

ARTICLE 7. SPECIAL EDUCATION

Rule 1. General Provisions (Repealed)

(Repealed by Indiana State Board of Education; filed Dec 9, 1991, 8:30 a.m.: 15 IR 558)

Rule 2. Placement in Private Special Schools (Repealed)

(Repealed by Indiana State Board of Education; filed Dec 9, 1991, 8:30 a.m.: 15 IR 558)

Rule 3. Definitions (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 4. General Provisions (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 5. Program Planning and Evaluation (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 6. General Administration of Programs (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 7. Prior Notice (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 8. Confidentiality of Information (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 9. Educational Surrogate Parents (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 10. Identification and Evaluation (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 11. Eligibility Criteria (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 12. Educational Placement (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 13. Program and Service Information (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 14. Special Education Placement Options and Caseloads (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 15. Due Process Procedures (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 16. Child Count (Repealed)

(Repealed by Indiana State Board of Education; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

Rule 17. Definitions

511 IAC 7-17-1 Applicability

Authority: IC 20-19-2-8; IC 20-19-2-16
Affected: IC 20-35

Sec. 1. The definitions in this rule apply throughout this article. (*Indiana State Board of Education; 511 IAC 7-17-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2431*)

511 IAC 7-17-2 “Adaptive behavior” defined

Authority: IC 20-19-2-8; IC 20-19-2-16
Affected: IC 20-35

Sec. 2. “Adaptive behavior” means the effectiveness or of degree with which an individual meets the standards of personal independence and social responsibility expected of the individual’s chronological age and cultural group. (*Indiana State Board of Education; 511 IAC 7-17-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2431*)

511 IAC 7-17-3 “Adequate notice” defined

Authority: IC 20-19-2-8; IC 20-19-2-16
Affected: IC 20-35

Sec. 3. “Adequate notice” means notice that:

- (1) is provided early enough to allow a change in time or location, to make arrangements to attend a meeting, or to allow a response prior to the proposed action;
- (2) includes all components specified in this article based upon the purpose of the notice;
- (3) is provided in the native language or other mode of communication; and
- (4) is written or communicated in common understandable language.

(*Indiana State Board of Education; 511 IAC 7-17-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2431*)

511 IAC 7-17-4 “Adversely affects educational performance” defined

Authority: IC 20-19-2-8; IC 20-19-2-16
Affected: IC 20-35

Sec. 4. “Adversely affects educational performance” means that the disability or behavior prevents the student from benefitting from the student’s education without the provision of special education or related services. (*Indiana State Board of Education; 511 IAC 7-17-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2431*)

511 IAC 7-17-5 “Assistive technology device” defined

Authority: IC 20-19-2-8; IC 20-19-2-16
Affected: IC 20-35

Sec. 5. “Assistive technology device” means any item, piece of equipment, or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of a student with a disability. (*Indiana State Board of Education; 511 IAC 7-17-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2431*)

511 IAC 7-17-6 “Assistive technology service” defined

Authority: IC 20-19-2-8; IC 20-19-2-16
Affected: IC 20-35

Sec. 6. “Assistive technology service” means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. (*Indiana State Board of Education; 511 IAC 7-17-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2431*)

511 IAC 7-17-7 “At no cost” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 7. “At no cost” means that all specially designed instruction is provided without charge to the parent, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the general education program. Such fees may include, but are not limited to, fees for the following:

- (1) Textbook rental.
- (2) Consumable materials.
- (3) Extracurricular activities.

(Indiana State Board of Education; 511 IAC 7-17-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2432)

511 IAC 7-17-8 “Behavioral intervention plan” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 8. “Behavioral intervention plan” is a plan, agreed upon by the case conference committee and incorporated into a student’s individualized education program, that describes how the student’s environment will be altered, identifies positive behavioral intervention strategies, and specifies which skills will be taught in an effort to change a specific pattern of behavior of the student. The plan shall be linked to information gathered through a functional behavioral assessment. To ensure transference, the behavioral intervention plan seeks to maximize consistency of implementation across people and settings in which the student is involved. *(Indiana State Board of Education; 511 IAC 7-17-8; filed May 22, 2000, 8:52 a.m.: 23 IR 2432)*

511 IAC 7-17-9 “Benchmarks” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 9. “Benchmarks”, for the purpose of this article, are major milestones a student is expected to achieve. Benchmarks establish expected performance levels that allow for regular checks of progress that coincide with the reporting periods for informing parents of the student’s progress toward achieving the annual goals delineated in a student’s individualized education program. *(Indiana State Board of Education; 511 IAC 7-17-9; filed May 22, 2000, 8:52 a.m.: 23 IR 2432)*

511 IAC 7-17-10 “Case conference committee” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 10. “Case conference committee” means the group of persons described in 511 IAC 7-27-3, including parents and public agency personnel, who are responsible for the following:

- (1) Reviewing evaluation data, identifying the existence of a disability, and determining a student’s eligibility for special education and related services.
- (2) Developing, reviewing, and revising a student’s individualized education program.
- (3) Determining the appropriate special education, related services, and placement for a student and the setting or settings in which those services will be provided.
- (4) Determining other matters, including the provision of a free appropriate public education, that are assigned to an IEP team by federal law or to a case conference committee by state law or any rule of the Indiana state board of education, including this article.

(Indiana State Board of Education; 511 IAC 7-17-10; filed May 22, 2000, 8:52 a.m.: 23 IR 2432; filed May 13, 2002, 2:00 p.m.: 25 IR 3149)

511 IAC 7-17-11 “Caseload” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 11. “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, and related services provider shall be limited in number to allow the teacher, speech-language pathologist, and related services provider to implement each assigned student’s individualized education program and shall be determined by:

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

(Indiana State Board of Education; 511 IAC 7-17-11; filed May 22, 2000, 8:52 a.m.: 23 IR 2432)

511 IAC 7-17-12 “Certified personnel” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 12. “Certified personnel”, for purposes of 511 IAC 7-25-2(b), 511 IAC 7-25-4(b), and 511 IAC 7-29-8(b), means:

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

who are employed by the public agency. (Indiana State Board of Education; 511 IAC 7-17-12; filed May 22, 2000, 8:52 a.m.: 23 IR 2432)

511 IAC 7-17-13 “Change of placement” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 13. (a) “Change of placement” means a change in one (1) or more of the following as determined by the case conference committee:

- (1) Identification of a student’s disability, including declassification, and a student’s eligibility for special education and related services.
- (2) Length, frequency, or duration of services specified in a student’s individualized education program if the changes affect the goals and objectives of the individualized education program unless the change is contained in the current agreed-upon individualized education program.
- (3) Placement within the continuum as set forth in 511 IAC 7-27-9 unless the change is contained in the current agreed-upon individualized education program.
- (4) Location, if such change affects the goals and objectives of the individualized education program.
- (5) Graduation from high school with a regular diploma.

(b) Change of placement for disciplinary removals means the public agency’s unilateral removal of the student from the student’s current placement for disciplinary reasons. A change of placement for disciplinary removals occurs if:

- (1) the student is removed for more than ten (10) consecutive instructional days; or
- (2) the student is subjected to a series of removals that constitutes a pattern because:
 - (A) they cumulate to more than ten (10) instructional days in a school year; and
 - (B) of factors, such as:
 - (i) the length of each removal;
 - (ii) the total amount of time the child is removed; and

(iii) the proximity of the removals to one another.

(Indiana State Board of Education; 511 IAC 7-17-13; filed May 22, 2000, 8:52 a.m.: 23 IR 2432)

511 IAC 7-17-14 “Community-supported services” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 14. “Community-supported services” means intensive special education and related services necessary to enable the student to remain in the community without resorting to residential placement or to return to the local community from a residential placement. The need for community-supported services is made by the case conference committee, after the public agency’s continuum of services has been exhausted. The public agency may seek additional funding to support a student’s community-supported services in accordance with 511 IAC 7-27-12. *(Indiana State Board of Education; 511 IAC 7-17-14; filed May 22, 2000, 8:52 a.m.: 23 IR 2433)*

511 IAC 7-17-15 “Complaint” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 15. “Complaint” means a written, signed allegation of a procedural violation of federal or state statutes, regulations, rules, or constructions governing special education and submitted to the division of special education for investigation in accordance with 511 IAC 7-30-2. *(Indiana State Board of Education; 511 IAC 7-17-15; filed May 22, 2000, 8:52 a.m.: 23 IR 2433)*

511 IAC 7-17-16 “Comprehensive plan” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 16. “Comprehensive plan” refers to the written plan required under IC 20-35, which specifies how the local educational agency will provide for special education and related services in accordance with this article. *(Indiana State Board of Education; 511 IAC 7-17-16; filed May 22, 2000, 8:52 a.m.: 23 IR 2433; errata filed Jul 11, 2005, 10:00 a.m.: 28 IR 3307)*

511 IAC 7-17-17 “Comprehensive system of personnel development” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 17. “Comprehensive system of personnel development” means a plan to provide training and information to public agency personnel, parents, and others regarding the provision of a free appropriate public education to students with disabilities. *(Indiana State Board of Education; 511 IAC 7-17-17; filed May 22, 2000, 8:52 a.m.: 23 IR 2433)*

511 IAC 7-17-18 “Consent” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 18. “Consent” includes each of the following:

- (1) The parent has been fully informed, in the parent’s native language or other mode of communication, of all information relevant to the activity for which consent is sought.
- (2) The parent understands and agrees in writing to the activity for which consent has been sought, and the consent:
 - (A) describes that activity; and
 - (B) lists the records, if any, that will be released and to whom.
- (3) The parent understands that granting consent is voluntary on the part of the parent and that the consent may be revoked at any time. If the parent revokes consent, the revocation is not retroactive, that is, it does not negate an action that has occurred after the consent was given and before the consent was revoked.

