school students with disabilities may receive a different amount of services under a service plan than public school students receive under an IEP. However, a service plan must include the following:

- (1) A statement of the student's present levels of educational performance.
- (2) A statement of measurable annual goals related to the services that will be provided, describing what the student can be expected to accomplish within a twelve (12) month period.
- (3) A statement of the special education and related services and supplementary aids and services to be provided to the student or, on behalf of the student, by the public agency, or supports for school personnel that will be provided.
- (4) If applicable, a statement regarding the student's participation in statewide or district assessments, including documentation of any appropriate testing accommodations that will be utilized by the student, according to the requirements in [511 IAC 7-36-10](#).
- (5) The projected dates for initiation of services by the public agency and the anticipated length, frequency, location, and duration of services.
- (6) A statement of the student's progress toward annual goals including how the parents will be informed of the progress.

(f) Special education and related services provided by the public agency to parentally-placed nonpublic school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools. ~~except that nonpublic elementary school and secondary school teachers who are providing services under section 7(j) of this rule do not have to meet the highly qualified special education teacher requirements in [511 IAC 7-36-3](#).~~

(g) If a student is enrolled, or is going to enroll in a nonpublic school outside of the student's school district of legal settlement, parental consent as defined in [511 IAC 7-32-17](#) must be obtained before any personally identifiable information about the student is released between public agency officials in the school district of legal settlement and the school district where the nonpublic school is located.

(Indiana State Board of Education; [511 IAC 7-34-5](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 9. [511 IAC 7-34-6](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-34-6](#) Due process hearings and complaints

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

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

Sec. 6. (a) The procedures for mediation in [511 IAC 7-45-2](#) and the procedures for due process hearings and appeals in [511 IAC 7-45-3](#) through [511 IAC 7-45-11](#) are not available to resolve disputes regarding the requirements set forth in this rule, unless the dispute concerns one (1) of the following issues:

- (1) Child find.
- (2) The appropriateness of an evaluation or reevaluation.
- (3) The determination of eligibility for special education and related services.

(b) A request for a due process hearing regarding the issues set forth in subsection (a) must be sent simultaneously to the superintendent of public instruction and the public agency in which the nonpublic school or facility is located, unless the:

- (1) request for due process concerns the appropriateness of an initial evaluation or the determination of eligibility for special education and related services, or both; and
- (2) initial evaluation and determination of eligibility were conducted by the school district of legal settlement.

(c) If the request for a due process hearing concerns the issues set forth in subsection (b)(1) and (b)(2), the request must be sent simultaneously to the superintendent of public instruction and the public agency of legal settlement.

(d) A complaint that a public agency has failed to meet the requirements of this rule may be filed under the procedures described in [511 IAC 7-45-1](#), except for complaints filed by nonpublic school officials under section 4(f) of this rule, which must be filed in accordance with section 4(f) through 4(h) of this rule.

(Indiana State Board of Education; [511 IAC 7-34-6](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 10. [511 IAC 7-34-7](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-34-7](#) Requirements pertaining to Part B funds

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

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

Sec. 7. (a) A public agency must do the following:

- (1) Offer services to each student who is:
 - (A) eligible to receive special education and related services; and
 - (B) parentally-placed by his or her parent in a nonpublic school within the boundaries of the public agency.Public agencies may use state funds and Part B funds to provide services under this rule.
- (2) Control and administer Part B funds that are used to provide special education and related services under this rule.
- (3) Determine the number of parentally-placed nonpublic school students with disabilities attending nonpublic schools located in the public agency. The count:
 - (A) must be conducted annually on December 1; and
 - (B) is used to determine the amount of Part B funds that the public agency must spend on providing special education and related services to parentally-placed nonpublic school students with disabilities in the next subsequent school year.
- (4) Spend a proportionate share of its Part B funds to serve parentally-placed nonpublic school students with disabilities. The proportionate amount of Part B funds must be calculated according the specifications set forth in subsections (b) through (e).

(b) The public agency, in providing special education and related services to students in nonpublic schools and facilities, must expend at least an amount that is the same proportion of the public agency total subgrant

under 20 U.S.C. 1411(f) as the number of nonpublic school students with disabilities, who are enrolled by their parents in nonpublic schools ~~or facilities~~ within its boundaries, is to the total number of students with disabilities of the same age range.

(c) To calculate the proportionate amount of Part B funds specified in subsection (b), the public agency must take the following steps:

- (1) Using data from the previous calendar year's December 1 count, divide the number of parentally-placed nonpublic school students with disabilities by the total number of students with disabilities (public school and nonpublic school students).
- (2) The quotient obtained in subdivision (1) is multiplied by the public agency's current total subgrant under 20 U.S.C. 1411(f).
- (3) The product obtained in subdivision (2) equals the public agency's proportionate amount of Part B funds that must be spent on parentally-placed nonpublic school students.

(d) For students three (3) years of age through five (5) years of age, the public agency, in providing special education and related services to students in nonpublic schools, ~~and facilities~~, must expend at least an amount that is the same proportion of the public agency total subgrant under 20 U.S.C. 1419(g) as the number of nonpublic school students with disabilities three (3) years of age through five (5) years of age who are enrolled by their parents in nonpublic schools ~~or facilities that meet the definition of elementary school in 511 IAC 7-32-33~~ within its boundaries, is to the total number of students with disabilities three (3) years of age through five (5) years of age.

(e) To calculate the proportionate amount of Part B funds specified in subsection (d), the public agency must take the following steps:

- (1) Using data from the previous calendar year's December 1 count, divide the number of parentally-placed students with disabilities three (3) years of age through five (5) years of age, who attend nonpublic schools that meet the definition of an elementary school in [511 IAC 7-32-33](#), by the total number of students with disabilities three (3) years of age through five (5) years of age (public school and nonpublic school students).
- (2) The quotient obtained in subdivision (1) is multiplied by the public agency's current total subgrant under 20 U.S.C. 1419(g).
- (3) The product obtained in subdivision (2) equals the public agency's proportionate amount of Part B funds that must be spent on parentally-placed nonpublic school students three (3) years of age through five (5) years of age who attend nonpublic schools that meet the definition of elementary school in [511 IAC 7-32-33](#).

(f) A public agency must calculate the proportionate share of Part B funds before designating funds for early intervening services.

(g) State and local funds may supplement but in no case supplant the proportionate share of Part B funds required to be expended for parentally-placed nonpublic school students with disabilities under this rule.

(h) If a public agency has not expended all of the proportionate amount of Part B funds described in subsections (b) through (e) by the end of the fiscal year for which the division of special education allocated the funds, the public agency must obligate the remaining funds for special education and related services, including direct services, to parentally-placed nonpublic school students with disabilities during a carryover period of one (1) additional year.

(i) Expenditures for child find activities, including the cost of individual evaluations and reevaluations, shall not be considered in determining whether the public agency has met the proportionate share requirement in this section.

(j) The public agency shall not use the Part B funds to do the following:

- (1) Fund existing levels of instruction currently provided by the nonpublic school ~~or facility~~, or otherwise benefit the nonpublic school.
- (2) Meet the needs of the nonpublic school. ~~or facility~~.
- (3) Meet the general needs of the students enrolled in the nonpublic school. ~~or facility~~.
- (4) Fund classes that are organized separately on the basis of school enrollment or religion of the students if the classes:

- (A) are at the same site; and
- (B) include students enrolled in public schools and students enrolled in nonpublic schools.

(k) The public agency may use Part B funds for the following:

(1) To make public school personnel available in places other than public facilities:

(A) to the extent necessary to provide special education and related services to students with disabilities in nonpublic schools; ~~or facilities~~; and

(B) if those services are not normally provided by the nonpublic school. ~~or facility~~.

(2) To pay for the services of an employee of the nonpublic school ~~or facility~~ to provide special education and related services if the employee performs the services:

(A) outside of the employee's regular hours of duty; and

(B) under public supervision and control.

(Indiana State Board of Education; [511 IAC 7-34-7](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 11. [511 IAC 7-34-8](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-34-8](#) Requirements pertaining to services, location of services, and transportation

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

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

Sec. 8. (a) Special education and related services provided by a public agency to parentally-placed nonpublic school students, including materials and equipment, must be:

- (1) secular;
- (2) neutral; and
- (3) nonideological.

(b) Special education and related services delivered under this rule must be provided:

- (1) by employees of a public agency; or
- (2) through a contract by the public agency with an:
 - (A) individual;
 - (B) association;
 - (C) agency;
 - (D) organization; or
 - (E) other entity.

(c) After consulting with nonpublic school representatives and representatives of parents as described in section 3 of this rule, the public agency must make final decisions with respect to where services will be provided. Services to students in nonpublic schools ~~or facilities~~ may be provided at:

- (1) the nonpublic school, ~~or facility~~, including a religious school;
- (2) the public school; or
- (3) a neutral site.

(d) If services are provided at the public school or a neutral site and transportation is necessary, the public agency must provide transportation from the:

- (1) nonpublic school or the student's home to a site other than the nonpublic school; ~~or facility~~; and
- (2) service site to the nonpublic school or the student's home, depending on the timing of the services.

(e) The public agency may, but is not required to, transport the student from the student's home to the nonpublic school.

(f) The cost of transportation may be included in the calculation of the public agency's proportionate share requirement, as specified in section 7 of this rule.

(Indiana State Board of Education; [511 IAC 7-34-8](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 12. [511 IAC 7-34-10](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-34-10](#) Reimbursement for parent's unilateral enrollment of a student in a nonpublic school when the public agency's provision of a free appropriate public education is in dispute

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

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

Sec. 10. (a) This section does not require the public agency to pay the cost of education, including special education and related services, of a student with a disability at a nonpublic school ~~or facility~~ if the:

- (1) public agency made a free appropriate public education available to the student; and
- (2) parent elected to place the student in a nonpublic school. ~~or facility.~~

However, the public agency must include the student in the population whose needs are addressed in sections 1 through 9 of this rule.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the student, and the question of financial reimbursement, are subject to the due process procedures in [511 IAC 7-45-3](#) through [511 IAC 7-45-11](#).

(c) If the parents of a student with a disability, who previously received special education and related services under the authority of the public agency, enroll the student in a nonpublic preschool, elementary school, or secondary school without the consent of or referral by the public agency, the parent may seek reimbursement for the costs of the nonpublic school ~~or facility~~ from the public agency.

(d) If the parent and the public agency cannot reach agreement on the issue of reimbursement, either may request a due process hearing under [511 IAC 7-45-3](#) to resolve the issue.

(e) The independent hearing officer or the court may require the public agency to reimburse the parent for the cost of the nonpublic school enrollment if the hearing officer or court finds both of the following:

- (1) The public agency did not make a free appropriate public education available to the student in a timely manner prior to enrollment in the nonpublic school. ~~or facility.~~
- (2) The nonpublic placement is appropriate.

(f) The hearing officer or the court may find that the nonpublic placement made by the parent is appropriate even if the placement does not meet the state standards that apply to education provided by public agencies.

(g) The hearing officer or the court may reduce or deny reimbursement to the parents in the following instances:

(1) If:

- (A) at the most recent CCC meeting that the parents attended prior to removal of the student from the public agency, the parents did not inform the CCC that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to the student, including stating their concerns and their intent to enroll the student in a nonpublic school at public expense; or
- (B) at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the student from the public agency, the parents did not give written notice to the public agency of the information described in clause (A).

(2) If, prior to the parent's removal of the student from the public agency, the public agency informed the parent, through the notice requirements of [511 IAC 7-40-4\(e\)](#), of its intent to evaluate the student, including a statement of the purpose of the evaluation that was appropriate and reasonable, but the parent did not make the student available for evaluation.

(h) The hearing officer or the court must not reduce or deny the reimbursement if the parent failed to provide the written notice described in subsection (g)(1), if the hearing officer or the court finds any of the following:

- (1) Compliance with subsection (g)(1) would likely result in physical harm to the student.
- (2) The public agency prevented the parent from providing the notice described in subsection (g)(1).
- (3) The parent had not received notice of procedural safeguards, under [511 IAC 7-37-1](#), containing the notice requirement of subsection (g)(1).

(i) The hearing officer or the court, in its discretion, may decide not to reduce or deny reimbursement if the parent failed to provide the written notice described in subsection (g)(1) if:

- (1) the parents are not literate or cannot write in English; or
- (2) compliance with subsection (g)(1) would likely result in serious emotional harm to the student.

(j) The cost of reimbursement may be reduced or denied upon a judicial finding of unreasonableness with respect to the actions taken by the parents.

(Indiana State Board of Education; [511 IAC 7-34-10](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 13. [511 IAC 7-36-2](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-36-2](#) Special education program personnel

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

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

Sec. 2. (a) All personnel employed or contracted by a public agency to provide special education or related services must be appropriately licensed or certified and must have the content knowledge and skills necessary to provide the services for which the individual is employed or contracted in accordance with standards established by the department of education's ~~division of professional standards~~ **office of educator licensing** or other applicable licensing and certification bodies. The person designated as a student's teacher of record shall:

- (1) for kindergarten through grade 12, be appropriately licensed in the area of the student's disability or, where appropriate state licensure is not available, appropriately trained; and
- (2) for early childhood, hold an appropriate license to teach early childhood special education.

(b) Special education teachers who teach in public elementary and secondary schools must

~~(1) meet the requirements of subsection (a). and~~

~~(2) with the exception of early childhood special education teachers, be highly qualified according to section 3 of this rule.~~

(c) Related services personnel who deliver services in their discipline:

- (1) must meet the requirements of subsection (a); and
- (2) may not have certification or licensure requirements waived on:
 - (A) an emergency;
 - (B) a temporary; or
 - (C) a provisional;basis.