(Indiana State Board of Education; 511 IAC 7-17-18; filed May 22, 2000, 8:52 a.m.: 23 IR 2433)

511 IAC 7-17-19 “Consultation” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 19. “Consultation” means services that include, but are not limited to, the following:

- (1) Working with general and special education teachers in matters relating to the following:
 - (A) Development and implementation of individualized education programs.
 - (B) Curriculum development.
 - (C) Instructional or behavioral management techniques.
 - (D) Identification, adaptation, and utilization of materials, equipment, and instructional aids.
- (2) Serving as a communication link between and among public agency personnel, parents, and other agencies.
- (3) Conducting individual assessments or observations of a student.
- (4) Counseling or crisis intervention.
- (5) Providing direct services to a student or group of students.
- (6) Providing parent counseling and training.

(Indiana State Board of Education; 511 IAC 7-17-19; filed May 22, 2000, 8:52 a.m.: 23 IR 2433)

511 IAC 7-17-20 “Controlled substance” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35; IC 35-48-2

Sec. 20. “Controlled substance” means a drug or other substance identified under Schedule I, II, III, IV, or V in 21 U.S.C. 812(c) or IC 35-48-2. *(Indiana State Board of Education; 511 IAC 7-17-20; filed May 22, 2000, 8:52 a.m.: 23 IR 2434)*

511 IAC 7-17-21 “Day” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 21. “Day” means a calendar day unless otherwise indicated as a business day or instructional day. As used in this section:

- (1) “business day” means Monday through Friday, except for federal and state holidays unless holidays are specifically included in the designation of business days as in 511 IAC 7-19-2(d)(2); and
- (2) “instructional day” means any day or part of a day that students are expected to be in attendance.

(Indiana State Board of Education; 511 IAC 7-17-21; filed May 22, 2000, 8:52 a.m.: 23 IR 2434)

511 IAC 7-17-22 “Destruction of information” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 22. “Destruction of information” means physical destruction or removal of personal identifiers from information contained in an educational record so that the information is no longer personally identifiable. *(Indiana State Board of Education; 511 IAC 7-17-22; filed May 22, 2000, 8:52 a.m.: 23 IR 2434)*

511 IAC 7-17-23 “Diagnostic teaching evaluation” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 23. (a) “Diagnostic teaching evaluation” means an extended evaluation of a student with a disability, recommended and designed by the case conference committee. A diagnostic teaching evaluation shall be implemented pursuant to an interim individualized education program and shall provide additional information on any of the following:

- (1) A student's strengths and weaknesses.
- (2) A student's learning styles.
- (3) A student's specific educational needs.
- (4) Other aspects relative to an appropriate education.

(b) A parent must provide written consent for the diagnostic teaching evaluation. The interim individualized education program shall contain a specific timeline for completion of the diagnostic teaching evaluation, finalizing the individualized education program, and determining the appropriate placement for the student. (*Indiana State Board of Education; 511 IAC 7-17-23; filed May 22, 2000, 8:52 a.m.: 23 IR 2434*)

511 IAC 7-17-24 "Directory information" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 24. "Directory information" means information contained in an educational record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the following:

- (1) The student's name.
- (2) The student's address.
- (3) The student's telephone listing.
- (4) The student's date and place of birth.
- (5) The student's major field of study.
- (6) The student's participation in officially recognized activities and sports.
- (7) The weight and height of members of athletic teams.
- (8) Dates of attendance.
- (9) Degrees and awards received.
- (10) The most recent previous educational agency or institution attended.

(*Indiana State Board of Education; 511 IAC 7-17-24; filed May 22, 2000, 8:52 a.m.: 23 IR 2434*)

511 IAC 7-17-25 "Disciplinary action or proceeding" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 25. "Disciplinary action or proceeding" means the investigation, adjudication, or imposition of sanctions by a public agency with respect to an infraction or violation of the internal rules of conduct applicable to students of the public agency. (*Indiana State Board of Education; 511 IAC 7-17-25; filed May 22, 2000, 8:52 a.m.: 23 IR 2434*)

511 IAC 7-17-26 "Disclosure" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 26. "Disclosure" means to permit access to, or the release, transfer, or other communication of personally identifiable information contained in educational records to any party by any means including oral, written, or electronic means. (*Indiana State Board of Education; 511 IAC 7-17-26; filed May 22, 2000, 8:52 a.m.: 23 IR 2435*)

511 IAC 7-17-27 "Due process hearing" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 27. "Due process hearing" means a proceeding initiated by a student's parent, a public agency, or the state educational agency and is conducted by an independent hearing officer when there is a dispute regarding any of the following:

- (1) The identification or eligibility of a student for services under this article.
- (2) The appropriateness of the educational evaluation.

- (3) The appropriateness of the student's proposed or current level of services or placement.
- (4) Any other dispute affecting the provision of a free appropriate public education to the student.
- (5) Reimbursement for the provisions in this section.

(Indiana State Board of Education; 511 IAC 7-17-27; filed May 22, 2000, 8:52 a.m.: 23 IR 2435)

511 IAC 7-17-28 "Duration of services" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 28. "Duration of services" means the projected month, day, and year of the beginning and ending of special education services. *(Indiana State Board of Education; 511 IAC 7-17-28; filed May 22, 2000, 8:52 a.m.: 23 IR 2435)*

511 IAC 7-17-29 "Educational records" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 29. "Educational records" means records directly related to a student and maintained by a public agency or by a party acting for the public agency. The term includes test protocols that contain personally identifiable information regarding the student and individualized education programs. The term also includes video clips, audio clips, scanned images, and other electronically recorded or produced items, such as those in the Indiana Assessment System of Educational Proficiencies. The term does not include the records of instructional, supervisory, administrative, or ancillary personnel that remain in the sole possession of the maker of the record and are not accessible to or revealed to any other person. *(Indiana State Board of Education; 511 IAC 7-17-29; filed May 22, 2000, 8:52 a.m.: 23 IR 2435)*

511 IAC 7-17-30 "Educational surrogate parent" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 30. "Educational surrogate parent" means a person trained and appointed to represent a student with a disability in matters relating to the provision of a free appropriate public education, including identification, evaluation, and placement. An educational surrogate parent is appointed in accordance with 511 IAC 7-24. *(Indiana State Board of Education; 511 IAC 7-17-30; filed May 22, 2000, 8:52 a.m.: 23 IR 2435)*

511 IAC 7-17-31 "Eligible student" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 31. "Eligible student", for purposes of 511 IAC 7-23, means a student who has reached eighteen (18) years of age and who has not been adjudicated incompetent. *(Indiana State Board of Education; 511 IAC 7-17-31; filed May 22, 2000, 8:52 a.m.: 23 IR 2435)*

511 IAC 7-17-32 "Evaluation" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 32. "Evaluation" means procedures used in accordance with 511 IAC 7-25-3 through 511 IAC 7-25-7 to provide information about a student's disability or suspected disability for the case conference committee to determine whether a student has a disability and the nature and extent of the special education and related services that the student needs. An evaluation may include review of existing data, which may include results on tests or other procedures that are based on the general curriculum and may be used with all students in a grade, school, or class. *(Indiana State Board of Education; 511 IAC 7-17-32; filed May 22, 2000, 8:52 a.m.: 23 IR 2435)*

511 IAC 7-17-33 “Expedited due process hearing” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 33. “Expedited due process hearing” means a hearing that is conducted by an independent hearing officer, in accordance with 511 IAC 7-30-5, and may be requested in any of the following situations:

- (1) The parent disagrees with a determination that the student’s behavior was not a manifestation of the student’s disability.
- (2) The parent disagrees with the public agency’s decision regarding the student’s disciplinary change of placement under 511 IAC 7-29-3.
- (3) The public agency maintains that it is dangerous for the student to return to the current placement (placement prior to removal to the interim alternative educational setting) after the expiration of the student’s placement in an interim alternative educational setting.

(Indiana State Board of Education; 511 IAC 7-17-33; filed May 22, 2000, 8:52 a.m.: 23 IR 2435)

511 IAC 7-17-34 “Expedited evaluation” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 34. “Expedited evaluation” means an initial evaluation that is conducted during the pendency of disciplinary action of a student that has not been determined eligible for special education. The timelines for conducting an expedited evaluation and convening the case conference committee are shorter than for an initial evaluation pursuant to 511 IAC 7-29-8. *(Indiana State Board of Education; 511 IAC 7-17-34; filed May 22, 2000, 8:52 a.m.: 23 IR 2436)*

511 IAC 7-17-35 “Extended school year services” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 35. “Extended school year services” means special education services that:

- (1) are provided to a student with a disability:
 - (A) beyond the normal school year of the public agency;
 - (B) in accordance with the student’s individualized education program; and
 - (C) at no cost to the parent or the student; and
- (2) meet the standards of the state educational agency.

(Indiana State Board of Education; 511 IAC 7-17-35; filed May 22, 2000, 8:52 a.m.: 23 IR 2436)

511 IAC 7-17-36 “Free appropriate public education” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 36. “Free appropriate public education” means special education and related services that:

- (1) are provided at public expense, under public supervision and direction, and at no cost to the parent;
- (2) meet the standards of the state educational agency, including the requirements of this article;
- (3) include early childhood education, elementary education, or secondary education;
- (4) are provided in conformity with an individualized education program that meets the requirements of this article;
- (5) are provided to ensure students identified as eligible for special education and related services under this article have an equal opportunity to participate in activities and services available to all other students;
- (6) are provided to the student during a period of removal subsequent to removal for ten (10) cumulative instructional days during the school year; and
- (7) include the award of credit and diploma for completion of academic requirements to the same extent such credit is awarded to students without disabilities.

(Indiana State Board of Education; 511 IAC 7-17-36; filed May 22, 2000, 8:52 a.m.: 23 IR 2436)

511 IAC 7-17-37 “Frequency of services” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 37. “Frequency of services” means how often special education and related services are to be provided, such as:

- (1) daily;
- (2) twice a week;
- (3) weekly; or
- (4) other similar specific time frames.

(Indiana State Board of Education; 511 IAC 7-17-37; filed May 22, 2000, 8:52 a.m.: 23 IR 2436)

511 IAC 7-17-38 “Functional behavioral assessment” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 38. “Functional behavioral assessment” means a systematic collection and analysis of data that will vary in length and scope depending on the severity of a student’s behavior. Results and analysis of the data collection are used in developing the student’s behavioral intervention plan. A functional behavioral assessment shall identify patterns in the student’s behavior and the purpose or function of the behavior for the student. *(Indiana State Board of Education; 511 IAC 7-17-38; filed May 22, 2000, 8:52 a.m.: 23 IR 2436)*

511 IAC 7-17-39 “General education” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 39. “General education” means those programs provided or available to all students, including, but not limited to, the following:

- (1) Sequential grade advancement.
- (2) Elective courses.
- (3) Extracurricular activities.
- (4) The general curriculum.

(Indiana State Board of Education; 511 IAC 7-17-39; filed May 22, 2000, 8:52 a.m.: 23 IR 2436)

511 IAC 7-17-40 “General education intervention” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 40. “General education intervention” means a written formal system, at the building level, of methods and procedures used with a student to address those aspects of a student’s classroom performance that are substantially affecting educational outcomes. Utilization of general education intervention strategies is not a prerequisite to referring a student for an evaluation. *(Indiana State Board of Education; 511 IAC 7-17-40; filed May 22, 2000, 8:52 a.m.: 23 IR 2436)*

511 IAC 7-17-41 “Homebound instruction” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 41. “Homebound instruction” means instruction provided to students, in accordance with 511 IAC 7-27-10 and 511 IAC 7-27-11, including students without disabilities, who are unable to attend school. Homebound instruction may be provided at:

- (1) a student’s home;
- (2) a hospital; or
- (3) another site;

and may be provided in person or by any other technology systems. (*Indiana State Board of Education; 511 IAC 7-17-41; filed May 22, 2000, 8:52 a.m.: 23 IR 2437*)

511 IAC 7-17-42 “Identification and eligibility” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 42. “Identification and eligibility” means the case conference committee’s determinations, in accordance with this article, that:

- (1) a disability exists;
- (2) a disability exists that is different from or in addition to, or both, the disability originally determined;
- (3) the nature or extent of a disability, or both, qualifies a student for special education;
- (4) the nature or extent of a disability, or both, no longer qualifies a student for special education; or
- (5) the nature or extent of a disability, or both, is not severe enough to qualify a student for special education.

(*Indiana State Board of Education; 511 IAC 7-17-42; filed May 22, 2000, 8:52 a.m.: 23 IR 2437*)

511 IAC 7-17-43 “Illegal drug” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 43. “Illegal drug” means a controlled substance, but does not include a substance that is legally possessed or used under:

- (1) the supervision of a licensed health care professional; or
- (2) any other authority under the Controlled Substances Act or under any other provision of federal law.

(*Indiana State Board of Education; 511 IAC 7-17-43; filed May 22, 2000, 8:52 a.m.: 23 IR 2437*)

511 IAC 7-17-44 “Individualized education program” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 44. “Individualized education program” means a written document, developed by the case conference committee, that describes how a student will access the general education curriculum and the special education and related services needed to participate in the educational environment. The required components of an individualized education program are contained in 511 IAC 7-27-6. (*Indiana State Board of Education; 511 IAC 7-17-44; filed May 22, 2000, 8:52 a.m.: 23 IR 2437*)

511 IAC 7-17-45 “Interim alternative educational setting” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 45. (a) “Interim alternative educational setting” means a placement determined by the case conference committee when the public agency removes a student from the student’s current placement as a result of either of the following:

- (1) The student carries a weapon to school or to a school function that is under the jurisdiction of a public agency.
- (2) The student knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function that is under the jurisdiction of a public agency.

(b) A hearing officer may order the student’s placement in an interim alternative educational setting if the hearing officer determines that the public agency has demonstrated by substantial evidence that maintaining the student’s current placement is substantially likely to result in injury to the student or to others.

(c) A court may determine an interim alternative educational setting for a student while administrative remedies are exhausted.

(*Indiana State Board of Education; 511 IAC 7-17-45; filed May 22, 2000, 8:52 a.m.: 23 IR 2437*)

511 IAC 7-17-46 “Intervener” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 46. “Intervener” 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. (*Indiana State Board of Education; 511 IAC 7-17-46; filed May 22, 2000, 8:52 a.m.: 23 IR 2437*)

511 IAC 7-17-47 “Job coach” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 47. “Job coach” means an individual who works with and on behalf of a student with a disability who participates in supported employment. A job coach provides support and training to the student and the employer, including, but not limited to, organizing the tasks necessary to do the job into sequential steps and teaches the student by working along side the student while the tasks and job are being learned. (*Indiana State Board of Education; 511 IAC 7-17-47; filed May 22, 2000, 8:52 a.m.: 23 IR 2437*)

511 IAC 7-17-48 “Legal settlement” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-26-11; IC 20-35

Sec. 48. “Legal settlement” of a student means the student’s status with respect to the school corporation that has the responsibility to permit the student to attend its local public schools without the payment of tuition, or is financially responsible should the student attend school in another situation permitted by law. (*Indiana State Board of Education; 511 IAC 7-17-48; filed May 22, 2000, 8:52 a.m.: 23 IR 2438*)

511 IAC 7-17-49 “Local educational agency” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 49. “Local educational agency” means a public board of education or other public authority legally constituted for either administrative control or direction of, or to perform a service function for, publicly funded schools as such schools are established under the laws of Indiana. The term includes school corporations and state-operated schools. (*Indiana State Board of Education; 511 IAC 7-17-49; filed May 22, 2000, 8:52 a.m.: 23 IR 2438*)

511 IAC 7-17-50 “Manifestation determination” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 50. “Manifestation determination” means an evaluative process conducted by the student’s case conference committee, in accordance with this article, to determine whether a student’s behavior is caused by, or is a manifestation of, the student’s disability, deficiencies in the individualized education program, or placement. (*Indiana State Board of Education; 511 IAC 7-17-50; filed May 22, 2000, 8:52 a.m.: 23 IR 2438*)

511 IAC 7-17-51 “Mediation” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 51. “Mediation” is a voluntary process in which the parent and public agency attempt, with the assistance of a trained impartial mediator, to resolve a dispute that has arisen in the case conference committee regarding any of the following:

- (1) The identification or eligibility of a student for services under this article.

- (2) The appropriateness of the educational evaluation.
- (3) The appropriateness of the student's proposed or current level of services or placement.
- (4) Any other dispute affecting the provision of a free appropriate public education to the student.
- (5) Reimbursement for the provisions in this section.

(Indiana State Board of Education; 511 IAC 7-17-51; filed May 22, 2000, 8:52 a.m.: 23 IR 2438)

511 IAC 7-17-52 "Medical services" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 52. "Medical services" means services provided by a physician with an unlimited license to practice medicine or a hospital to determine a student's medically related disability that results in the student's need for special education and related services. *(Indiana State Board of Education; 511 IAC 7-17-52; filed May 22, 2000, 8:52 a.m.: 23 IR 2438)*

511 IAC 7-17-53 "Mode of communication" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 53. "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.

(Indiana State Board of Education; 511 IAC 7-17-53; filed May 22, 2000, 8:52 a.m.: 23 IR 2438)

511 IAC 7-17-54 "Native language" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 54. "Native language", for use in all contact with students and parents, means the following:

- (1) For a parent or student of limited English proficiency, the language normally used by that individual in the home.
- (2) For a parent or student who is deaf or hearing or visually impaired, or with no written language, the mode of communication that is normally used by the individual, such as sign language, Braille, or oral communication.

(Indiana State Board of Education; 511 IAC 7-17-54; filed May 22, 2000, 8:52 a.m.: 23 IR 2438)

511 IAC 7-17-55 "Orientation and mobility" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 55. "Orientation and mobility" means services provided by qualified personnel to students who are visually impaired to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community. *(Indiana State Board of Education; 511 IAC 7-17-55; filed May 22, 2000, 8:52 a.m.: 23 IR 2438)*

511 IAC 7-17-56 "Paraprofessional" defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 56. "Paraprofessional" means an individual who works under the supervision and direction of licensed teachers or related services personnel to assist in areas that relate to personal, social, and instructional needs. The term includes, but is not limited to,

the following:

- (1) Instructional or program assistants.
- (2) School bus monitors.
- (3) Interpreters.
- (4) Note takers.
- (5) Job coaches.

(Indiana State Board of Education; 511 IAC 7-17-56; filed May 22, 2000, 8:52 a.m.: 23 IR 2439)

511 IAC 7-17-57 “Parent” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 57. “Parent” means one (1) of the following:

- (1) Any natural or adoptive parent whose parental rights have not been terminated or restricted in accordance with law.
- (2) A guardian, including a court-appointed temporary guardian.
- (3) A person with legal custody, such as a grandparent or other relative, or other adult who accepts full legal responsibility for the student and with whom the student lives.
- (4) An educational surrogate parent appointed in accordance with 511 IAC 7-24.
- (5) Any student with a disability who is eighteen (18) years of age and has not had a guardian appointed by a court.