(d) Personnel working with deaf or hard of hearing students who provide sign language transliteration and interpreting services must:

- (1) meet the requirements of subsections (a) and (c); and
- (2) be certified to interpret in an educational setting.

(e) Public agencies may allow paraprofessionals and assistants who are appropriately trained to work under the direction and supervision of:

- (1) licensed teachers; **or**
- ~~(2) highly qualified teachers; or~~
- ~~(3)~~ **(2)** related services personnel;

to assist students in areas that relate to personal, social, and educational needs.

(f) The public agency shall do the following:

- (1) Provide preservice and in-service training to paraprofessionals in the following areas:
 - (A) The role of the paraprofessional related to the role of the professional person providing supervision and direction.
 - (B) The specific skills and content knowledge necessary to carry out the assigned responsibilities.

(C) Information on the following:

- (i) The specific special needs and characteristics of the students with whom the paraprofessional will be working.
 - (ii) Special education procedures, including the confidentiality of personally identifiable information.
- (2) Document, in writing, the training provided to paraprofessionals.

(g) In addition to the requirements listed in subsections (e) and (f), paraprofessionals who provide instructional support in a program supported by funds from Title I, Part A of the Elementary and Secondary Education Act must have the following:

- (1) A high school diploma as defined in [511 IAC 6-7.1-1](#)(e) or its recognized equivalent.
- (2) Paraprofessionals hired after January 8, 2002, must have achieved one (1) of the following:
 - (A) Completed two (2) years of study at an institution of higher education, as defined in [511 IAC 7-32-52](#).
 - (B) Obtained an associate's or higher degree.
 - (C) Met a rigorous standard of quality and be able to demonstrate, through a formal state academic assessment, knowledge of and the ability to assist in instructing reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness).

(h) A paraprofessional under subsection (g) does not have to meet the requirement in subsection (g)(2) if the paraprofessional is a person who:

- (1) is proficient in English and a language other than English and acts solely as a translator to enhance the participation of limited English proficient students; or
- (2) only conducts parental activities, such as a home school liaison.

(i) A paraprofessional under subsection (g) does not have to meet the requirements contained in subsection (g) if the paraprofessional:

- (1) works in a Title I targeted assistance program, as opposed to a Title I school-wide program, unless the paraprofessional's salary is funded, in whole or in part, by Title I Part A; or
- (2) does not provide instructional support, such as a person who solely provides personal care.

(j) Notwithstanding any other individual right of action that a parent or student may maintain under this article, nothing in this article shall be construed to:

- (1) create a right of action on behalf of an individual student or class of students for the failure of a public agency employee to ~~be highly qualified~~; **meet the requirements described in subsection (a)**; or
- (2) prevent a parent from filing a complaint about staff qualifications with the division of special education under [511 IAC 7-45-1](#).

(Indiana State Board of Education; [511 IAC 7-36-2](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 14. [511 IAC 7-36-3](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-36-3](#) Special education teachers

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

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

Sec. 3. (a) A special education teacher who teaches in a public elementary, middle, junior high, or high school in the state must ~~be highly qualified as a special education teacher by meeting~~ **meet** the following requirements:

- (1) The teacher has obtained full state licensure as a special education teacher, including licensure obtained through an alternative route, as described in subsection (b), or passed the state special education teacher licensing examinations and holds a license to teach in the state as a special education teacher.
- (2) The teacher has not had special education licensure requirements waived.
- (3) The teacher holds at least a bachelor's degree.

(b) A teacher will meet the requirement in subsection (a)(1) if that teacher is participating in an alternative route to special education licensure program under which the:

- (1) teacher:
 - (A) receives high-quality professional development that is:
 - (i) sustained;

(ii) intensive; and

(iii) classroom-focused;

in order to have a positive and lasting impact on classroom instruction, before and while teaching;

(B) participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;

(C) assumes functions as a teacher only for a specified period of time not to exceed three (3) years; and

(D) demonstrates satisfactory progress toward full licensure as prescribed by the state; and

(2) state ensures, through its licensure process, that the provisions in subdivision (1) are met.

~~(c) Special education teachers who do not teach core academic subjects only have to meet the highly qualified special education teacher requirements in subsection (a). A special education teacher does not teach core academic subjects if the special education teacher:~~

~~(1) is a co-teacher who:~~

~~(A) works within the general education setting in which a highly qualified general education teacher provides instruction to the class on core academic elementary content or a core academic middle, junior high, or high school subject; and~~

~~(B) provides direct assistance to students with disabilities via individualized or small group instruction as a support to the highly qualified teacher's instruction;~~

~~(2) is a consultant teacher who provides consultation, such as:~~

~~(A) adapting curricula;~~

~~(B) using behavioral supports and interventions; and~~

~~(C) selecting appropriate accommodations;~~

~~to highly qualified general education teachers of core academic elementary content or a core middle, junior high, or high school academic subject;~~

~~(3) is a resource room teacher who provides direct assistance to students with disabilities, such as tutoring and reinforcement of content provided in the general education setting, in segregated settings after the students receive instruction on core academic elementary content or a core academic middle, junior high, or high school subject from a highly qualified general education teacher; or~~

~~(4) provides direct instruction to students with disabilities on noncore academic subjects, such as:~~

~~(A) life skills;~~

~~(B) study skills; and~~

~~(C) community based instruction.~~

~~(d) Special education teachers who teach core academic subjects, as defined in [511 IAC 7-32-21](#), must be highly qualified as a special education teacher under subsection (a) and highly qualified in the core academic subjects under [511 IAC 7-32-44](#). Special education teachers teach core academic subjects in the following situations:~~

~~(1) The special education teacher is the primary teacher providing instruction to elementary students in the core academic elementary content.~~

~~(2) The special education teacher is the primary teacher providing instruction to middle, junior high, or high school students in a core academic subject.~~

~~(3) The special education teacher team teaches in the general education setting alongside a highly qualified teacher of elementary academic content or a core academic middle, junior high, or high school subject, and the teachers share responsibilities for the:~~

~~(A) design and delivery of instruction; and~~

~~(B) evaluation of student performance.~~

~~(e) Special education teachers who teach core academic subjects exclusively to students who are assessed against alternate achievement standards must meet the requirements in subsection (a) and, whether they are a new or a veteran teacher, may either meet the:~~

~~(1) applicable requirements of [511 IAC 7-32-44](#) for any new or veteran elementary, middle, junior, or high school teacher; or~~

~~(2) requirements of [511 IAC 7-32-44\(b\)\(2\)](#) or [511 IAC 7-32-44\(b\)\(3\)](#) as applied to an elementary school teacher and, in the case of instruction above the elementary level, have subject matter knowledge appropriate to the level of instruction being provided, as determined by the state.~~

~~(f) Special education teachers who teach two (2) or more core academic subjects exclusively to students with disabilities (including students assessed against alternative achievement standards) must meet the requirements in subsection (a) and may either:~~

(1) meet the applicable requirements of [511 IAC 7-32-44\(b\)\(2\)](#) or [511 IAC 7-32-44\(b\)\(3\)](#);

(2) in the case of a veteran teacher, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for a veteran elementary, middle, junior high, or high school teacher under [511 IAC 7-32-44](#), which may include a single, high objective uniform state standard of evaluation (HOUSSE) covering multiple subjects; or

(3) in the case of a new special education teacher who:

(A) teaches multiple subjects; and

(B) is highly qualified in mathematics, language arts, or science;

demonstrate, not later than two (2) years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, junior high, or high school teacher under [511 IAC 7-32-44](#), which may include a single HOUSSE covering multiple subjects.

~~(g) Notwithstanding any other individual right of action that a parent or student may maintain under this article, nothing in this section shall be construed to:~~

~~(1) create a right of action on behalf of an individual student or class of students for the failure of a public agency employee to be highly qualified; or~~

~~(2) prevent a parent from filing a complaint under [511 IAC 7-45-1](#) about staff qualifications with the division of special education.~~

~~(h) A teacher who is highly qualified under this section is considered highly qualified for purposes of the Elementary and Secondary Education Act of 1965, as amended by 20 U.S.C. 6311 et seq.~~

~~(i) For purposes of subsection (f)(3), a fully licensed regular education teacher who subsequently becomes fully licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.~~

~~(j) The requirements in this section do not apply to teachers hired by nonpublic elementary, middle, junior high, or high schools, including nonpublic school teachers hired or contracted by public agencies to provide special education and related services to parentally placed nonpublic school students with disabilities under [511 IAC 7-34-7\(k\)\(2\)](#).~~

~~(k) Because the early childhood special education program described in section 5 of this rule is not part of the state's public elementary, middle, junior high, and high school system, kindergarten through grade 12, early childhood teachers do not have to meet the highly qualified teacher requirements. However, early childhood special education teachers do have to be appropriately licensed.~~

~~(Indiana State Board of Education; [511 IAC 7-36-3](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))~~

SECTION 15. [511 IAC 7-36-7](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-36-7](#) Instructional curricula, materials, equipment, and assistive technology devices and services

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

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

Sec. 7. (a) Each student shall be involved in and progress in the general education curriculum, to the maximum extent feasible, as determined by the student's CCC. The public agency may supplement the general education curriculum with modified programs of instruction or curriculum that ~~relate~~ **align** to state academic standards and **related** functional skills to be achieved.

(b) The public agency shall provide to students with disabilities instructional materials and supplies comparable to those provided to nondisabled students.

(c) A student's CCC must determine whether the student needs instructional materials, including print instructional materials as defined in [511 IAC 7-32-75](#), in an accessible format.

(d) For purposes of this section, "accessible format" means an alternate approach to presenting information to a student with a disability. Accessible formats may be purchased ready for use by students with disabilities, developed for use by students with disabilities, or modified from existing materials in accordance with federal and state copyright laws. Accessible formats include, but are not limited to, the following:

- (1) Braille.
- (2) Audio.
- (3) Digital text.
- (4) Large type.
- (5) Tactile graphics.
- (6) Video.
- (7) Captions.
- (8) Audio descriptions.

(e) If a student's CCC determines that a student needs instructional materials in an accessible format that are not print instructional materials, the public agency must ensure that the student receives the instructional materials at the same time as other students receive the instructional materials, in accordance with policies and procedures established by the department of education.

(f) If a student's CCC determines that a student needs print instructional materials in an accessible format, the public agency must provide the materials to the student in a timely manner as described in subsection (h).

(g) When a student needs print instructional materials in an accessible format, the public agency must determine whether the student is a student with a print disability as defined in [511 IAC 7-32-93](#). This may require the public agency to obtain a written certification statement from a competent authority according to policies and procedures established by the department of education. A competent authority is a recognized expert who attests to the physical basis of the visual, perceptual, or other physical disability that limits the student's use of standard print, in accordance with policies and procedures established by the department of education.

(h) For purposes of this section, "timely manner" means that a public agency will take all reasonable steps to ensure that students who need print instructional materials in accessible formats are provided those materials at the same time as other students receive instructional materials. Reasonable steps include, but are not limited to, the following:

- (1) Requiring publishers or other contractors to, at a minimum, provide the National Instructional Materials Access Center (NIMAC) with electronic files containing the content of the print instructional materials using the National Instructional Materials Accessibility Standard (NIMAS). Such files must be provided to the NIMAC with sufficient time, according to policies and procedures established by the department of education, to ensure that students requiring accessible formats receive the instructional materials at the same time as other students receive the instructional materials.
- (2) Having a means of acquiring print instructional materials in accessible formats according to policies and procedures established by the department of education, including for students who transfer into the public agency after the start of the school year.

Reasonable steps would not include withholding print instructional materials from other students until print instructional materials in accessible formats are available.

(i) Nothing in this section relieves a public agency of its responsibility to ensure that the following students, who need print instructional materials in accessible formats, receive those materials in a timely manner:

- (1) A student who is not a student with a print disability as defined in [511 IAC 7-32-93](#).
- (2) A student who needs print instructional materials that cannot be produced from NIMAS files.

(j) Charges to the parent for textbook rental, incidental fees, or any other fees permitted by state statute or rule do not violate the at no cost requirement.

(k) The public agency shall provide instructional materials and equipment and assistive technology devices and services, as defined in [511 IAC 7-32-7](#) and [511 IAC 7-32-8](#), which are specified in the student's IEP. On a case-by-case basis, the use of school-purchased assistive technology devices in a student's home or in other settings is required if the student's CCC determines that the student needs access to those devices in order to

receive a free appropriate public education.

(l) Unless the student's CCC determines otherwise, the public agency is not responsible to provide basic equipment that may be required at home as well as in the educational setting, such as the following:

- (1) Wheelchairs.
- (2) Braces.
- (3) Glasses.
- (4) Hearing aids.

(m) The public agency is responsible for maintenance and repair of all equipment and devices provided by the public agency. The public agency is not responsible for the cost of repair or replacement of equipment not purchased by the public agency. However, the public agency must ensure that hearing aids worn in school by students who are deaf or hard of hearing are functioning properly.

(n) The public agency is not responsible for the postsurgical maintenance, programming, or replacement of a student with a disability's medical device that has been surgically implanted, or of an external component of the surgically implanted medical device. However, the public agency must ensure that the external components of the surgically implanted medical devices are functioning properly.

(Indiana State Board of Education; [511 IAC 7-36-7](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 16. [511 IAC 7-36-10](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-36-10](#) State and local assessments

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

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

Sec. 10. (a) A student with a disability must participate in all state and local assessment programs, including assessments described under Section 1111 of the Elementary and Secondary Education Act, 20 U.S.C. 6311, with appropriate accommodations and alternate assessments, if necessary, as indicated in a student's IEP.

(b) The:

- (1) department of education; or
- (2) in the case of a district assessment, public agency;

must, to the extent possible, use universal design principles in developing and administering assessments under this section.