(Indiana State Board of Education; 511 IAC 7-17-57; filed May 22, 2000, 8:52 a.m.: 23 IR 2439)

511 IAC 7-17-58 “Personally identifiable information” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 58. “Personally identifiable information” means information by which it is possible to identify a student with reasonable certainty, including, but not limited to, the following:

- (1) The name of a student, a student’s parent or parents, or other family member or members.
- (2) The address of a student.
- (3) A personal identifier, such as a student’s Social Security number or student number.
- (4) A list of personal characteristics or other information that would make the student’s identity easily traceable, including disability designation.

(Indiana State Board of Education; 511 IAC 7-17-58; filed May 22, 2000, 8:52 a.m.: 23 IR 2439)

511 IAC 7-17-59 “Physical education” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 59. (a) “Physical education” means the development of the following:

- (1) Physical and motor fitness.
- (2) Fundamental motor skills and patterns.
- (3) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).

(b) Physical education includes special physical education, adapted physical education, movement education, and motor development. *(Indiana State Board of Education; 511 IAC 7-17-59; filed May 22, 2000, 8:52 a.m.: 23 IR 2439)*

511 IAC 7-17-60 “Public agency” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 60. “Public agency” means any public or private entity that has direct or delegated authority to provide special education and related services, including the following:

- (1) Public school corporations operating programs individually or cooperatively.
- (2) Community agencies, state developmental centers, and state-operated facilities of the division of mental health.
- (3) Programs operated by the state department of health.
- (4) The Indiana School for the Blind and the Indiana School for the Deaf.
- (5) Programs operated by the department of correction.

(Indiana State Board of Education; 511 IAC 7-17-60; filed May 22, 2000, 8:52 a.m.: 23 IR 2439)

511 IAC 7-17-61 “Qualified professional” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 61. “Qualified professional” means one who has met state certification, licensing, registration, or other comparable requirements that apply to the area in which the individual is providing special education or related services. *(Indiana State Board of Education; 511 IAC 7-17-61; filed May 22, 2000, 8:52 a.m.: 23 IR 2439)*

511 IAC 7-17-62 “Related services” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 62. “Related services” means those services that are supplementary to the student’s instructional program and are required for the student to benefit from special education. Such services may be developmental, corrective, or supportive in nature. *(Indiana State Board of Education; 511 IAC 7-17-62; filed May 22, 2000, 8:52 a.m.: 23 IR 2439)*

511 IAC 7-17-63 “Residential services” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 63. “Residential services” means services in a public or private residential program that are necessary to provide special education and related services to a student with a disability. Residential services may be necessary when the student’s disability is of such intensity as to preclude achievement in the public agency’s educational program, even with community-supported services. *(Indiana State Board of Education; 511 IAC 7-17-63; filed May 22, 2000, 8:52 a.m.: 23 IR 2440)*

511 IAC 7-17-64 “Special education” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 64. “Special education” means specially designed instruction, at no cost to the parent, designed to meet the unique needs of a student eligible for special education and related services under this article. Special education may include, but is not limited to, the following:

- (1) Instruction conducted in:
 - (A) the classroom;
 - (B) the home;
 - (C) hospitals and institutions; and
 - (D) other settings.
- (2) Instruction in physical education.
- (3) Travel training.
- (4) Transition services.
- (5) Vocational education.
- (6) Speech-language pathology services.

(Indiana State Board of Education; 511 IAC 7-17-64; filed May 22, 2000, 8:52 a.m.: 23 IR 2440)

511 IAC 7-17-65 “Special education planning district” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 65. “Special education planning district” means the public school administrative unit responsible for the provision of special education and related services in a specified geographic area. A planning district may be an individual public school corporation or two (2) or more public school corporations that operate under a written agreement. (*Indiana State Board of Education; 511 IAC 7-17-65; filed May 22, 2000, 8:52 a.m.: 23 IR 2440*)

511 IAC 7-17-66 “Specially designed instruction” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 66. “Specially designed instruction” means adapting, as appropriate to the needs of a student who is eligible for special education and related services, the content, methodology, or delivery of instruction:

(1) to address the unique needs of the student that result from the student’s disability; and

(2) to ensure the student’s access to the general curriculum so that the student can meet the educational standards within the public agency that apply to all students.

(*Indiana State Board of Education; 511 IAC 7-17-66; filed May 22, 2000, 8:52 a.m.: 23 IR 2440*)

511 IAC 7-17-67 “State educational agency” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 67. “State educational agency” means the department of education. (*Indiana State Board of Education; 511 IAC 7-17-67; filed May 22, 2000, 8:52 a.m.: 23 IR 2440*)

511 IAC 7-17-68 “Student” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 68. “Student” means any person three (3) years of age, but less than twenty-two (22) years of age, who has been:

(1) formally referred for an educational evaluation to determine the nature and extent of a suspected disability, but not yet determined eligible for special education and related services; or

(2) identified as disabled and determined eligible for special education and related services under this article.

(*Indiana State Board of Education; 511 IAC 7-17-68; filed May 22, 2000, 8:52 a.m.: 23 IR 2440*)

511 IAC 7-17-69 “Student with a disability” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 69. “Student with a disability” means a student:

(1) identified in accordance with this article as having a disability, as defined in 511 IAC 7-26; and

(2) who, by reason of the disability, requires special education and related services.

(*Indiana State Board of Education; 511 IAC 7-17-69; filed May 22, 2000, 8:52 a.m.: 23 IR 2440*)

511 IAC 7-17-70 “Substantial evidence” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 70. “Substantial evidence” means beyond a preponderance of the evidence. (*Indiana State Board of Education; 511 IAC*

7-17-70; filed May 22, 2000, 8:52 a.m.: 23 IR 2440)

511 IAC 7-17-71 “Supplementary aids and services” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 71. “Supplementary aids and services” means aids, services, and other supports that are provided in general education classes or other education-related settings to enable students with disabilities to be educated with nondisabled peers to the maximum extent appropriate. (*Indiana State Board of Education; 511 IAC 7-17-71; filed May 22, 2000, 8:52 a.m.: 23 IR 2441*)

511 IAC 7-17-72 “Teacher of record” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 72. “Teacher of record” is a term used to designate the single special education teacher to whom a student with a disability is assigned. Each student with a disability must have a teacher of record identified. The teacher of record may be the teacher of service and must be appropriately licensed to work with the student or, where appropriate state licensure is not available, appropriately trained. The teacher of record shall do the following:

- (1) Provide direct or indirect services to the student according to the student’s individualized education program.
- (2) Participate in the case conference committee meeting as the student’s teacher to assist in developing measurable goals, benchmarks, and objectives to meet the student’s needs.
- (3) Regularly monitor the implementation of the student’s individualized education program and provide progress reports to the student’s parent.
- (4) Ensure the student’s individualized education program is accessible to each of the student’s teachers, related services providers, and other services providers who is responsible for implementation of the individualized education program.
- (5) Inform each teacher and provider of his or her specific responsibilities related to implementing the student’s individualized education program.
- (6) Ensure that supplementary aids and services, program modifications, and supports for school personnel are provided in accordance with each student’s individualized education program.
- (7) Serve as a consultant and resource person to all other personnel providing services to the student.
- (8) Ensure any accommodations on statewide or district assessments are implemented according to the student’s individualized education program.
- (9) Participate in the ongoing or triennial evaluations of the student.

(*Indiana State Board of Education; 511 IAC 7-17-72; filed May 22, 2000, 8:52 a.m.: 23 IR 2441*)

511 IAC 7-17-73 “Teacher of service” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 73. “Teacher of service” means any teacher providing services to a student with a disability. (*Indiana State Board of Education; 511 IAC 7-17-73; filed May 22, 2000, 8:52 a.m.: 23 IR 2441*)

511 IAC 7-17-74 “Transition planning” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 74. “Transition planning” from Part C (early intervention) to Part B (early childhood) occurs prior to the child’s third birthday to enable the child to experience a smooth and effective transition. The transition planning process is initiated by the Part C service coordinator, bringing together public agencies and the family to plan a process that maximizes continuity and minimizes disruptions in services. (*Indiana State Board of Education; 511 IAC 7-17-74; filed May 22, 2000, 8:52 a.m.: 23 IR 2441*)

511 IAC 7-17-75 “Transition services” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 75. “Transition services” includes a coordinated set of activities for a student with a disability that:

- (1) are designed within an outcome-oriented process;
- (2) are incorporated into the student’s individualized education program; and
- (3) promote movement from school to postschool activities, including, but not limited to:
 - (A) postsecondary education;
 - (B) vocational training;
 - (C) integrated employment;
 - (D) continuing and adult education;
 - (E) adult services;
 - (F) independent living; or
 - (G) community participation.

(Indiana State Board of Education; 511 IAC 7-17-75; filed May 22, 2000, 8:52 a.m.: 23 IR 2441)

511 IAC 7-17-76 “Travel training” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 76. “Travel training” means providing instruction to enable a student to do the following:

- (1) Develop an awareness of the environment in which the student lives.
- (2) Learn the skills necessary to move effectively and safely from place to place within that environment including, but not limited to, the following:
 - (A) In school.
 - (B) In the home.
 - (C) At work.
 - (D) In the community.

(Indiana State Board of Education; 511 IAC 7-17-76; filed May 22, 2000, 8:52 a.m.: 23 IR 2441)

511 IAC 7-17-77 “Vocational education” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 77. “Vocational education” means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. *(Indiana State Board of Education; 511 IAC 7-17-77; filed May 22, 2000, 8:52 a.m.: 23 IR 2442)*

511 IAC 7-17-78 “Ward of the state” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 78. “Ward of the state” refers to the student who has been removed from the student’s home for suspected or actual neglect or abuse, and the court has issued an order restricting or terminating the rights of the student’s parent. *(Indiana State Board of Education; 511 IAC 7-17-78; filed May 22, 2000, 8:52 a.m.: 23 IR 2442)*

511 IAC 7-17-79 “Weapon” defined

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35; IC 35-41-1-8; IC 35-47-1-5

Sec. 79. "Weapon" has the meaning given:

- (1) "dangerous weapon" under 18 U.S.C. 930(g)(2);
- (2) "deadly weapon" under IC 35-41-1-8; and
- (3) "firearm" under IC 35-47-1-5.

(Indiana State Board of Education; 511 IAC 7-17-79; filed May 22, 2000, 8:52 a.m.: 23 IR 2442)

Rule 18. General Provisions

511 IAC 7-18-1 Scope

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. (a) This article, 511 IAC 7-17 through 511 IAC 7-31, applies to all special education programs provided for students at least three (3) years of age, but less than twenty-two (22) years of age.

(b) The department of education, division of special education is the state educational agency responsible for the general supervision of all special education programs, as specified in IC 20-35.

(c) This article applies to all programs and services subject to the supervision of the state educational agency, including those programs conducted by or through public school corporations, special education planning districts, state agencies, and other public agencies. *(Indiana State Board of Education; 511 IAC 7-18-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2442; errata filed Jul 11, 2005, 10:00 a.m.: 28 IR 3307)*

511 IAC 7-18-2 Public schools' special education programs; organizational and administrative structures

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-26-10; IC 20-35-5; IC 36-1-7

Sec. 2. (a) Public school corporations shall provide a free appropriate public education to students who:

(1) are at least three (3) years of age, but less than twenty-two (22) years of age;

(2) are identified as disabled under this article, including:

(A) students who are advancing from grade to grade; and

(B) students who have been suspended or expelled from school to the extent required by 511 IAC 7-29-1 and 511 IAC 7-29-2; and

(3) have not completed high school graduation requirements and received a diploma.

(b) Special education programs shall include the following:

(1) Elementary school programs.

(2) Secondary school programs.

(3) Early childhood programs for students who are at least three (3) years of age, but who are not enrolled in kindergarten.

(c) Public school corporations may provide special education programs through a variety of arrangements, including, but not limited to, the following:

(1) An individual school corporation that is a special education planning district under an approved comprehensive plan.

(2) Two (2) or more school corporations that, together, are a special education planning district under an approved comprehensive plan referencing an agreement authorized by any of the following:

(A) The Joint Service and Supply Act, IC 20-26-10.

(B) The Special Education Cooperatives Act, IC 20-35-5.

(C) The Interlocal Cooperation Act, IC 36-1-7.

(D) Any other cooperative arrangement permitted by law.

(3) A transfer tuition agreement.

(4) A contract for certain related services.

(5) A contract for certain educational services or related services, or both, for early childhood programs.

(d) Each public school corporation, or two (2) or more school corporations operating under an approved comprehensive plan, shall employ a licensed director of special education to administer and supervise its special education program. *(Indiana State Board of Education; 511 IAC 7-18-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2442; errata filed Jul 11, 2005, 10:00 a.m.: 28 IR 3307)*

511 IAC 7-18-3 Other public agencies' special education programs; state-level interagency agreements

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) The provisions of this article pertaining to identification, eligibility, evaluation, and placement procedures as well as the provision of a free appropriate public education, including all due process and procedural safeguards, for students at least three (3) years of age, but less than twenty-two (22) years of age, apply to special education programs conducted by, or under the jurisdiction of, the following:

- (1) The Indiana state department of health.
- (2) The family and social services administration, including, but not limited to, the division of disability, aging, and rehabilitative services and the division of mental health.
- (3) The department of correction.
- (4) The Indiana School for the Blind.
- (5) The Indiana School for the Deaf.

(6) Any public or private agency providing special education programs for students referred by a public school corporation, the division of special education, or any other public agency.

(7) Any other public agency that contracts with any of the agencies in subdivisions (1) through (5) to provide special education.

(b) The division of special education shall, in conjunction with each public agency in subsection (a), develop an interagency agreement. Interagency agreements may address educational programs or noneducational programs that provide or pay for services that are considered special education, or both. Interagency agreements shall include the following as appropriate:

(1) Compliance with state and federal special education laws and regulations, including data collection and submission, program monitoring, state complaint investigation procedures, and due process hearings and appeals.

(2) Methods of ensuring services, including the following:

(A) Agency financial responsibility, including the responsibility of noneducational divisions and public insurers to provide or pay for services that are also considered special education or related services.

(B) Conditions and terms of reimbursement.

(C) Resolution of interagency disputes, including the provision of services pending resolution of disputes.

(D) Coordination of service procedures.

(c) An agreement described in subsection (b) shall meet the following criteria:

(1) Be signed by the state superintendent of public instruction and the chief administrator of the public agency.

(2) Be valid for a period not to exceed four (4) years.

(3) Relate specifically to special education or related services, or both.

(4) Not supersede the administrative jurisdiction of the agency to develop eligibility or admission criteria or other administrative aspects of the program or facility.

(5) Be binding on any successor in interest, including a consolidation with other agencies.

(d) If a noneducational public agency or a public agency other than the local educational agency is otherwise obligated under federal or state law, or assigned responsibility under state policy pursuant to an interagency agreement to provide or pay for any services that are also considered special education or related services that are necessary for ensuring a free appropriate public education to students with disabilities within the state, the public agency shall fulfill that obligation or responsibility either directly, through contract, or through other arrangement.

(e) A public agency described in subsection (d) that receives Medicaid reimbursement for service provision may not disqualify an eligible service for Medicaid reimbursement because that service is provided in a public school setting.

(f) If a public agency described in subsection (d) fails to provide or pay for the special education and related services necessary for the provision of a free appropriate public education to a student, the local educational agency shall provide or pay for these services in a timely manner. The local educational agency may then claim reimbursement for the services from the public agency that failed to provide or pay for these services and the public agency shall reimburse the local educational agency in accordance with the terms of the interagency agreement described in subsection (b). (*Indiana State Board of Education; 511 IAC 7-18-3; filed May 22, 2000, 8:52 a.m.; 23 IR 2443; filed May 13, 2002, 2:00 p.m.; 25 IR 3150*)

511 IAC 7-18-4 Use of public and private insurance proceeds

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 4. (a) A public agency may use Medicaid or other public insurance benefits programs in which a student participates to provide or pay for services required under this article as permitted under the public insurance program. With regard to services required to provide a free appropriate public education to a student with a disability under this article, the public agency may not:

- (1) require parents to sign up for or enroll in public insurance programs in order for the student to receive a free appropriate public education;
- (2) require parents to incur an out-of-pocket expense, such as the payment of a deductible or copay amount incurred in filing a claim for services provided, but may pay the cost that the parent otherwise would be required to pay; and
- (3) use a student's benefits under a public insurance program if that use would:
 - (A) decrease available lifetime coverage or any other insured benefit;
 - (B) result in the family paying for services that would otherwise be covered by the public insurance program and that are required for the student outside of the time the student is in school;
 - (C) increase premiums or lead to the discontinuation of insurance; or
 - (D) risk loss of eligibility for home and community-based waivers, based on aggregate health-related expenditures.

(b) A public agency may access a parent's private insurance proceeds only if the parent provides informed consent. Each time the public agency proposes to access the parent's private insurance proceeds, it must do the following:

- (1) Obtain parent consent.
- (2) Inform the parents that their refusal to permit the public agency to access their private insurance does not relieve the public agency of its responsibility to ensure that all required services are provided at no cost to the parents.

(c) If a public agency is unable to obtain parental consent to use the parent's private insurance, or public insurance when the parent would incur a cost for a specified service required under this article, the public agency may use its federal funds to pay for the service in order to ensure a free appropriate public education is provided to the student. These funds may also be used to pay the cost the parents would otherwise have to pay to use the parent's insurance, such as deductible or copay amounts.

(d) Proceeds from public or private insurance shall not be considered program income.

(e) If a public agency spends reimbursements from federal funds for services under this article, those funds shall not be considered state or local funds for purposes of maintenance of effort provisions.

(f) Nothing in this part shall be construed to alter the requirements imposed on the state Medicaid agency, or any other agency administering a public insurance program by federal statute, regulations, or policy under Title XIX or Title XXI of the Social Security Act, or any other public insurance program. (*Indiana State Board of Education; 511 IAC 7-18-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2443*)

Rule 19. Private Schools or Facilities**511 IAC 7-19-1 Special education for students in private schools or facilities**

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. (a) This rule applies to students with disabilities who have been unilaterally enrolled by the parent in a private school or facility. This rule does not apply to students with disabilities who have been placed in or referred to a private school or facility by a public agency.

(b) The activities undertaken to carry out child find responsibilities for private school students with disabilities must be comparable to activities undertaken for students with disabilities in public schools. Each public agency shall, with regard to any private 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 7-25;
- (2) consult with appropriate representatives of private school students with disabilities on how to carry out the location, identification, and evaluation, and December 1 child count activities; and
- (3) make available special education and related services to any such student who is participating in any program assisted or carried out under this article.

(c) The December 1 child count shall be used to determine the amount of subgrant funds from 20 U.S.C. 1411(g) and 20 U.S.C. 1419(g) that the public agency must spend on providing special education and related services to students in private schools and facilities in the subsequent fiscal year.

(d) Each public agency shall consult, in a timely and meaningful way, but at least annually, with appropriate representatives of private school students to determine the following:

- (1) Which students require services from the public agency.
- (2) What services will be provided.
- (3) How and where the services will be provided.
- (4) How the services provided will be evaluated.