(c) Appropriate accommodations for the state assessment programs are:

- (1) set forth in the program manual issued each year by the department of education; and
- (2) accommodations that do not invalidate scores.

(d) For district assessments, public agencies must develop guidelines for the provision of appropriate accommodations that do not invalidate scores.

(e) The student's CCC must determine, in advance, whether the student will utilize any of the appropriate accommodations described in subsections (c) and (d) during state and district assessments and throughout the student's education program. If the student will utilize accommodations, the CCC must:

- (1) select testing accommodations the student needs in order for the assessment to reflect the student's academic achievement;
- (2) not select testing accommodations that will invalidate a student's score; and
- (3) document the testing accommodations in the student's IEP.

(f) Nothing in this article prohibits the use of accommodations in classroom instruction that, if used for state and district assessments, would invalidate a student's score.

(g) The CCC may determine that a student will participate in an alternate assessment in lieu of participating in the general assessment. For state assessments, the CCC's determination must be based upon the criteria in [511 IAC 5-2-4.5](#).

(h) Before a CCC can determine that a student will participate in an alternate assessment in lieu of the general assessment, the public agency must provide the CCC with a clear explanation of the differences between the assessments, including any effects of state or district policies on the student's education resulting from participation in an alternate assessment.

(i) If the CCC determines that a student will participate in an alternate assessment, the public agency must ensure that the parent is informed that the student's performance will not be measured against grade-level **aligned alternate** academic achievement standards.

(Indiana State Board of Education; [511 IAC 7-36-10](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 17. [511 IAC 7-36-11](#) IS ADDED TO READ AS FOLLOWS:

[511 IAC 7-36-11](#) Caseload

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

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

Sec. 11. The caseload of each teacher, speech-language pathologist, or related services provider shall be limited in number to allow the teacher, speech-language pathologist, or related services provider to implement each assigned student's IEP and shall be determined by the following:

- (1) The nature and severity of the students' disabilities.**
- (2) The type and intensity of services needed as specified in the IEP.**
- (3) The chronological ages of the students.**
- (4) The total number of students with and without disabilities for whom the teacher has instructional responsibility.**

(Indiana State Board of Education; [511 IAC 7-36-11](#))

SECTION 18. [511 IAC 7-39-1](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-39-1](#) Method for determining whether a student needs an educational surrogate parent

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

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

Sec. 1. (a) The public agency must establish, maintain, and implement written procedures regarding the following:

- (1) how the public agency determines a student is in need of an educational surrogate parent.**
- (2) ~~How eligible persons will be trained to serve as educational surrogate parents.~~**

(b) The public agency shall protect the rights of a student by assigning an educational surrogate parent under any of the following circumstances:

- (1) When no parent, as defined in [511 IAC 7-32-70](#), can be identified.**
- (2) When, after reasonable efforts, the public agency cannot locate a parent.**
- (3) When the student is a ward of the state under the laws of the state, unless as follows:**
 - (A) The court order creating the wardship:**
 - (i) permits the student to remain in the home; or**
 - (ii) expressly reserves to a parent the authority to make decisions regarding the student's education or upbringing.**
 - (B) The student is a ward of the department of correction who has a parent as defined by [511 IAC 7-32-70](#).**
- (4) When the student is a homeless student as defined in [511 IAC 7-32-46](#) who is not in the physical custody of a parent or guardian.**

(c) The public agency shall appoint an educational surrogate parent, if needed:

- (1) at the time the student is referred for an initial educational evaluation; and
- (2) any time the public agency determines that a student who has been identified as disabled under this article is in need of an educational surrogate parent.

(d) The public agency must make reasonable efforts to ensure the assignment of an educational surrogate parent not more than thirty (30) calendar days after the public agency determines that a student needs an educational surrogate parent.

(e) If a student is a ward of the state, the educational surrogate parent may be appointed by the judge overseeing the student's case, provided that the educational surrogate parent meets the requirements of section 2(b)(1) and 2(d) of this rule.

(Indiana State Board of Education; [511 IAC 7-39-1](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 19. [511 IAC 7-39-2](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-39-2](#) Method for assigning an educational surrogate parent

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

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

Sec. 2. (a) The public agency shall establish, maintain, and implement written procedures regarding the assignment of educational surrogate parents that include the following:

- (1) A system ~~to assign~~ **for determining the eligibility of individuals to serve as** educational surrogate parents.
- (2) A system ~~for determining the eligibility of individuals to serve as~~ **to assign** educational surrogate parents.
- (3) ~~A system for training individuals to serve as educational surrogate parents that includes training regarding special education laws and rules.~~

(b) The public agency must ensure that a person assigned as an educational surrogate parent:

- (1) is not employed by the department of education, a public agency, or any other agency involved in the education or care of the student;
- (2) has no personal or professional interest that conflicts with the interests of the student whom the educational surrogate parent represents;
- (3) matches the student's cultural and linguistic background to the extent possible; and
- (4) has knowledge and skills that ensure adequate representation of the student.

(c) An individual who otherwise qualifies to be an educational surrogate parent under subsection (b) is not an employee of the public agency solely because the individual may be paid by the agency to serve as an educational surrogate parent.

(d) In the case of a homeless student as defined in [511 IAC 7-32-46](#), who is not in the physical custody of a parent or guardian, appropriate staff of:

- (1) emergency shelters;
- (2) transitional shelters;
- (3) independent living programs; and
- (4) street outreach programs;

may be appointed as temporary educational surrogate parents without regard to subsection (b)(1) until a nontemporary educational surrogate parent can be appointed that meets all of the requirements of subsection (b).

(e) An educational surrogate parent may represent the student in all matters relating to the following:

- (1) Identification.
- (2) Evaluation and eligibility.
- (3) Placement.
- (4) Provision of a free appropriate public education.

- (f) An educational surrogate parent's representation of a student includes the following:
- (1) Participating in case conferences or other parent-teacher conferences.
 - (2) Granting or denying written consent for evaluation or services.
 - (3) Accessing and reviewing the student's educational record.
 - (4) Requesting mediation, a due process hearing, or filing a complaint.
 - (5) Exercising on behalf of the student any other rights that a parent may exercise under this article.

(g) An individual assigned as an educational surrogate parent shall not be liable for damages arising out of any civil action initiated as a result of the individual's discharge of this duty.

~~(h) To meet the training requirements in subsection (a)(3), the public agency must train or contract with another agency or organization to train educational surrogate parents about special education laws and rules in order to develop a pool of educational surrogate parents from which the public agency may draw.~~

(i) (h) When a student attends an educational program outside the school corporation of legal settlement and is in need of an educational surrogate parent, the corporation of legal settlement is responsible to ensure an educational surrogate parent is assigned. The educational surrogate parent may be from the:

- (1) school corporation of legal settlement; or
- (2) geographic area where the educational program is located;

as agreed upon by the administrators of both programs involved.

(j) (i) The public agency shall keep a list of educational surrogate parents from which it makes its assignments. The list shall include the:

- (1) qualifications of; and
- (2) number of assignments for;

each educational surrogate parent.

(Indiana State Board of Education; [511 IAC 7-39-2](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 20. [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\(e\)](#);
- (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](#); filed Dec 3, 2009, 1:50 p.m.: [20091230-IR-511090057FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 21. [511 IAC 7-40-5](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-40-5](#) Conducting an initial educational evaluation

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

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

Sec. 5. (a) After a parent has provided consent, as defined in [511 IAC 7-32-17](#), for an initial educational evaluation, the public agency must conduct a comprehensive and individual educational evaluation in accordance with the requirements of this rule and [511 IAC 7-41](#). The educational evaluation must be conducted by a multidisciplinary team that prepares an educational evaluation report addressing the necessary components of evaluation specific to each suspected disability set forth in [511 IAC 7-41](#). The report is utilized:

- (1) by the student's CCC to determine eligibility for special education and related services; and
- (2) if a student is found to be eligible, to inform the student's CCC of the student's special education and related service needs.

(b) The educational evaluation must be conducted by a multidisciplinary team, which is a group of qualified professionals who conduct a student's educational evaluation with input from the student's parent. The qualified professionals include, but are not limited to, the following:

- (1) At least one (1) teacher licensed in, or other specialist with knowledge in, the area of suspected disability.
- (2) A school psychologist, except for a student with a suspected:
 - (A) developmental delay, in which case the multidisciplinary team shall be at least two (2) qualified professionals from different disciplines based upon the needs of the student;
 - (B) language impairment, a speech-language pathologist and at least one (1) qualified professional from a different discipline based upon the needs of the student; or
 - (C) speech impairment only, a speech-language pathologist may serve as the sole qualified professional on the multidisciplinary team.
- (3) For a student with a suspected specific learning disability, the following:
 - (A) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach students of the same age.
 - (B) For early childhood students, an individual who holds an appropriate license to teach early childhood special education.
- (4) For a student who:
 - (A) is blind or has low vision;
 - (B) is deaf or hard of hearing; or
 - (C) has suspected multiple disabilities;

the public agency may request that representatives of the state-operated schools serve as part of the multidisciplinary team only if the parent has provided written consent, in addition to the written consent to conduct the initial educational evaluation, for the representative's participation in the educational evaluation.

(c) As part of the educational evaluation, the multidisciplinary team must, with or without a meeting, 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, local, and state assessments.
 - (C) Classroom based observations and observations by teachers and related services providers.
- (2) On the basis of that review, and input from the student's parents, identify the following:
 - (A) The suspected disability or disabilities.
 - (B) Any additional data, as described in [511 IAC 7-41](#), that is required for the student's CCC to determine:
 - (i) eligibility for special education; and
 - (ii) the special education and related service needs of the student.
- (3) Obtain information for the CCC to use in making determinations under section 6(b)(1) of this rule.

(d) The initial educational evaluation must be conducted and the CCC convened within fifty (50) instructional days of the date the written parental consent is received by licensed personnel in accordance with section 4(h) of this rule. The time frame does not apply in the following situations:

- (1) When a student has participated in a process that assesses the student's response to scientific, research based interventions described in section 2 of this rule, in which case the time frame is twenty (20) instructional days.
- (2) When a child is transitioning from early intervention (Part C) to early childhood special education (Part B), in which case the evaluation must be completed and the CCC convened to ensure that the child receives special education services by his or her third birthday.
- (3) When the parent of a student repeatedly fails or refuses to produce the student for the evaluation.
- (4) When a student enrolls in a school of another public agency after the relevant time frame in subsection (a) has begun, and prior to completion of the evaluation, if the:
 - (A) subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation; and
 - (B) parent and subsequent public agency agree to a specific time when the evaluation will be completed.

(e) After an educational evaluation has been completed, the multidisciplinary team must compile the findings of the multidisciplinary team into an educational evaluation report.

(f) For a student with the suspected disability of autism spectrum disorder, the educational evaluation report must include the results of the multidisciplinary team's assessments, observations, and collection of information as aligned to the characteristics of autism spectrum disorder.

(g) For a student with a suspected learning disability, the educational evaluation report must include the following:

- (1) For a student who has participated in a process that assesses the student's response to scientific, research based interventions:
 - (A) documentation of previous parent notification about:
 - (i) the:
 - (AA) amount and nature of the student performance data that would be collected; and
 - (BB) general education services that would be provided;
 - (ii) strategies for increasing the student's rate of learning; and
 - (iii) the parent's right to request an educational evaluation to determine eligibility for special education and related services; and
 - (B) the:
 - (i) instructional strategies used; and
 - (ii) student centered data collected.
- (2) A synthesis of the required educational evaluation components in [511 IAC 7-41-12](#) in relationship to the following:
 - (A) Whether the student:
 - (i) does not achieve adequately for the student's age or to meet state grade level standards in one (1) or more of the areas identified in [511 IAC 7-41-12\(a\)\(1\)](#) when provided with learning experiences and

instruction appropriate for the student's age or state grade level standards; and

(ii) meets either of the following criteria:

(AA) The student does not make sufficient progress to meet age or state grade level standards in one (1) or more of the areas identified in [511 IAC 7-41-12\(a\)\(1\)](#) when using a process based on the student's response to scientific, research based intervention.

(BB) The student exhibits a pattern of strengths and weaknesses in performance or achievement, or both, relative to age, state grade level standards, or intellectual development, that is determined by the multidisciplinary team to be relevant to the identification of a specific learning disability. The multidisciplinary team is prohibited from using a severe discrepancy between ~~academic achievement~~ **intellectual ability** and ~~global cognitive functioning~~ **achievement** to meet this requirement.

(B) The effects of any of the following factors on the student's achievement:

(i) Visual, hearing, or motor disability.

(ii) ~~Cognitive~~ **Intellectual** disability.

(iii) Emotional disturbance.

(iv) Cultural factors.

(v) Environmental or economic disadvantage.

(vi) Limited English proficiency.

(C) Whether the multidisciplinary team believes the student has a specific learning disability and the basis for having that opinion. The opinion of the multidisciplinary team is utilized by the CCC to determine whether the student is eligible for special education. Each member of the multidisciplinary team must certify in writing whether the educational evaluation report reflects the member's opinion. If the report does not reflect the member's opinion, the member must submit a separate statement presenting the member's opinion.

(h) If a parent requests, under section 4(h)(1) of this rule, a copy of the educational evaluation report prior to the CCC meeting, the public agency must ensure that a copy of the educational evaluation report is made available at no cost to the parent not less than five (5) instructional days prior to the scheduled CCC meeting.

(i) If a parent requests, under section 4(h)(2) of this rule, a meeting to have the results of the educational evaluation explained prior to the scheduled CCC meeting, the public agency must arrange a meeting with the parent and an individual who can explain the evaluation results within five (5) instructional days prior to the scheduled CCC meeting. The meeting shall be scheduled at a mutually agreed upon date, time, and place. A copy of the educational evaluation report must be provided at no cost to and reviewed with the parent at this meeting.