(e) The public agency shall afford the representatives of the private school students a genuine opportunity to express their views in the consultation required in subsection (d). The consultation shall occur before the public agency makes any decision that affects the opportunities of students with disabilities enrolled in private schools or facilities, and the consultation shall include consideration of the following:

- (1) The funding requirements.
- (2) The number of private school students with disabilities.
- (3) The needs of private school students with disabilities.
- (4) The location of the private school students with disabilities.

(f) The case conference committee, in accordance with 511 IAC 7-27-4, shall make decisions with respect to the special education and related services to be provided to students enrolled in private schools or facilities.

(g) For each student in a private school or facility that has been determined eligible to receive special education and related services from the public agency, the public agency shall do the following:

- (1) Initiate and conduct case conference committee meetings to develop, review, and revise an individualized education program in accordance with 511 IAC 7-27-4 and 511 IAC 7-27-6.

- (2) Ensure that a representative of the private school or facility attends each case conference committee meeting, either in person or by telephone.

- (3) Implement the individualized education program in accordance with 511 IAC 7-27-7.

(h) At the election of the public agency, services to students in private schools or facilities may be provided at:

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

(i) If services are provided at the public school or a neutral site and transportation is necessary, the public agency must provide transportation from the private school or the student's home to a site other than the private school or facility and from the service site to the private school or the student's home, depending on the timing of the services. The public agency is not required, under this article, to transport the student from the student's home to the private school. The cost of transportation may be included in the calculation of the public agency's required expenditure described in subsections (j) and (k).

(j) For students who are three (3) years of age, but less than twenty-two (22) years of age, the public agency, in providing special education and related services to students in private 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(g) as the number of private school students with disabilities who are three (3) years of age, but less than twenty-two (22) years of age residing in its boundaries is to the total number of students with disabilities of the same age range.

(k) 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 private 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 private school students with disabilities three (3) years of age through five (5) years of age residing in its boundaries is to the total number of students with disabilities three (3) years of age through five (5) years of age.

(l) Expenditures for child find activities shall not be considered in determining whether the public agency has met the expenditure of federal funds requirement of this article.

(m) The public agency shall not use the funds described in subsections (j) and (k) to do the following:

- (1) Fund existing levels of instruction currently provided by the private school or facility, or otherwise benefit the private school.
- (2) Meet the needs of the private school or facility.

(3) Meet the general needs of the students enrolled in the private 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 private schools.

(n) The public agency may use the funds described in subsections (j) and (k) to make public school personnel available in the private school or facility to the extent necessary to provide special education and related services to students with disabilities in private schools or facilities, if those services are not normally provided by the private school or facility.

(o) The public agency may use funds described in subsections (j) and (k) to pay for the services of an employee of the private school or facility if the employee performs the services:

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

(2) under public supervision and control.

(p) The services provided to students in private schools or facilities must be provided by personnel meeting the same standards as personnel providing services in the public agency.

(q) A complaint that a public agency has failed to meet the requirements of this rule may be filed pursuant to the procedures described in 511 IAC 7-30-2.

(r) The procedures for mediation under 511 IAC 7-30-1 and for a due process hearing and appeal under 511 IAC 7-30-3 and 511 IAC 7-30-4 are not applicable to students under this rule, except to resolve disputes on 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.

(Indiana State Board of Education; 511 IAC 7-19-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2444; filed May 13, 2002, 2:00 p.m.: 25 IR 3150)

511 IAC 7-19-2 Reimbursement for parent's unilateral enrollment of student in private schools or facilities 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 20-35

Sec. 2. (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 private school or facility if the public agency made a free appropriate public education available to the student, and the parent elected to place the student in a private school or facility. If, as a result of a disagreement between the parent and the public agency, regarding the availability of a free appropriate public education for a student who previously received special education and related services under the authority of the public agency, the parent of a student with a disability enrolls the student in a private preschool, elementary school, or secondary school without the consent or referral by the public agency, the parent may seek reimbursement for the costs of the private school or facility from the public agency.

(b) If the parent and the public agency cannot reach agreement on the issue of reimbursement, either may request a due process hearing pursuant to 511 IAC 7-30-3 to resolve the issue.

(c) The independent hearing officer or the court may require the public agency to reimburse the parent for the cost of the private school enrollment if the hearing officer 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 private school or facility.

(2) The private placement is appropriate.

(d) The hearing officer or the court may reduce or deny reimbursement to the parents if the hearing officer or the court finds any of the following:

(1) At the most recent case conference committee meeting that the parents attended prior to removal of the student from the public agency, the parents did not inform the case conference committee 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 private school at public expense.

(2) The parent failed to provide written notice to the public agency, 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, of the information required by subdivision (1).

(3) 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 7-22-2, 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.

(e) The hearing officer or the court may not reduce or deny the reimbursement if the parent failed to provide the written notice described in subsection (d)(2) if the hearing officer or the court finds any of the following:

(1) The parent cannot read or write in English.

(2) Compliance with subsection (d)(2) would likely result in physical or serious emotional harm to the student.

(3) The public agency prevented the parent from providing the notice.

(4) The parent had not received notice of procedural safeguards, pursuant to 511 IAC 7-22-1, containing the notice requirement of subsection (d)(2).

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

(g) 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 7-19-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2446; filed May 13, 2002, 2:00 p.m.: 25 IR 3152*)

511 IAC 7-19-3 Equipment and supplies for the benefit of private school students

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) The public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies the public agency acquires with funds described in section 1(j) and 1(k) of this rule for the benefit of private school children with disabilities.

(b) The public agency shall ensure that the equipment and supplies placed in the private school:

(1) are used only for Part B purposes; and

(2) can be removed from the private school without remodeling the private school facility.

(c) The public agency shall remove equipment and supplies from a private school if:

(1) the equipment and supplies are no longer needed for Part B purposes; or

(2) removal is necessary to avoid unauthorized use of the equipment and supplies for other than Part B purposes.

(d) No funds under Part B may be used for repairs, minor remodeling, or construction of private school facilities. (*Indiana State Board of Education; 511 IAC 7-19-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2446*)

Rule 20. Program Planning and Evaluation

511 IAC 7-20-1 Comprehensive plan

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. (a) Each public agency shall review annually and, if appropriate, revise the comprehensive plan previously approved by the division of special education. School corporations participating in a cooperative, joint services program, or interlocal arrangement that have filed a single comprehensive plan shall conduct the annual review jointly.

(b) The Indiana School for the Blind, the Indiana School for the Deaf, university-affiliated schools, the department of correction, the state department of health, and the division of mental health shall submit plans to provide special education in programs administered by those agencies, as required by IC 20-1-6 [*IC 20-1 was repealed by P.L.1-2005, SECTION 240, effective July 1, 2005. See IC 20-35.*]. These public agencies shall review and, if appropriate, revise their respective comprehensive plans annually.

(c) Each public agency shall file with the division of special education a current comprehensive plan specifying how the public agency will provide special education and related services in accordance with this article.

(d) A public agency shall obtain approval from the division of special education prior to implementing a proposed change to a comprehensive plan that involves any of the following restructuring:

(1) Proposed withdrawal of a public agency from a planning district in order to operate as a single corporation public agency.

- (2) Proposed withdrawal of a public agency from a planning district in order to join a different planning district.
- (3) Proposed admission of a public agency to a planning district.
- (4) Organization or reorganization of a planning district affected by the withdrawal or admission of a public agency.
- (e) A planning district seeking approval under subsection (d) shall submit to the division of special education the following:
 - (1) Information regarding the effects on the students of the proposed restructuring.
 - (2) Proposed comprehensive plans that address the following:
 - (A) Participating public agencies and their enrollments.
 - (B) Organizational and administrative structures permitted under 511 IAC 7-18-2.
 - (C) Full array of special education and related services to provide free appropriate public education.
 - (D) Adherence to state and federal special education laws and regulations.

(f) The state advisory council on the education of children with disabilities shall review each comprehensive plan and information submitted under subsections (d) and (e) and shall recommend approval or rejection of the plan. The director of the division of special education shall consider the council's recommendation in making the final decision on the proposed changes. *(Indiana State Board of Education; 511 IAC 7-20-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2447)*

511 IAC 7-20-2 Program monitoring

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (a) The division of special education shall monitor all public agencies that receive federal or state monies for special education to ensure compliance with and implementation of the mandates of federal and state laws, rules, regulations, and policies regarding the provision of programs, services, protections, and a free appropriate public education to all students with disabilities in Indiana.

(b) The monitoring activities may include, but are not limited to, the following:

- (1) Complaint investigations.
- (2) Data collection and analysis.
- (3) State or federal fiscal audits.
- (4) On-site reviews of the total special education program on a cyclical or other basis.
- (5) On-site reviews of portions of programs to examine one (1) or more issues.
- (6) Collection of accreditation information.
- (7) Due process hearing decisions.
- (8) Performance indicators of the state improvement plan.

(Indiana State Board of Education; 511 IAC 7-20-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2447)

511 IAC 7-20-3 Comprehensive system of personnel development

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) Each public agency shall implement a comprehensive system of personnel development that is integrated with other professional development plans and provides for the training and information dissemination to public agency personnel, parents, and others regarding the provision of a free appropriate public education to students with disabilities. The system shall include, but is not limited to, the following:

- (1) The identification of needs and establishment of priorities for inservice training.
- (2) The provision of training or support opportunities to meet identified needs.
- (3) The evaluation of the system and the training opportunities provided, both on a short term basis and long term basis.
- (4) The dissemination of information and promising practices learned from the training to persons both inside and outside the agency.
- (b) The public agency shall annually submit to the division of special education a report containing the following:
 - (1) The number of personnel providing special education and related services.
 - (2) Relevant information on current and anticipated personnel vacancies and shortages, including the number of positions filled by staff with limited licenses.

(3) The extent of certification or retraining necessary to eliminate these shortages that is based, to the maximum extent possible, on existing assessments of personnel needs.