(j) If the parent does not request a:

(1) copy of the educational evaluation report; or

(2) meeting to explain the evaluation;

prior to the initial CCC meeting, the public agency must provide a copy of the educational evaluation report at no cost to the parent at the CCC meeting. If the student is parentally-placed in a nonpublic school, the public agency shall also provide a copy of the educational evaluation report at no cost to the nonpublic school representative.

(Indiana State Board of Education; [511 IAC 7-40-5](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 22. [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 ~~(f)~~ (j).

(f) A parent's request for a reevaluation 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 (g).

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

~~(h)~~ **(i)** 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)~~ **(j)** 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)~~ **(k)** 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)~~ **(l)** 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)~~ **(m)** In considering the need for reevaluation, 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)~~ **(n)** The review described in subsection ~~(f)~~ **(m)** may be conducted without a meeting.

~~(n)~~ **(o)** If the CCC and other qualified professionals, as appropriate, after reviewing existing evaluation data as described in subsection ~~(f)~~, **(m)**, 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)~~ **(p)** If the CCC and other qualified professionals, as appropriate, after reviewing existing evaluation data as described in subsection ~~(f)~~, **(m)**, 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 ~~(f)~~: **(m)**.

(Indiana State Board of Education; 511 IAC 7-40-8; filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); filed Oct 11, 2013, 3:17 p.m.: [20131106-IR-511130028FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 23. [511 IAC 7-41-1](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-41-1](#) Autism spectrum disorder

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

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

Sec. 1. (a) Autism spectrum disorder is a lifelong developmental disability that includes autistic disorder, Asperger's syndrome, and other pervasive developmental disorders, as described in the current version of the American Psychiatric Association's Diagnostic Statistical Manual of Mental Disorders. The disability is generally evident before three (3) years of age and significantly affects verbal, nonverbal, or pragmatic communication and social interaction skills and results in an adverse effect on the student's educational performance. Other characteristics often associated include the following:

- (1) Engagement in:
 - (A) repetitive activities; and
 - (B) stereotyped movements.
- (2) Resistance to:
 - (A) environmental change; or
 - (B) change in daily routines.
- (3) Unusual responses to sensory experiences.

(b) Autism spectrum disorder does not apply if a student's educational performance is adversely affected primarily by:

- (1) an emotional disability;
- (2) blindness or low vision;
- (3) deaf-blindness; or
- (4) ~~a cognitive~~ **an intellectual** disability;

unless the characteristics of autism spectrum disorder are demonstrated to a greater degree than is normally attributed to these disabilities.

(c) Eligibility for special education as a student with autism spectrum disorder shall be determined by the student's CCC. This determination shall be based on the multidisciplinary team's educational evaluation report described in [511 IAC 7-40-5\(e\)](#) and [511 IAC 7-40-5\(f\)](#), which includes the following:

- (1) An assessment of the following:
 - (A) Current academic achievement as defined at [511 IAC 7-32-2](#).
 - (B) Functional skills or adaptive behavior across various environments from multiple sources.
 - (C) The student's receptive, expressive, pragmatic, and social communication skills that must include at

least one (1) of the following:

- (i) An individually administered norm-referenced assessment when appropriate for the student.
 - (ii) If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that:
 - (AA) has been designed or may be adapted or modified for use with students who have autism spectrum disorder; and
 - (BB) is administered by a professional or professionals with knowledge of assessment strategies appropriate for the student.
 - (D) An assessment of motor skills and sensory responses.
- (2) A social and developmental history that may include, but is not limited to, the following:
- (A) Communication skills.
 - (B) Social interaction skills.
 - (C) Motor skills.
 - (D) Responses to sensory experiences.
 - (E) Relevant family and environmental information.
 - (F) Patterns of emotional adjustment.
 - (G) Unusual or atypical behaviors.
- (3) A systematic observation of the student across various environments.
- (4) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
- (A) exclude the disabilities listed in subsection (b);
 - (B) determine eligibility for special education and related services; and
 - (C) inform the student's CCC of the student's special education and related services needs.

(Indiana State Board of Education; [511 IAC 7-41-1](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 24. [511 IAC 7-41-3](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-41-3](#) Intellectual disability

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

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

Sec. 3. (a) ~~A cognitive~~ **An intellectual** disability:

- (1) is manifested during the developmental period;
- (2) is characterized by significant limitations in ~~cognitive~~ **intellectual** functioning;
- (3) is demonstrated through limitations in adaptive behavior; and
- (4) adversely affects educational performance.

(b) A student with a mild ~~cognitive~~ **intellectual** disability has ~~cognitive~~ **intellectual** functioning that generally:

- (1) falls two (2) standard deviations below the mean; and
- (2) manifests delays in adaptive behavior consistent with the mild ~~cognitive~~ **intellectual** disability.

(c) A student with a moderate ~~cognitive~~ **intellectual** disability has ~~cognitive~~ **intellectual** functioning that generally:

- (1) falls three (3) standard deviations below the mean; and
- (2) manifests delays in adaptive behavior consistent with the moderate ~~cognitive~~ **intellectual** disability.

(d) A student with a severe ~~cognitive~~ **intellectual** disability has ~~cognitive~~ **intellectual** functioning and adaptive behavior skills that generally:

- (1) falls four (4) or more standard deviations below the mean; and
- (2) manifests delays in adaptive behavior consistent with the severe ~~cognitive~~ **intellectual** disability.

(e) Eligibility for special education as a student with a ~~cognitive~~ **an intellectual** disability shall be determined by the student's CCC. This determination shall be based on the multidisciplinary team's educational evaluation report described in [511 IAC 7-40-5](#)(e), which includes the following:

- (1) An assessment of the following:
 - (A) ~~Cognitive~~ **Intellectual** ability and functioning that must include at least one (1) of the following:

- (i) An individually administered norm-referenced assessment.
- (ii) If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that:
 - (AA) has been designed or may be adapted or modified for use with students who have a cognitive and intellectual disability; and
 - (BB) is administered by a professional or team of professionals with knowledge of assessment strategies appropriate for the student.
- (B) Current academic achievement as defined at [511 IAC 7-32-2](#).
- (C) Functional skills or adaptive behavior across various environments from multiple sources.
- (2) A social and developmental history that may include, but is not limited to, the following:
 - (A) Communication skills.
 - (B) Social interaction skills.
 - (C) Motor skills.
 - (D) Responses to sensory experiences.
 - (E) Relevant family and environmental information.
- (3) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
 - (A) determine eligibility for special education and related services; and
 - (B) inform the student's CCC of the student's special education and related services needs.

(Indiana State Board of Education; [511 IAC 7-41-3](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 25. [511 IAC 7-41-6](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-41-6](#) Developmental delay

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

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

Sec. 6. (a) Developmental delay is a disability category solely for students who are at least three (3) years of age and ~~not more less than five (5) nine (9) years of age. or five (5) years of age but not eligible to enroll in kindergarten.~~ Developmental delay means a delay of either two (2) standard deviations below the mean in one (1) of the following developmental areas or one and one-half (1.5) standard deviations below the mean in any two (2) of the following developmental areas:

- (1) Gross or fine motor development.
- (2) Cognitive development.
- (3) Receptive or expressive language development.
- (4) Social or emotional development.
- (5) Self-help or other adaptive development.

(b) Eligibility for special education as a student with a developmental delay shall be determined by the student's CCC. This determination shall be based on the multidisciplinary team's educational evaluation report described in [511 IAC 7-40-5](#)(e), which includes the following:

- (1) An assessment of the developmental areas listed in subsection (a) that must include at least one (1) of the following:
 - (A) An individually administered norm-referenced assessment.
 - (B) If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that:
 - (i) has been designed or may be adapted or modified for use with students who have a developmental delay or delays; and
 - (ii) is administered by a professional or team of professionals with knowledge of assessment strategies appropriate for the student.
- (2) A social and developmental history that may include, but is not limited to, the following:
 - (A) Communication skills.
 - (B) Social interaction skills.
 - (C) Play skills.
 - (D) Motor skills.
 - (E) Responses to sensory experiences.
 - (F) Relevant family and environmental information.

- (G) Patterns of emotional adjustment.
- (H) Unusual or atypical behaviors.
- (3) Available medical information that is developmentally relevant.
- (4) A vision and hearing screening.
- (5) A systematic observation of the student across various environments.
- (6) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:
 - (A) determine eligibility for special education and related services; and
 - (B) inform the student's CCC of the student's special education and related services needs.

(Indiana State Board of Education; [511 IAC 7-41-6](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 26. [511 IAC 7-41-12](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-41-12](#) Specific learning disability

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

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

Sec. 12. (a) "Specific learning disability" means a disorder in one (1) or more of the basic psychological processes involved in understanding or in using language, spoken or written, that adversely affect the student's educational performance, including conditions referred to, or previously referred to, as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. As follows, a specific learning disability:

- (1) Manifests itself when the student does not achieve adequately for the student's age or to meet state approved grade level standards in one (1) or more of the following areas, when provided with learning experiences and instruction appropriate for the student's age or state approved grade level standards:
 - (A) Reading disability, which is a specific learning disability that is neurological in origin and has a continuum of severity. It is characterized by difficulties with accurate or fluent, or both, word recognition and by poor spelling and decoding abilities. A reading disability may be due to difficulties in the following:
 - (i) Basic reading skills.
 - (ii) Reading fluency skills.
 - (iii) Reading comprehension.
 - (B) Written expression disability, which is a specific learning disability that is neurological in origin and has a continuum of severity. Written expression is a complex domain that requires the integration of the following:
 - (i) Oral language.
 - (ii) Written language.
 - (iii) Cognition.
 - (iv) Motor skills.
 - (C) Math disability, which is a specific learning disability that is neurological in origin and has a continuum of severity. The ability to perform mathematical computations and reasoning requires multiple core cognitive processes. A math disability may be due to difficulties in the following:
 - (i) Mathematics calculation.
 - (ii) Mathematics problem solving.
 - (D) Oral expression disability, which is a specific learning disability that:
 - (i) is neurological in origin;
 - (ii) has a continuum of severity; and
 - (iii) is characterized by deficits in using expressive language processes to mediate learning of:
 - (AA) reading;
 - (BB) writing;
 - (CC) spelling; or
 - (DD) mathematics;skills.
 - (E) Listening comprehension disability, which is a specific learning disability that:
 - (i) is neurological in origin;
 - (ii) has a continuum of severity; and
 - (iii) is characterized by difficulties in using receptive language processes to mediate learning of:
 - (AA) reading;
 - (BB) writing;
 - (CC) spelling; or

(DD) mathematics;
skills.

(2) Can be evidenced through either of the following:

(A) Insufficient progress to meet age or state approved grade level standards in one (1) or more of the areas identified in subdivision (1) when using a process based on the student's response to scientific, research based intervention.

(B) A pattern of strengths and weaknesses in performance or achievement, or both, relative to:

- (i) age;
- (ii) state approved grade level standards; or
- (iii) intellectual development;

that is determined by the group to be relevant to the identification of a specific learning disability. The multidisciplinary team is prohibited from using a severe discrepancy between ~~academic achievement~~ **intellectual ability** and global ~~cognitive functioning~~ **achievement** to meet this requirement.

(3) Does not include learning problems that are primarily the result of any of the following:

(A) A visual, hearing, or motor disability.

(B) ~~A cognitive~~ **An intellectual** disability.

(C) An emotional disability.

(D) Cultural factors.

(E) Environmental or economic disadvantage.

(F) Limited English proficiency.

(G) Lack of appropriate instruction in reading or math evidenced by the following:

(i) Data demonstrating that prior to, or part of, the referral process, the student was provided appropriate instruction in general education settings, delivered by qualified personnel.

(ii) Data based documentation of repeated assessments of achievement at reasonable intervals, reflecting formal assessment of student progress during instruction, which was provided to the student's parents.

(b) Eligibility for special education as a student with a specific learning disability shall be determined by the student's CCC. This determination shall be based on the multidisciplinary team's educational evaluation report described in [511 IAC 7-40-5\(e\)](#) and [511 IAC 7-40-5\(g\)](#), which includes the following:

(1) An assessment of current academic achievement as defined at [511 IAC 7-32-2](#).

(2) An observation of the student in the student's learning environment, including the general classroom setting, to document the student's academic performance and behavior in the areas of difficulty. The multidisciplinary team may do either of the following:

(A) Use information from an observation in routine classroom instruction and monitoring of the student's performance that was done before the student was referred for an educational evaluation.

(B) Have at least one (1) member of the multidisciplinary team, other than the student's general education teacher, conduct an observation of the student's academic performance in the general education classroom after:

(i) the child has been referred for an educational evaluation; and

(ii) parental consent for the educational evaluation has been obtained.

In the case of a student of less than school age or out of school, a team member must observe the student in an environment appropriate for a student of that age.

(3) Available medical information that is educationally relevant.

(4) A social and developmental history that may include, but is not limited to, the following:

(A) Communication skills.

(B) Social interaction skills.

(C) Responses to sensory experiences.

(D) Relevant family and environmental information.

(E) Patterns of emotional adjustment.

(F) Unusual or atypical behaviors.

(5) An assessment of progress in the general education curriculum that includes an analysis of any interventions used to address the academic concerns leading to the referral for the educational evaluation.

(6) Any other assessments and information, collected prior to referral or during the educational evaluation, necessary to:

(A) address the exclusionary factors listed in subsection (a)(3);

(B) determine eligibility for special education and related services; and

(C) inform the student's CCC of the student's special education and related services needs.