(4) Other information as required by the division of special education.

(c) The public agency shall, on a quarterly basis, submit to the division of special education data that documents the type and content of professional development training conducted. (*Indiana State Board of Education; 511 IAC 7-20-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2447*)

Rule 21. General Administration of Programs

511 IAC 7-21-1 Parent and community participation

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. (a) Each public agency shall establish, maintain, and implement written procedures to provide for participation of and consultation with parents of students participating in special education and other community members.

(b) The public agency may establish, or support the establishment of, a parent advisory council, committee, task force, or group. (*Indiana State Board of Education; 511 IAC 7-21-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2448*)

511 IAC 7-21-2 Special education program personnel

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (a) All personnel employed or contracted by a public agency to provide or supervise the provision of special education or related services shall be appropriately licensed or certified to provide the services for which the individual is employed or contracted in accordance with standards established by the Indiana professional standards board or other applicable licensing and certification bodies. The person designated as a student's teacher of record shall be appropriately licensed in the area of the student's disability or, where appropriate state licensure is not available, appropriately trained.

(b) Public agencies may allow paraprofessionals and assistants who are appropriately trained to work under the direction and supervision of licensed teachers or related services personnel to assist students in areas that relate to personal, social, and educational needs.

(c) The public agency shall do the following:

(1) Provide preservice and inservice 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 necessary to carry out the assigned responsibilities.

(C) Information on the specific special needs and characteristics of the students with whom the paraprofessional will be working.

(D) Information on special education procedures, including the confidentiality of personally identifiable information.

(2) Document, in writing, the training provided to paraprofessionals.

(*Indiana State Board of Education; 511 IAC 7-21-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2448*)

511 IAC 7-21-3 School calendar; elementary and secondary instructional day

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-30-2; IC 20-35

Sec. 3. (a) The school calendar of the school corporation providing the special education program shall be followed when the calendars of the providing school corporation and the school corporation of legal settlement differ. Unless otherwise provided, the school corporation of legal settlement is responsible to provide for transportation necessary to enable students to attend school on days when the providing school corporation is in attendance but the school corporation of legal settlement is not in attendance.

(b) Each public agency shall ensure that extended school year services are available as necessary to provide free appropriate public education. A public agency may not limit extended school year services to particular categories of disability or unilaterally limit the type, amount, or duration of those services.

(c) The length of the instructional day for elementary and secondary students with disabilities shall be the same as the instructional day for nondisabled elementary and secondary students, respectively, in the same school building, unless the case conference committee determines the length of the student's instructional day should be different and documents the justification in the case conference committee report. (*Indiana State Board of Education; 511 IAC 7-21-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2448*)

511 IAC 7-21-4 Early childhood

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 4. (a) The length and frequency of the instructional day for early childhood students with disabilities shall be based on the developmental and educational needs as determined by the student's case conference committee. Full-time special education for students in early childhood special education programs shall be at least twelve and one-half (12½) hours a week.

(b) An early childhood special education program, designed primarily for students with disabilities, shall have no more than ten (10) students with disabilities. For a classroom with one (1) to eight (8) students, a full-time instructional or program assistant shall be provided in addition to the teacher. For a classroom with nine (9) or ten (10) students, two (2) full-time instructional or program assistants shall be provided in addition to the teacher. The actual number of students assigned to an early childhood teacher is subject to the requirements of 511 IAC 7-17-11. (*Indiana State Board of Education; 511 IAC 7-21-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2449*)

511 IAC 7-21-5 Facilities

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 5. (a) The public agency shall provide instructional space for students with disabilities that is:

(1) not less than the per student instructional space for general education students of the same chronological age in the same building;

(2) comparable to the general space and instructional environment of the general education students in the same building; and

(3) sufficient to accommodate a student's special equipment, assistive devices, or curricular needs.

(b) Each public agency shall include in its disaster plan, in accordance with rules promulgated by the Indiana state board of education, provisions for warning and evacuating students whose disabilities require special warning or evacuation procedures. (*Indiana State Board of Education; 511 IAC 7-21-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2449*)

511 IAC 7-21-6 Instructional curricula, materials, equipment, and assistive technology devices and services

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 6. (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 case conference committee. The public agency may supplement the general education curriculum with modified programs of instruction or curriculum that relate to state academic proficiencies and 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) Charges for textbook rental and incidental fees for students are permitted and do not violate the at no cost requirement, except where such charges are prohibited by state law.

(d) The public agency shall provide instructional materials and equipment and assistive technology devices and services that are specified in the student's individualized education program. 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 case conference committee determines that the student needs access to those devices in order to receive a free appropriate public education.

(e) Unless the student's case conference committee 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.

(f) 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. The public agency shall monitor the maintenance and repair of hearing aids and other equipment used or worn by a student at school to ensure the equipment is working properly.

(g) As used in this section, "assistive technology service" includes, but is not limited to, the following:

- (1) The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment.
- (2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for students with disabilities.
- (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices.
- (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs.
- (5) Training or technical assistance for a student with a disability or, if appropriate, the student's family.
- (6) Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of students with disabilities.

(Indiana State Board of Education; 511 IAC 7-21-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2449)

511 IAC 7-21-7 Transportation

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-27-9-7; IC 20-35

Sec. 7. (a) When appropriate, students with disabilities shall be transported with nondisabled students.

(b) The public school corporation of legal settlement is ultimately responsible for transportation of students with disabilities. Under a comprehensive plan or joint services agreement, interlocal or cooperative arrangement, responsibility for transportation may be delegated. Transportation as a related service, under 511 IAC 7-28-1(o), may be necessary for a student to receive special education and related services as specified in the student's individualized education program.

(c) Whenever the transit time of a student with a disability exceeds the transit time of nondisabled students of comparable age in the same school corporation, the school corporation of legal settlement shall place a written student-specific justification for the excess transit time in each affected student's record. A local policy limiting transit time is applicable to students with disabilities.

(d) The parent of a student with a disability shall not be required to provide transportation. If the parent does transport the student, pursuant to a written agreement with the public agency, the public agency shall reimburse the parent at no less than the per mile rate at which employees of the public agency are reimbursed. *(Indiana State Board of Education; 511 IAC 7-21-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2450)*

511 IAC 7-21-8 Medication administration

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35; IC 34-30-14

Sec. 8. (a) The public agency shall establish, maintain, and implement written policies and procedures on the administration of medication that include the following:

- (1) No medication shall be administered without the written and dated consent of the parent.
- (2) The parent's written consent is valid only for the period specified on the consent form and never longer than the current school or program year.
- (3) A physician's prescription, a copy of the original prescription, or the pharmacy label must be provided by the parent and be on file with the public agency.
- (4) Medication shall be maintained in a secure location.
- (5) Medication shall be administered in accordance with the physician's prescription.

- (6) The parent may, upon request, obtain a copy of the public agency's policies and procedures on medication administration.
- (7) If the medication is to be terminated prior to the date on the prescription, the written and dated consent or withdrawal of consent of the parent is required.

(8) The person or persons authorized to administer medication are specified.

(b) The public agency shall document any special training provided to persons authorized to administer medication. (*Indiana State Board of Education; 511 IAC 7-21-8; filed May 22, 2000, 8:52 a.m.: 23 IR 2450*)

511 IAC 7-21-9 State and local assessments

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-32-5; IC 20-35

Sec. 9. (a) A student with a disability shall participate in state and local assessments, with appropriate accommodations in testing materials and procedures, unless the student's case conference committee determines:

(1) it is not appropriate for the student to participate in all or part of the assessment; and

(2) an alternate assessment will be used to assess the student's achievement.

(b) Testing accommodations for state assessment programs are subject to the program manual issued each year by the department of education.

(c) The student's case conference committee shall determine, in advance, which appropriate accommodations the student needs in order for the assessment to reflect the student's skills and knowledge base and shall document the accommodations in the student's individualized education program.

(d) If the student's case conference committee determines that a student will not participate in a state or local assessment, a description of the alternate assessment shall be documented in the student's individualized education program. (*Indiana State Board of Education; 511 IAC 7-21-9; filed May 22, 2000, 8:52 a.m.: 23 IR 2450*)

Rule 22. Procedural Safeguards

511 IAC 7-22-1 Notice of procedural safeguards

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. (a) The public agency shall establish, maintain, and implement procedures in accordance with this section to ensure that students with disabilities and their parents are afforded procedural safeguards with respect to the provision of a free appropriate public education by the agency.

(b) The written notice of procedural safeguards shall be a standard notice and shall be:

(1) written in language understandable to the general public;

(2) provided in the native language or other mode of communication used by the parent unless it clearly is not feasible to do so; and

(3) printed in a format that is easy to read.

(c) When the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure the following:

(1) The procedural safeguards are translated orally or by other means to the parent in his or her native language or other mode of communication.

(2) The parent understands the content of the notice.

(3) There is written documentation that the requirements of this section are met.