(c) Other assessments and information, collected prior to referral or during the educational evaluation under subsection (b)(6), may pertain to the following:

- (1) For difficulties with reading, the following:
 - (A) Decoding.
 - (B) Phonological awareness.
 - (C) Phonological memory.
 - (D) Phonological processing.
 - (E) Orthographic processing.
 - (F) Reading fluency (rate and accuracy).
 - (G) Reading comprehension.
- (2) For difficulties with written expression, the following:
 - (A) Handwriting, which encompasses the following:
 - (i) Fine motor skills.
 - (ii) Visual-motor coordination.
 - (iii) Visual and working memory.
 - (iv) Phonological and orthographic processing.
 - (B) Spelling, which encompasses the following:
 - (i) Phonological and orthographic processing.
 - (ii) Written spelling ability.
 - (C) Composition, which encompasses the following:
 - (i) Oral language.
 - (ii) Reading ability.
 - (iii) Attention.
 - (iv) Memory.
- (3) For difficulties with math, the following:
 - (A) Nonverbal problem solving.
 - (B) Working memory.
 - (C) Long-term memory.
 - (D) Processing speed.
 - (E) Attention.

(Indiana State Board of Education; [511 IAC 7-41-12](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 27. [511 IAC 7-42-3](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-42-3](#) Case conference committee participants

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

Affected: [IC 20-19-2](#); [IC 20-30-4](#); [IC 20-30-8](#); [IC 20-35](#)

Sec. 3. (a) For each CCC meeting, the public agency must designate a representative who:

- (1) is:
 - (A) knowledgeable about the availability of, and has the authority to commit, resources of the public agency;
 - (B) qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities; and
 - (C) knowledgeable about the general education curriculum; and
- (2) may be any public agency participant of the CCC if the criteria of subdivision (1) are satisfied.

(b) The public agency must ensure that the case conference participants include the following:

- (1) The designated public agency representative as described in subsection (a).
- (2) One (1) of the following:
 - (A) The student's current teacher of record.
 - (B) In the case of a student with a language or speech impairment only, the speech-language pathologist.
 - (C) For a student whose initial eligibility for special education and related services is under consideration, a teacher licensed in the area of the student's suspected disability.
- (3) Not fewer than one (1) of the student's general education teachers, if the student is or may be participating in the general education environment. For purposes of early childhood, a general education teacher may be:
 - (A) a general education:
 - (i) teacher who provides services to nondisabled students in the public agency's preschool program; or
 - (ii) kindergarten teacher who provides services to nondisabled students if the student is of kindergarten age; or

(B) an individual knowledgeable about early childhood development, curriculum, and integrated placement options if the public agency does not have a general education preschool program.

(4) An individual who can interpret the instructional implications of evaluation results, who may be a member of the CCC described in subdivisions (1) through (3) or subsection (e).

(5) The:

(A) parent of a student less than eighteen (18) years of age; or

(B) student of legal age as defined in [511 IAC 7-32-91](#);

unless the parent or student of legal age choose not to participate, as described in section 2(b) of this rule.

(c) The public agency must ensure the participation in the CCC of additional individuals in the following circumstances:

(1) When a purpose of the meeting is the initial consideration of the student's eligibility for special education and related services, at least one (1) qualified professional who is a member of the multidisciplinary team that evaluated the student.

(2) When a purpose of the meeting is to develop, review, or revise the IEP for a student to be enrolled or currently enrolled in an alternative school or alternative education program under [IC 20-30-8](#), a representative of the alternative school or alternative education program who is authorized to:

(A) make a recommendation regarding admission to the school; and

(B) commit resources.

(3) When a purpose of the meeting is to develop, review, or revise the IEP for a student to be enrolled or currently enrolled in a state-operated school or state-operated facility, a representative of the state-operated school or state-operated facility who is authorized to:

(A) make a recommendation regarding admission to the school or facility; and

(B) commit resources.

(4) When a purpose of the meeting is to develop an IEP for a student to be placed to in a nonpublic school or facility by a public agency in accordance with section 13 of this rule, the following persons must participate in person or by other methods, including individual or conference telephone calls:

(A) A representative of the nonpublic school or facility.

(B) A representative of the local public agency providing any of the student's special education and related services.

(5) When the student has been unilaterally enrolled in a nonpublic school or facility by the student's parent, a representative of the nonpublic school or facility. If the representative cannot attend, the public agency must use other methods to ensure participation by the representative of the nonpublic school or facility, including individual or conference telephone calls or video conference.

(6) When a purpose of the meeting is the development or the annual review of the student's graduation plan as required by [IC 20-30-4](#), the student's school counselor.

(d) The public agency must invite the following individuals to participate in the CCC meeting in the following circumstances:

(1) In the case of a child who is transitioning from Part C of the Individuals with Disabilities Education Act as described in [511 IAC 7-43-2](#), an invitation to the initial CCC meeting must, at the request of the parent, be sent to the Part C service coordinator or other representatives of the Part C system to assist with the smooth transition of services.

(2) When a purpose of the meeting is to develop or revise the transition IEP in accordance with [511 IAC 7-43-4](#) and section 9 of this rule, the public agency must invite the following:

(A) The student. If the student does not attend, the public agency must take other steps to ensure that the student's preferences and interests are considered.

(B) To the extent appropriate, and with the consent of the parent (or student of legal age as defined in [511 IAC 7-32-91](#)), a representative of any participating agency (other than the public agency) likely to be responsible for providing or paying for transition services.

(e) At the discretion of the parent or the public agency, other individuals who have knowledge or special expertise regarding the student, including related services personnel, as appropriate, may participate in the CCC meeting. The determination of the knowledge and special expertise of any individual described in this subsection must be made by the party who invited the individual to participate.

(f) At the discretion of the parent, the student may participate in any CCC meeting in addition to those meetings to which the student must be invited.

(g) A member of the CCC described in subsection (b)(1) through (b)(4) is not required to attend a CCC meeting, in whole or in part, if the parent and the public agency agree, in writing, that the attendance of the member is not necessary because the member's area of the curriculum or related services is not being modified or discussed in the meeting.

(h) A member of the CCC described in subsection (b)(1) through (b)(4) may be excused from attending a CCC meeting, in whole or in part, when the meeting involves a modification to or discussion of the member's area of the curriculum or related services, if the:

- (1) parent, in writing, and the public agency consent to the excusal, as consent is defined at [511 IAC 7-32-17](#); and
- (2) member submits, in writing to the parent and the CCC, input into the development of the IEP prior to the meeting, unless the member attends the part of the meeting that involves a modification to or discussion of the member's area of the curriculum or related services.

(Indiana State Board of Education; [511 IAC 7-42-3](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 28. [511 IAC 7-42-4](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-42-4](#) Written notice before initial case conference committee meetings

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

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

Sec. 4. (a) The public agency must provide to the parent written notice described in subsection (b) not later than five (5) instructional days prior to an initial CCC meeting.

(b) The written notice described in subsection (a) must contain the following:

(1) A description and overall findings of each:

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

the public agency used as a basis for any proposed action.

(2) A description of action that may be proposed by the public agency.

(3) An explanation of why the public agency may propose an action.

(Indiana State Board of Education; [511 IAC 7-42-4](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 29. [511 IAC 7-42-7](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-42-7](#) Written notice by the public agency and parental consent

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

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

Sec. 7. (a) Written notice that meets the requirements of subsection (b) must be given to the parent of a student with a disability before the public agency:

- (1) proposes to initiate or change the identification or educational placement of the student or the provision of a free appropriate public education to the student; or
- (2) refuses to initiate or change the identification, educational placement of the student, or the provision of a free appropriate public education to the student.

(b) The written notice required under subsection (a) must include the following:

- (1) A description of the action proposed or refused by the public agency.
- (2) An explanation of why the public agency proposed or refused to take the action.
- (3) A description of the following:

- (A) Each:
 - (i) evaluation **procedure**;
 - ~~(ii) procedure;~~
 - ~~(iii) (ii) assessment;~~
 - ~~(iv) (iii) record; or~~
 - ~~(v) (iv) report;~~

the agency used as a basis for the proposed or refused action.

(B) Other options that the CCC considered and the reasons why those options were rejected.

(C) Other factors relevant to the agency's proposal or refusal.

(4) A statement that the parent of a student with a disability has protection under the procedural safeguards described in [511 IAC 7-37-1](#) and the means by which a copy of a description of the procedural safeguards can be obtained. The statement must also explain that after a public agency provides written notice regarding a proposed or refused action that is subsequent to the initial IEP, the parent may challenge the action proposed or refused by the public agency by doing any of the following:

(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](#).

(C) Requesting a due process hearing under [511 IAC 7-45-3](#).

(5) A statement that if a parent challenges a proposed IEP prior to its implementation, the public agency must continue to implement the current IEP, except as provided in section 8(e) and 8(f) of this rule.

(6) Sources for the parent to contact to obtain assistance in understanding the provisions of this article.

(c) There is nothing in this article that prohibits a public agency from using the IEP as part of the written notice as long as the documentation the parent receives meets all the requirements in this section.

(d) The written notice must be written in language understandable to the general public and 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 of the parent or other mode of communication used by the parent is not a written language, the public agency must take steps to ensure the following:

(1) That the written notice is translated orally or by other means to the parent in his or her native language or other mode of communication.

(2) That the parent understands the content of the written notice.

(3) That there is written documentation that the requirements in subdivisions (1) and (2) have been met.

(e) The written notice described in this section may be:

(1) provided to the parent at the conclusion of the CCC meeting; or

(2) mailed to the parent at a later date.

If mailed, the written notice must be received by the parent not later than ten (10) business days after the date of the CCC meeting.

(f) After the public agency has provided written notice, the public agency must obtain written consent from the parent before the initial provision of special education and related services to the student. This encompasses the initial IEP and the initial educational placement.

(g) If the public agency is required to obtain consent from the parent under subsection (f), written notice can be provided at the same time as parental consent is requested.

(h) A public agency must make reasonable efforts to obtain written parental consent required under subsection (f). To meet this requirement, the public agency must document its attempts to obtain parental consent, such as the following:

(1) Detailed records of:

(A) telephone calls made or attempted; and

(B) the results of those 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.

(i) If the parent of a student refuses to consent to (or fails to respond to a request for consent for) the initial provision of special education and related services described in subsection (f), the public agency:

(1) may not:

(A) initiate mediation under [511 IAC 7-45-2](#); or

(B) request a due process hearing under [511 IAC 7-45-3](#);

in order to obtain an agreement or a ruling that the services may be provided to the student; and

(2) must not be considered to be in violation of the requirement to make available a free appropriate public education to the student.

(j) After a public agency provides written notice regarding a proposed IEP that is subsequent to the initial IEP, the parent may challenge the action proposed or refused by the public agency by doing any of the following:

(1) 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.

(2) Initiating mediation under [511 IAC 7-45-2](#).

(3) Requesting a due process hearing under [511 IAC 7-45-3](#).

(Indiana State Board of Education; [511 IAC 7-42-7](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 30. [511 IAC 7-42-8](#) IS AMENDED TO READ AS FOLLOWS:

[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 20-32-4-11](#); [IC 20-33-2-10](#); [IC 20-35](#)

Sec. 8. (a) The services identified in an IEP must be provided **as follows**:

(1) No later than ten (10) instructional days after parental consent to the student's initial IEP is received.

(2) On the eleventh instructional day 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. ~~the public agency must continue to implement the current IEP~~

(3) If the parent challenges the proposed IEP prior to its implementation by: the public agency must continue to implement the current IEP until the completion of the meeting, mediation, or hearing requested by the parent under section 7(j) of this rule. Within ten (10) instructional days of the conclusion of that process, the public agency must implement the IEP as revised through the meeting, mediation, or due process hearing, or implement the proposed IEP if no revisions resulted from the parent's challenge.

~~(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) (4)~~ 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) (5)~~ On 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) Beginning in grade 9, communicate at least one (1) time each grading period with the student's parent concerning the student's progress toward the student's selected diploma, as required by [IC 20-32-4-11](#).

(4) (5) 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 (d) and (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](#); filed Dec 3, 2009, 1:50 p.m.: [20091230-IR-511090057FRA](#); errata filed Oct 22, 2010, 11:31 a.m.: [20101110-IR-511090057ACA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 31. [511 IAC 7-42-13](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-42-13](#) Nonpublic school or facility placements by public agencies

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

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

Sec. 13. (a) Before a public agency places a student with a disability in a nonpublic school or facility, the public agency must initiate and conduct a CCC meeting to develop an IEP for the student in accordance with this rule.

(b) The public agency must ensure that a representative of the nonpublic school or facility attends the meeting. If the representative cannot attend, the public agency must use other methods to ensure participation by the

nonpublic school or facility, including individual or conference telephone calls or video conference.

(c) After a student enters a nonpublic school or facility, any meetings to review and revise the student's IEP may be initiated and conducted by the nonpublic school or facility at the discretion of the public agency. If the nonpublic school or facility initiates and conducts the CCC meetings, the public agency must ensure that the parent and a public agency representative:

- (1) are involved in any decision about the student's IEP; and
- (2) agree to any proposed changes in the IEP before those changes are implemented.

(d) Even if a nonpublic school or facility implements a student's IEP, responsibility for compliance with this article remains with the public agency. The public agency must ensure that the student:

- (1) is provided:
 - (A) special education and related services:
 - (i) in conformance with an IEP that meets the requirements of this rule; and
 - (ii) at no cost to the parents; and
 - (B) an education that meets the standards applicable to the state's public agencies, including the requirements of this article; ~~except for the highly qualified special education teacher requirements in [511 IAC 7-36-3](#)~~; and
- (2) has all of the rights of a student with a disability who is served by a public agency.

(e) To comply with subsection (d), the public agency must do the following:

- (1) Monitor compliance through procedures such as the following:
 - (A) Written reports.
 - (B) On-site visits.
 - (C) Parent questionnaires.
- (2) Disseminate copies of applicable standards to each nonpublic school or facility to which the public agency has placed a student with a disability.
- (3) Provide an opportunity for those nonpublic schools and facilities to participate in the development and revision of public agency standards that apply to them.

(Indiana State Board of Education; [511 IAC 7-42-13](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 32. [511 IAC 7-43-1](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-43-1](#) Related services

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

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

Sec. 1. (a) "Related services" means transportation and developmental, corrective, and other supportive services that are required for a student to benefit from special education. The public agency must provide related services to a student if the student's CCC determines that related services are necessary for the student to benefit from special education.

(b) Related services may be provided as:

- (1) direct services by qualified professionals; or
- (2) integrated services by teachers or paraprofessionals acting in accordance with the instructions of qualified professionals.

(c) Related services include the following and may include other developmental, corrective, or supportive services if the services are required for a student to benefit from special education:

- (1) Audiological services.
- (2) Counseling services.
- (3) Early identification and assessment of disabilities in children.
- (4) Interpreting services.
- (5) Medical services for the purpose of diagnosis and evaluation.
- (6) Occupational therapy.

- (7) Orientation and mobility services.
- (8) Parent counseling and training.
- (9) Physical therapy.
- (10) Psychological services.
- (11) Recreation, including therapeutic recreation.
- (12) Rehabilitation counseling.
- (13) School health services.
- (14) School nurse services.
- (15) School social work services.
- (16) Transportation.
- (17) Other supportive services.

(d) Related services do not include the following:

- (1) A medical device that is surgically implanted, such as a cochlear implant.
- (2) The optimization of a surgically implanted device's functioning, such as mapping for a cochlear implant.
- (3) Maintenance of a surgically implanted device.
- (4) The replacement of a surgically implanted device.

(e) Nothing in subsection (d):

- (1) limits the right of a student with a cochlear implant or other surgically implanted devices to receive special education (such as speech and language services) and related services that the student's CCC determines are necessary for the student to receive a free appropriate public education;
- (2) limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including:

- (A) breathing;
- (B) nutrition; or
- (C) operation of other bodily functions;

while the student is transported to and from school or is at school; or

- (3) prevents the routine checking of an external component of a surgically implanted device to make sure it is functioning properly, as required in [511 IAC 7-36-7\(n\)](#).

(f) Audiological services:

(1) may include:

- (A) identification of students with hearing loss;
- (B) determination of the nature, range, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;
- (C) provision of habilitative activities, such as:
 - (i) language habilitation;
 - (ii) auditory training;
 - (iii) hearing evaluation;
 - (iv) speech/lip reading; and
 - (v) speech conservation;
- (D) creation and administration of programs for prevention of hearing loss;
- (E) counseling with and guidance of students, teachers, and parents regarding hearing loss; and
- (F) determination of a student's need for group or individual amplification, selecting and fitting of an appropriate hearing aid, and evaluating the effectiveness of amplification; and

(2) must be provided by a licensed educational or clinical audiologist.

(g) Counseling services may:

(1) include:

- (A) sharing career information;
- (B) administering interest inventories or other career assessment instruments;
- (C) providing assistance in career planning;
- (D) guiding the identification of and planning for a student's course of study designed to help the student achieve the postschool goals and outcomes; and
- (E) assisting the student to:
 - (i) understand and cope with a disability;
 - (ii) cope with a personal problem or crisis; and
 - (iii) develop and implement a behavioral intervention plan;

- (2) be provided:
 - (A) in the instructional setting or another setting; and
 - (B) on a regular schedule or an as-needed basis; and
- (3) be provided by:
 - (A) school social workers or school counselors;
 - (B) school, clinical, or child psychologists;
 - (C) administrators or teachers;
 - (D) related services personnel;
 - (E) vocational rehabilitation counselors; or
 - (F) other qualified professionals.

(h) Early identification and assessment of disabilities includes, but is not limited to, a formal plan for identifying a disability as early as possible in a child's life.

(i) Requirements for interpreting services are as follows:

(1) Interpreting services include the following:

(A) When used with respect to students who are deaf or hard of hearing, the following:

- (i) Oral transliteration services.
- (ii) Cued language transliteration services.
- (iii) Sign language transliteration and interpreting services.
- (iv) Transcription services, such as the following:
 - (AA) Communication access real time translation (CART).
 - (BB) C-Print.
 - (CC) TypeWell.

(B) Special interpreting services for students who are deaf-blind.

(2) Individuals who provide sign language transliteration and interpreting services described in subdivision

(1)(A)(iii) must be certified to interpret in an educational setting.

(j) Medical services for the purpose of diagnosis and evaluation must be:

(1) considered a related service provided at no cost to the parent only if:

- (A) a diagnosis and evaluation of a medically related disability is needed to determine eligibility for special education or related services; or
- (B) ordered by a hearing officer to determine a student's eligibility for special education and related services or appropriate services for an eligible student; and

(2) provided by a physician with an unlimited license to practice medicine.

(k) Occupational therapy services:

(1) may include:

(A) evaluating:

- (i) developmental levels;
- (ii) gross and fine motor functioning; and
- (iii) self-care skills;

(B) developing, improving, or restoring functions impaired or lost through:

- (i) illness;
- (ii) injury; or
- (iii) deprivation;

(C) improving ability to perform tasks for independent functioning if functions are impaired or lost;

(D) preventing, through early intervention, initial or further impairment or loss of function;

(E) designing or adapting:

- (i) materials;
- (ii) equipment; or
- (iii) the educational environment;

to meet a student's needs;

(F) consulting with:

- (i) parents;
- (ii) teachers;
- (iii) paraprofessionals; and
- (iv) other related services personnel;

regarding activities that can assist in meeting the goals of therapy; and

- (2) must be provided by a:
 - (A) certified occupational therapist; or
 - (B) certified occupational therapy assistant under the supervision of a certified occupational therapist.

- (l) Orientation and mobility services:
 - (1) are provided to students who are blind or have low vision by qualified professionals to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
 - (2) include teaching students, as appropriate:
 - (A) spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (such as using sound at a traffic light to cross the street);
 - (B) ~~using~~ **to use** the long cane or a service animal:
 - (i) to supplement visual travel skills; or
 - (ii) as a tool for safely negotiating the environment for students with no available travel vision;
 - (C) understanding and using remaining vision and distance low vision aids; and
 - (D) other concepts, techniques, and tools.

- (m) Parent counseling and training may:
 - (1) include:
 - (A) assisting the parents in understanding the special needs of their child;
 - (B) providing parents with information on child development; and
 - (C) assisting parents in understanding the student's educational program and helping them to acquire the necessary skills that will allow them to support the implementation of their child's IEP;
 - (2) be provided:
 - (A) as part of the CCC process; or
 - (B) in the form of special meetings or conferences; and
 - (3) be provided by any of the persons listed in subsection (g)(3). The nature of the parent counseling and training needs must guide the selection of the appropriate individual and manner in which the counseling and training are provided.

- (n) Physical therapy:
 - (1) may include:
 - (A) evaluating:
 - (i) developmental levels;
 - (ii) gross motor function;
 - (iii) reflex levels;
 - (iv) range of motion;
 - (v) muscular strength; and
 - (vi) respiratory function;
 - (B) designing and implementing activities to:
 - (i) prevent;
 - (ii) correct;
 - (iii) treat; or
 - (iv) alleviate;impairments;
 - (C) evaluating, designing, and recommending adaption of assistive devices and equipment; and
 - (D) consulting with:
 - (i) parents;
 - (ii) teachers;
 - (iii) paraprofessionals; and
 - (iv) other related services personnel;regarding activities that can assist in meeting the goals of therapy; and
 - (2) must be provided:
 - (A) by a:
 - (i) licensed physical therapist; or
 - (ii) certified physical therapist assistant under the direct supervision of a licensed therapist; and
 - (B) only upon referral or order of a licensed:
 - (i) physician;
 - (ii) podiatrist;

- (iii) psychologist;
- (iv) chiropractor; or
- (v) dentist;

or as required otherwise permitted by state law governing licensing of physical therapists.

(o) Psychological services must be provided by school, clinical, and child psychologists or psychiatrists who are appropriately licensed and trained to provide the following services:

- (1) Administering psychological and educational assessments as a member of the multidisciplinary team.
- (2) Interpreting assessment results.
- (3) Obtaining, integrating, and interpreting information regarding student behavior and conditions related to learning.
- (4) Consulting and working with school personnel and parents in planning and developing a student's IEP to meet the special needs of a student as indicated by the following:
 - (A) Psychological assessments.
 - (B) Interviews.
 - (C) Direct observation.
 - (D) Behavioral assessments.
- (5) Planning and managing a program of psychological services, including psychological counseling for students and parents.
- (6) Assisting in developing positive behavioral intervention strategies.

(p) Recreation services may include the following:

- (1) Assessment of leisure function.
- (2) Therapeutic recreation services.
- (3) Recreation programs in the schools and community agencies.
- (4) Leisure education.

(q) Rehabilitation counseling services may include the following:

- (1) Services provided by qualified professionals in individual or group sessions that focus specifically on the following:
 - (A) Career development.
 - (B) Employment preparation.
 - (C) Achieving independence.
 - (D) Integration in the workplace and community of the student with a disability.
- (2) Vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.

(r) School health services:

- (1) include health services that are designed to enable a student with a disability to receive a free appropriate public education as described in the student's IEP; and
- (2) must be provided by either:
 - (A) a licensed school nurse; or
 - (B) other qualified personnel.

(s) School nurse services:

- (1) are health services designed to enable a student with a disability to receive a free appropriate public education as described in the student's IEP;
- (2) include the services described in [511 IAC 4-1.5-6](#), such as developing health care plans that are integrated into the student's IEP; and
- (3) must be provided by a licensed school nurse.

(t) School social work services:

- (1) may include:
 - (A) serving as a member of the educational evaluation multidisciplinary team with responsibilities that may include the preparation of a social and developmental history on a student;
 - (B) group and individual counseling with the student and family;
 - (C) working, in partnership with parents and others, on those problems in a student's home, school, and community life that affect the student's adjustment in the educational setting;

- (D) mobilizing school and community resources to enable the student to learn as effectively as possible in the student's educational program; or
 - (E) assisting in developing positive behavioral intervention strategies; and
- (2) must be provided by a licensed school social worker.

(u) Transportation:

(1) may include:

(A) travel:

- (i) to and from the educational setting and between educational settings;
- (ii) in and around the educational setting;
- (iii) to and from related services that are provided outside the educational setting; or
- (iv) for participation in nonacademic and extracurricular activities if transportation is provided to nondisabled students; or

(B) any service not provided to nondisabled students, including:

- (i) special bus routes;
- (ii) special or adapted vehicles;
- (iii) aides in attendance;
- (iv) separate or different modes of transportation, such as taxi or individual transportation; or
- (v) special equipment such as oxygen, lifts, and ramps;

(2) must be provided by the:

(A) public agency, directly or by contract; or

(B) student's parent, but only if the parent is willing to provide transportation, in which case the parent is entitled to reimbursement at the rate that employees of the public agency are reimbursed for travel expenses; and

(3) must be provided:

(A) when the student:

- (i) needs assistance moving from place to place within the educational setting;
- (ii) is enrolled in a school other than the school the student would attend if not disabled, including another building in the same school corporation, to another school corporation, or to a state-operated school; or
- (iii) is enrolled as a residential student in a public or private residential facility, in accordance with [511 IAC 7-42-14](#);

(B) when issues about the student's special physical health, mobility, or behavior require special consideration for type of transportation safety, supervision, assistance, or time in transit; or

(C) when the student:

- (i) requires a shortened instructional day;
- (ii) needs a related service that is provided:
 - (AA) at a site other than the school attended by the student; or
 - (BB) outside of the instructional day; or
- (iii) for other reasons, cannot be transported with nondisabled students or needs special assistance or consideration.

(Indiana State Board of Education; [511 IAC 7-43-1](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 33. [511 IAC 7-43-4](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-43-4](#) Transition individualized education program

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

Affected: [IC 20-19-2](#); [IC 20-30-4](#); [IC 20-30-10-2](#); [IC 20-35](#); [IC 22-4.1-2](#)

Sec. 4. (a) The CCC must develop a transition IEP that will be in effect when the student:

- (1) enters into grade 9; or
- (2) becomes fourteen (14) years of age;

whichever occurs first, or earlier if determined appropriate by the CCC.

(b) This section does not apply to a student:

- (1) convicted as an adult under state law; and
- (2) incarcerated in an adult prison;

if the student's eligibility under this article will end because of the student's age, before the student will be eligible

to be released from prison based on consideration of the student's sentence and eligibility for early release.

(c) The review and revision of a transition IEP must be in accordance with this section and [511 IAC 7-42-9](#).

(d) Notice of a CCC meeting to develop or revise a transition IEP must be in accordance with [511 IAC 7-42-2](#).

(e) ~~The members of the CCC who must participate in the development or revision of a transition IEP are specified in [511 IAC 7-42-3\(d\)\(2\)](#), which states that the public agency must invite the following individuals to participate in the CCC to develop or revise the transition IEP:~~ **public agency must ensure the participation of the student's school counselor in the development or revision of a transition IEP and must invite the following individuals to participate in the CCC to develop or revise the transition IEP:**

(1) The student, and, if the student does not attend, the public agency must take other steps to ensure that the student's preferences and interests are considered. ~~and~~

(2) To the extent appropriate, and with the consent of the parent (or student of legal age as defined in [511 IAC 7-32-91](#)), a representative of any participating agency (other than the public agency) likely to be responsible for providing or paying for transition services.

(f) When developing or revising a student's transition IEP, a CCC must consider the general and special factors described in [511 IAC 7-42-6\(b\)](#) and [511 IAC 7-42-6\(c\)](#).

(g) A general education teacher of the student, as a member of the CCC, must, to the extent appropriate, participate in the development or revision of a student's transition IEP, including the determination of the following:

- (1) Appropriate positive behavioral interventions and supports and other strategies for the student.
- (2) Supplementary aids and services, program modifications, and support for school personnel consistent with subsection (h)(8).

(h) A transition IEP must contain the following:

(1) A statement of the student's present levels of academic achievement and functional performance, including the following:

(A) How the student's disability affects the student's involvement and progress in the general education curriculum.

(B) Information from age appropriate transition assessments of:

- (i) strengths;
- (ii) preferences; and
- (iii) interests.

(2) Appropriate measurable postsecondary goals, based upon age appropriate transition assessments that are related to:

- (A) training;
- (B) education;
- (C) employment; and
- (D) where appropriate, independent living skills.

(3) Documentation ~~regarding whether the student will pursue a~~ **the CCC discussed with the student's parent and the student, if appropriate:**

(A) ~~high school diploma as defined in [511 IAC 6-7.1-1\(e\)](#); or~~ **the types of diplomas available for the student to receive;**

(B) ~~certificate of completion.~~ **the course requirements for each type of diploma;**

(C) **employment and career options for the student and the type of academic, technical, and vocational preparation necessary to achieve the employment or career; or**

(D) **the type of diploma the student will seek and courses that allow the student to progress toward the diploma in a timely manner or whether the student will pursue a certificate of completion.**

(4) The transition services, as defined at [511 IAC 7-32-100](#), needed to assist the student in reaching postsecondary goals, including the individuals and agencies identified for implementing the transition services.

(5) If appropriate based upon the transition services identified in subdivision (4), documentation that the CCC reviewed information, and the public agency presented written information to the parent and student, regarding available adult services provided through state and local agencies and other organizations to facilitate student movement from the public agency to adult life. Adult services may include, but are not limited to, services provided by the following:

- (A) A vocational rehabilitation services program.
- (B) The department of workforce development.

- (C) The Social Security Administration.
- (D) The bureau of developmental disabilities services.
- (E) A community mental health center.
- (F) A community rehabilitation program.
- (G) An area agency on aging.
- (6) The following:
 - (A) A statement of measurable annual goals, including academic and functional goals designed to support and align with the student's postsecondary goals, that meet:
 - (i) the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and
 - (ii) each of the student's other educational needs that result from the student's disability.
 - (B) For students who participate in alternate assessments aligned to alternative academic achievement standards, a description of benchmarks or short-term objectives.
- (7) A description of the following:
 - (A) How the student's progress toward meeting the postsecondary and annual goals described in subdivision (6) will be measured.
 - (B) When periodic reports on the progress the student is making toward meeting the postsecondary and annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.
- (8) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to do the following:
 - (A) Advance appropriately toward attaining the postsecondary and annual goals.
 - (B) Be involved in and make progress in the general education curriculum in accordance with subdivision (1) and participate in extracurricular and other nonacademic activities.
 - (C) Be educated and participate with other students with disabilities and nondisabled students in the activities described in this article.
- (9) An explanation of the extent, if any, to which the student will not participate with nondisabled students in:
 - (A) the general education environment; and
 - (B) extracurricular and other nonacademic activities.
- (10) A statement regarding the student's participation in statewide or local assessments of student achievement, including the following:
 - (A) Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student consistent with [511 IAC 7-36-10](#).
 - (B) If the CCC determines, in accordance with [511 IAC 7-36-10\(g\)](#) and [511 IAC 7-36-10\(h\)](#), that the student must take an alternate assessment of student achievement, instead of a particular statewide or local assessment, a statement:
 - (i) ~~of why the student cannot participate in the general assessment; that the criteria for the alternate assessment have been met;~~
 - (ii) of why the particular alternate assessment selected is appropriate for the student; and
 - (iii) documenting that the public agency informed the parent that the student's performance will not be measured against grade-level **aligned alternate** academic achievement standards.
- (11) The projected date for initiation of services and modifications described in subdivision (8) and the anticipated length and frequency, location, and duration of services and modifications.
- (12) Courses of study to achieve postsecondary goals.
- (13) A statement of the student's need for extended school year services consistent with [511 IAC 7-36-4\(c\)](#) and [511 IAC 7-36-4\(d\)](#).
- (14) Identification of the placement in the least restrictive environment as described in [511 IAC 7-42-10](#).
- (15) Beginning not later than one (1) year before the student becomes eighteen (18) years of age, a statement that the student and the parent have been informed that parent's rights under this article will transfer to the student at eighteen (18) years of age in accordance with section 5 of this rule.
- (16) Written notes documenting the meeting of the CCC, including the following:
 - (A) The date and purpose of the meeting.
 - (B) The names and titles of the participants.
 - (C) The issues discussed during the meeting.

(i) Not later than the date on which the student completes grade 9, the CCC shall further develop the student's graduation plan developed in grade 6 pursuant to [IC 20-30-4](#). The graduation plan must be developed in consultation with the student's school counselor and parent and input from the student. The

graduation plan developed in grade 6 shall be further developed, and then reviewed annually, to include the following:

- (1) The subject and skill areas of interest to the student.
- (2) A program of study under the college/technology preparation curriculum adopted by the state board under [IC 20-30-10-2](#) for grades 10, 11, and 12 that meets the interests and aptitude of the student.
- (3) Assurances that, upon satisfactory fulfillment of the plan, the student:
 - (A) is entitled to graduate; and
 - (B) will have taken at least the minimum variety and number of courses necessary to gain admittance to a state educational institution.
- (4) An indication of assessments (other than ISTEP and the graduation examination) that the student plans to take voluntarily during grade 10 through grade 12, and which may include any of the following:
 - (A) The SAT Reasoning Test.
 - (B) The ACT test.
 - (C) Advanced placement exams.
 - (D) College readiness exams approved by the department.
 - (E) Workforce readiness exams approved by the department of workforce development established under [IC 22-4.1-2](#).

~~(j)~~ (j) Nothing in this section must be construed to require:

- (1) that additional information be included in a student's transition IEP beyond what is explicitly required in this article; or
- (2) the CCC to include information under one (1) component of the student's transition IEP that is already contained under another component of the student's transition IEP.

~~(k)~~ (k) The public agency must give the parent a copy, at no cost, of the student's transition IEP. The copy may be:

- (1) provided to the parent at the conclusion of the CCC meeting; or
- (2) mailed to the parent at a later date.

If mailed, the copy must be received by the parent no later than ten (10) business days after the date of the CCC meeting.

~~(l)~~ (l) Any member of the CCC may submit a written opinion regarding the transition IEP. The written opinion must:

- (1) be submitted to the public agency not later than ten (10) business days after the date of the CCC meeting; and
- (2) remain with the student's educational records.

~~(m)~~ (m) If a participating agency, other than the public agency, fails to provide the transition services described in a transition IEP, the public agency must reconvene the CCC to identify alternative strategies to meet the transition objectives for the student set out in the transition IEP.

~~(n)~~ (n) Nothing in this article relieves any participating agency, including a state vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students who meet the eligibility criteria of that agency.

(Indiana State Board of Education; [511 IAC 7-43-4](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 34. [511 IAC 7-43-7](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-43-7](#) Summary of performance

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

Affected: [IC 20-19-2](#); [IC 20-32-4-4](#); [IC 20-33-2-28.5](#); [IC 20-35](#)

Sec. 7. (a) A public agency must provide a student with a summary of the student's academic achievement

and functional performance, which must include recommendations on how to assist the student in meeting the student's postsecondary goals, when a student:

- (1) graduates with a **Core 40, or higher**, high school diploma as defined in [511 IAC 6-7.1-1\(e\)](#);
- (2) leaves high school with a **general diploma or a** certificate of completion; or
- (3) exceeds the age eligibility for special education and related services under this article.

(b) A public agency may provide a student with a summary of performance when the student withdraws from high school after:

- (1) an exit interview is conducted; and
- (2) the student's parent and principal consent to the withdrawal as specified in [IC 20-33-2-28.5\(b\)](#).

(c) Leaving high school with a certificate of completion or withdrawal from high school as described in [IC 20-33-2-28.5](#) does not extinguish a student's eligibility for special education and related services.

(d) A summary of performance should include, but not be limited to, the following items:

- (1) Basic demographic information about the student.
- (2) Postsecondary goals that:
 - (A) take into account the student's educational program; and
 - (B) reflect the:
 - (i) interests;
 - (ii) preferences; and
 - (iii) strengths;of the student.
- (3) A summary of the student's academic achievement and functional performance. Information that can be used to prepare the summary includes, but is not limited to, the following:
 - (A) An academic transcript.
 - (B) Academic assessment results.
 - (C) Assessments of functional skills or adaptive behavior that explain a student's ability to:
 - (i) live;
 - (ii) work; and
 - (iii) access the community.
 - (D) Work force readiness assessments, career exploration internships, cooperative education experiences, or workforce credentials under ~~[IC 20-32-4-4\(6\)\(A\)](#)~~ **[IC 20-32-4-4\(a\)\(6\)\(A\)](#)**.
- (4) Recommendations to assist the student in meeting postsecondary goals, including accommodations, modifications, or assistive technology utilized by the student and identified by the student as particularly helpful or necessary to meet academic or functional goals, or both.

(Indiana State Board of Education; [511 IAC 7-43-7](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 35. [511 IAC 7-45-1](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-45-1](#) Complaints

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

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

Sec. 1. (a) Any individual, group of individuals, agency, or organization may file a complaint alleging violations of federal or state laws that apply to special education programs. The complaint must:

- (1) be in writing;
- (2) include a statement alleging that the public agency has violated a requirement of:
 - (A) this article;
 - (B) the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.; or
 - (C) the federal regulations implementing the Individuals with Disabilities Education Act;
- (3) include the facts on which the alleged violation is based;
- (4) be signed by the complainant or complainants and include contact information of the complainant or complainants; and
- (5) be submitted to the:
 - (A) division of special education; and

(B) public agency serving the student.

(b) If the complaint alleges violations with respect to a specific student, the complaint must also include the following:

(1) The:

(A) name and address of the residence of the student; or

(B) in the case of a homeless student as defined at [511 IAC 7-32-46](#), name of the student and available contact information for the student.

(2) The name of the school the student is attending.

(3) A description of the nature of the alleged violations with respect to the student, including facts relating to the alleged violations.

(4) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

(c) The complaint must allege a violation that occurred within one (1) year of the date that the complaint is received by the division of special education.

(d) The division of special education shall develop and implement written procedures to investigate and resolve complaints, including complaints filed by organizations or individuals from other states when the complaints meet the requirements of this section. These procedures shall be widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies, independent living centers, and other appropriate entities. The procedures shall address the following:

(1) Identifying issues in a complaint.

(2) Assigning a complaint investigator.

(3) Conducting an independent investigation, both on site and off site.

(4) Giving the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.

(5) Providing the public agency the opportunity to respond to the complaint including the following:

(A) At the discretion of the public agency, a proposal to resolve the complaint.

(B) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation under section 2 of this rule.

(6) Obtaining an extension of time for the investigation only if:

(A) exceptional circumstances exist with respect to a particular complaint; or

(B) the complainant and the public agency involved agree to extend the time to engage in mediation under section 2 of this rule.

(7) Reviewing all relevant information and making an independent determination as to whether the public agency is violating a requirement of:

(A) this article;

(B) Part B of the Individuals with Disabilities Education Act; or

(C) any other applicable Indiana law.

(8) Issuing a written complaint investigation report that addresses each allegation in the complaint, including findings of fact, conclusions, and reasons for the decision.

(9) Conducting a reconsideration of the decision.

(10) Monitoring compliance with the final decision, including the following:

(A) Corrective action.

(B) Technical assistance activities.

(C) Negotiations.

(e) The written procedures shall also include timelines for the following:

(1) The investigation.

(2) The issuance of a report.

(3) Reconsideration.

(4) Monitoring compliance.

(f) The individuals assigned as complaint investigators shall be trained employees of the department of education or other state agencies, as appropriate.

(g) Within ten (10) calendar days of the date the complaint is received by the public agency, the public agency

has the discretion to do any of the following:

- (1) Respond to the complaint in writing and forward the response to the division of special education and the complainant.
- (2) Resolve the complaint with a written agreement signed by the public agency and the complainant. The agreement must:
 - (A) be forwarded to the division of special education; and
 - (B) specify whether any issues remain that require investigation.
- (3) Agree with a parent who has filed a complaint to engage in mediation under section 2 of this rule.
- (4) Notify the division of special education that it should begin investigating the complaint because the public agency will not be exercising the options in subdivision (1), (2), or (3).

(h) If the public agency and a parent who has filed a complaint agree to engage in mediation under section 2 of this rule, the mediation must be completed within twenty (20) calendar days from the date the parties agree in writing to engage in mediation. If a mediation agreement is executed by the parent and the public agency, the public agency must forward the mediation agreement to the division of special education.

(i) If the public agency under subsection (g)(2) or (g)(3) resolves some but not all of the issues contained in a complaint, the division of special education will investigate the unresolved issues.

(j) Nothing in this section precludes a complainant from filing a new complaint to seek enforcement of a written agreement entered into by the complainant and public agency under subsection (g)(2) or (g)(3).

(k) If the public agency fails to respond under subsection (g), the division of special education will begin investigating the complaint eleven (11) days after the division of special education receives the complaint.

(l) A written complaint report shall be issued by the division of special education within forty (40) calendar days of receiving the complaint, unless an extension has been granted under subsection (d)(6).

(m) Either the public agency or the complainant may request reconsideration by the director of the division of special education of any part of a complaint report. A request for reconsideration must be submitted to the division of special education within ~~seven (7)~~ **ten (10)** calendar days of ~~receiving the~~ **date the complaint report is issued**. The request for reconsideration shall:

- (1) be in writing;
- (2) state the specific portion or portions of the report the party believes should be reconsidered with specific facts to support the request; and
- (3) be sent to the director of the division of special education.

(n) If the director of the division of special education revises the written complaint report, the revised report shall be issued within sixty (60) calendar days of the date the written complaint is received by the division of special education, unless an extension has been granted under subsection (d)(6).

(o) Corrective action required by the department of education shall be binding on the public agency. The timelines for the public agency to:

- (1) submit a corrective action plan; and
- (2) achieve compliance;

shall be included in the complaint investigator's report. Compliance with corrective action required by the department of education shall be monitored by the division of special education.

(p) Failure of the public agency to achieve compliance with corrective action required by the department of education shall result in the withholding of federal and state funds to the public agency.

(q) Complaint investigations conducted under this section are not a substitute for due process procedures in sections 3 through 8 of this rule.

(r) If a written complaint is received that is also the subject of a due process hearing or the complaint contains multiple issues, of which one (1) or more are part of that hearing, the department of education shall set aside any

part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action shall be resolved using the time limits and procedures described in this section.

(s) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties, the:

- (1) hearing decision is binding on that issue; and
- (2) department of education shall inform the complainant to that effect.

(t) A complaint alleging a public agency's failure to implement a due process decision must be resolved by the department of education through the complaint process set forth in this section.

(Indiana State Board of Education; [511 IAC 7-45-1](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 36. [511 IAC 7-45-5](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-45-5](#) Responding to the request for a due process hearing

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

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

Sec. 5. (a) The party receiving the due process hearing request must, within ten (10) calendar days of receiving the due process hearing request, send to the other party a response that specifically addresses the issues raised in the due process hearing request.

(b) If the party receiving the due process hearing request is the public agency and it has not sent written notice in accordance with [511 IAC 7-40-4\(e\)](#) or [511 IAC 7-42-7](#) to the parent regarding the subject matter contained in the parent's due process request, the public agency must, within ten (10) calendar days of receiving the due process hearing request, send a response to the parent that includes the following:

- (1) An explanation of why the public agency proposed or refused to take the action raised in the due process hearing request.
- (2) A description of the following:
 - (A) Other options considered by the CCC and the reasons why those options were rejected.
 - (B) Each:
 - (i) evaluation **procedure**;
 - ~~(ii) procedure~~;
 - ~~(iii)~~ **(ii)** assessment;
 - ~~(iv)~~ **(iii)** record; or
 - ~~(v)~~ **(iv)** report;
 - the public agency used as the basis for proposed or refused action.
 - (C) Other factors that are relevant to the public agency's proposed or refused action.

(c) A response by the public agency under subsection (b) shall not be construed to preclude the public agency from asserting, when appropriate, that the parent's due process request was insufficient under section 4 of this rule.

(Indiana State Board of Education; [511 IAC 7-45-5](#); filed Jul 14, 2008, 1:24 p.m.: [20080813-IR-511080112FRA](#); readopted filed Nov 6, 2014, 3:23 p.m.: [20141203-IR-511140382RFA](#))

SECTION 37. [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](#); [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 **served electronically or** 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 **served electronically or** 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\(b\)](#).
- (3) Present evidence and:
 - (A) confront;
 - (B) cross-examine; and
 - (C) compel the attendance of;

witnesses.

- (4) Conduct discovery in accordance with [IC 4-21.5-3](#), Indiana Rules of Trial Procedure, and this section.
- (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.
- (6) A separation of witnesses who are not parties to the dispute.
- (7) Obtain a written or, at the option of the parents, an electronic verbatim transcript of the hearing.
- (8) Obtain written or, at the option of the parents, electronic findings of facts and decision.
- (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; or
 - (B) 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 that a party may seek judicial review of the decision and orders by filing a petition for judicial review in a civil court with jurisdiction within thirty (30) calendar days after receipt of the independent hearing officer's final decision.

(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 judicial review is filed.

(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 **serve the decision electronically to parties in the electronic filing system. If a party is not accessing the electronic filing system, 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 a petition for judicial review is filed as described in 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) file a petition for judicial review 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 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 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 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](#); filed Dec 3, 2009, 1:50 p.m.: [20091230-IR-511090057FRA](#); filed May 25, 2010, 8:19 a.m.:

[20100623-IR-511090795FRA](#); errata filed Jun 29, 2010, 3:14 p.m.: [20100714-IR-511090795ACA](#); readopted filed

SECTION 38. [511 IAC 7-49-2](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-49-2](#) Definitions

Authority: [IC 20-51-4-4.6](#)

Affected: [IC 20-19-3-1](#); [IC 20-35-2-1](#); [IC 20-51-1-4.7](#); [IC 20-51-4-4](#)

Sec. 2. The following definitions apply throughout this rule:

- (1) "Choice scholarship student" means a student ~~with a disability~~ who has been awarded a choice scholarship under [IC 20-51-4-4](#) ~~(2)~~. [IC 20-51-4-4\(a\)\(2\)](#).
- (2) "Choice school" means a nonpublic school designated by the department as an eligible school under [IC 20-51-1-4.7](#) and [512 IAC 4](#).
- (3) "Choice scholarship **special** education plan" or "CSEP" means the written document developed by the choice scholarship education planning team that describes the special education and related services the choice school will provide to the choice scholarship student **with a disability**.
- (4) "Department" means the department of education established by [IC 20-19-3-1](#).
- (5) "Division of special education" means the division of special education established by [IC 20-35-2-1](#).

(Indiana State Board of Education; [511 IAC 7-49-2](#); filed Nov 25, 2014, 3:40 p.m.: [20141224-IR-511130560FRA](#))

SECTION 39. [511 IAC 7-49-4](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-49-4](#) Choice scholarship education plan

Authority: [IC 20-51-4-4.6](#)

Affected: [IC 20-51-4](#)

Sec. 4. (a) ~~Within a reasonable time~~ **ten (10) instructional days** after the a choice scholarship student **with a disability** enrolls in the choice school, the choice school shall convene a meeting with the parent of the choice scholarship student and school staff to:

- (1) determine the choice scholarship student's special education and related service needs; and
- (2) develop a CSEP for the choice scholarship student.

(b) The CSEP shall be in writing and, at a minimum, include the following components:

- (1) Measurable goals.
- (2) Information on how the student's progress will be monitored and how parents will be informed of the progress.
- (3) Accommodations that the choice school will provide to the student, including accommodations needed for the student to participate in statewide assessments.
- (4) The length, frequency, and duration of the special education and related services to be provided.

(c) The CSEP shall include statements to inform the parents of the following:

- (1) The parent must provide written consent in order for the choice school to implement the CSEP.
- (2) The parent may revoke consent at any time by providing a signed written statement revoking such consent.
- (3) Revocation of consent encompasses the entire CSEP.
- (4) Upon receipt of the written revocation, the choice school will stop implementing the CSEP.

(d) A parent may request a meeting at any time to review the CSEP. The choice school shall convene a meeting to review the CSEP within a reasonable time after receiving the request.

(e) For any choice scholarship student **with a disability** returning to the choice school, the student's previous year's CSEP shall be reviewed ~~at the beginning~~ **within ten (10) instructional days** of the **start of the** school year to inform the planning and development of a CSEP for the current school year if the ~~choice scholarship~~ student selects the choice school as the special education service provider for the current year.

(Indiana State Board of Education; [511 IAC 7-49-4](#); filed Nov 25, 2014, 3:40 p.m.: [20141224-IR-511130560FRA](#))

SECTION 40. [511 IAC 7-49-5](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-49-5](#) Parent consent

Authority: [IC 20-51-4-4.6](#)

Affected: [IC 20-51-4-4](#)

Sec. 5. (a) The parent must provide written consent for the CSEP in order for the choice school to implement the CSEP.

(b) The choice school shall provide the parent with a copy of the CSEP.

(c) The choice school shall implement the CSEP as written.

(d) At any time after the parent gives consent for implementation of the CSEP, the parent may revoke that consent by submitting a signed written statement to the choice school revoking the consent.

(e) A parent's revocation of consent encompasses everything included in the CSEP.

(f) The choice school:

- (1) shall terminate special education and related services upon receipt of the parent's written revocation; and
- (2) is not required to provide special education and related services for the remainder of the school year.

(g) Upon the choice school's receipt of the parent's revocation of consent, the choice school shall immediately provide:

- (1) written notice to the school corporation within whose boundaries the choice school is located that the student's scholarship is no longer funded under ~~IC 20-51-4-4(2)~~; [IC 20-51-4-4\(a\)\(2\)](#); and
- (2) the school corporation with a copy of the student's CSEP.

(h) Not later than ten (10) instructional days from the date the school corporation receives the written notice described in subsection (g), the school corporation shall convene a case conference committee meeting and develop ~~an individual~~ a service plan in accordance with [511 IAC 7-34-5](#).

(Indiana State Board of Education; [511 IAC 7-49-5](#); filed Nov 25, 2014, 3:40 p.m.: [20141224-IR-511130560FRA](#))

SECTION 41. [511 IAC 7-49-7](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-49-7](#) Complaint process

Authority: [IC 20-51-4-4.6](#)

Affected: [IC 20-51-4](#)

Sec. 7. (a) If a parent of a choice scholarship student believes the choice school is not complying with the requirements of this rule, the parent may file a **written** complaint with the choice school.

(b) If the choice school does not resolve the complaint to the parent's satisfaction, the parent may file a complaint with the department as described in this rule.

(c) The complaint must:

- (1) be in writing;
- (2) include the name and address of the choice school;
- (3) include a statement alleging that the choice school has failed to comply with one (1) or more requirements of this rule;
- (4) include the facts on which the alleged noncompliance is based;
- (5) include a copy of the written complaint filed with the choice school in accordance with subsection (a);**

- ~~(5)~~ **(6)** be signed by the parent and include the parent's contact information; and
~~(6)~~ **(7)** be submitted to the choice school and the division of special education.

(d) If the complaint alleges violations with respect to a specific choice scholarship student **with a disability**, the complaint must also include the name and address of the student.

(e) The division of special education shall investigate the complaint as described in [511 IAC 7-45-1](#).

(f) The choice school is required to complete any corrective action resulting from the complaint investigation within the timeline prescribed by the complaint investigation report.

(g) Failure of the choice school to complete any prescribed corrective action may negatively impact the choice school's continued eligibility under [512 IAC 4](#).

(Indiana State Board of Education; [511 IAC 7-49-7](#); filed Nov 25, 2014, 3:40 p.m.: [20141224-IR-511130560FRA](#))

SECTION 42. [511 IAC 7-49-9](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-49-9](#) Education records

Authority: [IC 20-51-4-4.6](#)

Affected: [IC 20-51-4](#)

Sec. 9. (a) Not later than ten (10) business days of receiving a request from a choice school for the education records of a choice scholarship student **with a disability** enrolled in the choice school, the school corporation or charter school shall provide the requested records to the choice school.

(b) Subject to subsection (c), and not later than ten (10) business days of receiving a request from a school corporation or a charter school for the education records of a choice scholarship student **with a disability** previously enrolled in the choice school, the choice school shall provide the requested records to the school corporation or charter school.

(c) If the parent of a choice scholarship student **with a disability** is in breach of a contract that conditions release of student records on the payment of outstanding tuition and other fees, the choice school shall within ten (10) business days of the request, provide a requesting school corporation with sufficient verbal information to permit the school corporation to make an appropriate placement decision regarding the student.

(Indiana State Board of Education; [511 IAC 7-49-9](#); filed Nov 25, 2014, 3:40 p.m.: [20141224-IR-511130560FRA](#))

SECTION 43. [511 IAC 7-49-10](#) IS AMENDED TO READ AS FOLLOWS:

[511 IAC 7-49-10](#) Proportionate share

Authority: [IC 20-51-4-4.6](#)

Affected: [IC 20-51-4-4.5](#)

Sec. 10. (a) A school corporation must consider all eligible parentally-placed nonpublic students with disabilities, including choice scholarship students, when determining how it will expend its proportionate share of federal special education funds on services to parentally-placed nonpublic students with disabilities.

(b) A school corporation within whose boundaries the choice school is located may, but is not required, choose to expend part of the proportionate share of federal special education funds on services to choice scholarship students.

(c) The school corporation within whose boundaries the choice school is located is not required to provide special education and related services for any choice scholarship student **with a disability** who has designated the choice school to provide ~~their~~ **the student's** special education services as described in [IC 20-51-4-4.5](#), unless

consent was subsequently revoked for the implementation of the CSEP.

(d) For students with disabilities who have been unilaterally enrolled by their parents in a choice school but who are not choice scholarship students, the school corporation must comply with the requirements of [511 IAC 7-34](#).

(e) The school corporation's child find responsibilities related to students who have been unilaterally enrolled by their parents in a choice school is subject to [511 IAC 7-34](#).

(Indiana State Board of Education; [511 IAC 7-49-10](#); filed Nov 25, 2014, 3:40 p.m.: [20141224-IR-511130560FRA](#))

SECTION 44. THE FOLLOWING ARE REPEALED: [511 IAC 7-32-21](#); [511 IAC 7-32-44](#); [511 IAC 7-32-81](#).

[Notice of Public Hearing](#)

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