(d) A copy of the notice of procedural safeguards shall be given to the parents, at a minimum, at the time of:

(1) initial referral for evaluation;

(2) notification of a case conference committee meeting;

(3) reevaluation of the student;

(4) filing of a due process hearing;

(5) the date of the decision to place a student in an interim alternative educational setting for up to forty-five (45) days or the date expulsion charges have been filed; and

- (6) notification of a proposed placement or denial of placement.
- (e) The written notice of procedural safeguards shall include a full explanation of the following:
 - (1) The parent's right to contact and meet with public agency personnel or the agency's governing body to do the following:
 - (A) Obtain an explanation or clarification of the procedural safeguards or due process procedures.
 - (B) Discuss any questions or issues.
 - (C) Obtain local access in a convenient place to:
 - (i) federal and state laws pertaining to special education;
 - (ii) the public agency's standards, policies, and procedures pertaining to special education;
 - (iii) the public agency's approved comprehensive plan;
 - (iv) approved applications; and
 - (v) final monitoring reports of the public agency.
 - (2) The prerequisite of written parental consent for:
 - (A) An initial evaluation.
 - (B) A reevaluation.
 - (C) An additional evaluation.
 - (D) Initial special education services.
 - (E) A change of placement.
 - (3) The parent's right to participate as a member of the case conference committee and the requirements of 511 IAC 7-27-4.
 - (4) The parent's right to obtain a copy of the initial educational evaluation report, in accordance with 511 IAC 7-25-4(k) and 511 IAC 7-25-4(l), prior to the case conference committee meeting.
 - (5) The parent's right to request that a case conference committee be convened at any time.
 - (6) The parent's right to request an evaluation and the protections contained in 511 IAC 7-25-4.
 - (7) The parent's right to prior written notice consistent with the requirements of section 2 of this rule.
 - (8) The parent's right to obtain an independent educational evaluation, including the following:
 - (A) The right to have the results of the independent educational evaluation considered by the case conference committee or the independent hearing officer in a due process hearing.
 - (B) The circumstances under which an independent educational evaluation may be obtained at public expense.
 - (C) The criteria that must be met when an independent educational evaluation is conducted at public expense.
 - (9) The requirement that a student with a disability be placed in the least restrictive environment, as determined by the case conference committee, that is appropriate to meet the student's individual needs, including the continuum of services to be considered under 511 IAC 7-27-9.
 - (10) The parent's rights with regard to the student's educational record, including the following:
 - (A) Accessing the record.
 - (B) Inspecting and reviewing the record.
 - (C) Challenging information in the record.
 - (D) Amending information in the record.
 - (E) The consent required for disclosure, use, and destruction of records pursuant to 511 IAC 7-23-1.
 - (F) Any fees associated with copying record.
 - (11) The availability of mediation as a means of dispute resolution and the mediation process pursuant to 511 IAC 7-30-1.
 - (12) The right of the parent, or any interested party, to file a complaint, including the process for filing a complaint and the timelines under 511 IAC 7-30-2.
 - (13) The parent's right to request a due process hearing to challenge the public agency's proposed or refused action regarding a student with a disability, including the following:
 - (A) The process for requesting a due process hearing.
 - (B) The student's placement, special education, and related services during the pendency of a due process hearing.
 - (C) The requirement to disclose evaluation results and recommendations.
 - (D) The rights of the parent and the public agency before, during, and after a due process hearing conducted pursuant to 511 IAC 7-30-3, including an administrative appeal, a civil action, and attorneys' fees.
 - (14) The procedures under 511 IAC 7-24 for appointing an educational surrogate parent and the circumstances in which an educational surrogate parent must be appointed.
 - (15) The requirements under 511 IAC 7-19-2 for a parent's unilateral placement of a student with a disability in a private

school at public expense.

(16) The protections for students who have not been determined eligible for special education and related services pursuant to 511 IAC 7-29-8.

(17) The protections and procedures for students who are subject to placement in an interim alternative educational setting.

(18) The transfer of rights to the student at eighteen (18) years of age under 511 IAC 7-28-4.

(19) The names and addresses of agencies and organizations that provide assistance to parents in understanding this rule.

(Indiana State Board of Education; 511 IAC 7-22-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2451; filed May 13, 2002, 2:00 p.m.: 25 IR 3153)

511 IAC 7-22-2 Prior written notice

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (a) The public agency shall provide the written notice to the parent a reasonable time before the public agency:

(1) proposes to initiate or change the identification, evaluation, or special education 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, evaluation, or special education placement of the student or the provision of a free appropriate public education to the student.

(b) The notice to the parent shall be:

(1) written in language understandable to the general public;

(2) provided in the native language or other mode of communication used by the parent unless it clearly is not feasible to do so; and

(3) printed in a format that is easy to read.

(c) When the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure the following:

(1) 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) The parent understands the content of the notice.

(3) There is written documentation that the requirements of this section are met.

(d) The content of the prior written notice shall include the following:

(1) A description of the action proposed or refused by the agency.

(2) An explanation of why the agency proposes or refuses to take the action.

(3) A description of any other options that the agency considered and the reasons why those options were rejected.

(4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action.

(5) A description of any other factors that are relevant to the agency's proposal or refusal.

(6) A statement that the parents of a student with a disability have protection under the procedural safeguards and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards may be obtained.

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

(8) A statement that disagreements between the parent and the public agency regarding eligibility for special education and related services or the contents of a proposed individualized education program may be resolved through mediation pursuant to 511 IAC 7-30-1 or a due process hearing pursuant to 511 IAC 7-30-3.

(9) A statement that:

(A) parental consent, required by subsection (d) *[this subsection]*, may be revoked at any time;

(B) the revocation must be in writing and sent to the local director of special education; and

(C) revocation of consent has no retroactive effect if the action consented to has already occurred.

(Indiana State Board of Education; 511 IAC 7-22-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2452)

Rule 23. Confidentiality of Information

511 IAC 7-23-1 Access to and disclosure of educational records

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-33-7; IC 20-35

Sec. 1. (a) The public agency shall annually notify, in writing, parents of students currently in attendance, or eligible students currently in attendance, of their rights regarding confidentiality of personally identifiable information. The notice shall inform parents or eligible students that they have the right to the following:

- (1) Inspect and review the student's educational record with respect to the identification, evaluation, and educational placement of the student and the provision of a free appropriate public education to the student.
- (2) Seek amendment of the student's educational record that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights.
- (3) Consent to disclosures of personally identifiable information contained in the student's educational record, except to the extent that this rule authorizes disclosure without consent.
- (4) File a complaint concerning the public agency's alleged failure to comply with the requirements of this rule.

(b) The written notice shall include the following:

- (1) The procedure for exercising the right to inspect and review educational record.
- (2) The procedure for requesting an amendment of record.
- (3) The criteria for determining who constitutes a public agency official and what constitutes a legitimate educational interest, if the public agency has a policy of disclosing educational records to other public agency officials who have been determined to have a legitimate educational interest.

(c) The right to inspect and review educational records includes the following:

- (1) The right to an explanation and interpretation of the record by the public agency.
- (2) The right to have other arrangements made to inspect and review requested record or to receive copies of the record from the public agency if the failure to provide those copies would prevent the parent or eligible student from exercising the right to inspect and review the record.
- (3) The right to have a representative of the parent or eligible student inspect and review the record.
- (4) The right to receive a copy of the student's educational record from the public agency for use in a pending due process hearing.

(d) A public agency shall permit the parent, or parent's representative, to inspect and review any educational record of the parent's children from birth to eighteen (18) years of age that are collected, maintained, or used by the public agency as described in this rule. All rights under this rule transfer to the student when the student reaches eighteen (18) years of age unless the student has been adjudicated incompetent.

(e) The public agency shall permit a custodial and noncustodial parent to inspect and review the student's record unless the public agency has received actual written notice that a court order has terminated or restricted the parent's authority to access the student's record under applicable state law governing matters, such as, but not limited to, guardianship, separation, divorce, and custody.

(f) The public agency shall comply with a request from a parent or eligible student to inspect and review the record:

- (1) without unnecessary delay;
- (2) before any meeting regarding an individualized education program, interim alternative educational setting, manifestation determination, or a due process hearing; and
- (3) in no case more than forty-five (45) calendar days after the request is made.

(g) The public agency may charge a fee for copies of records, not to exceed actual cost of duplication, that are made for a parent or eligible student under this rule unless the payment of a fee prevents the parent or eligible student from exercising the right to inspect and review the record. The public agency may not charge a fee to search for or to retrieve information under this rule.

(h) If an educational record includes information on more than one (1) student, the parent or eligible student has the right to inspect and review only the information relating to the parent's child or to be informed of that specific information.

(i) The public agency shall maintain a record of each request for access to and disclosure of personally identifiable information from the educational record of each student, except when the disclosure has been by or to:

- (1) a parent or eligible student;
- (2) a party with written consent from the parent or eligible student;
- (3) a party seeking directory information;

(4) an authorized public agency official; or

(5) a party seeking or receiving the record as directed by a federal grand jury or other law enforcement subpoena and the issuing court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.

(j) The record of access and disclosure shall be maintained with the educational record as long as the educational record is maintained. The access and disclosure record shall include the following:

(1) The name of the person who has requested or received personally identifiable information from the educational record.

(2) The purpose of the party in requesting or obtaining the information.

(3) The date of disclosure of the information.

(k) If the public agency discloses personally identifiable information with the understanding that the party receiving the information may make further disclosures on behalf of the public agency in which prior consent is not required, the record of disclosure shall include the following:

(1) The names of the additional parties to which the receiving party may disclose the information on behalf of the public agency.

(2) The purpose of each of the additional parties in requesting or obtaining the information.

(l) The public agency, upon request of a parent or eligible student, shall provide a list of the types and locations of educational record collected, maintained, or used by the public agency.

(m) The public agency shall include in the educational record of a student with a disability, a statement of any current or previous disciplinary action that has been taken against the student and transmit the statement to the same extent that the disciplinary information is included in, and transmitted with, the student record of nondisabled children, in accordance with subsection (q). The statement may include the following:

(1) A description of any behavior engaged in by the student that required disciplinary action.

(2) A description of the disciplinary action taken.

(3) Any other information that is relevant to the safety of the student and other individuals involved with the student.

(n) If a student transfers from one (1) school to another, the public agency's transmission of any of the student's record shall include the student's current individualized education program and any statement of the current or previous disciplinary action that has been taken against the student in accordance with subsections (m) and (q).

(o) When the public agency reports a crime committed by a student with a disability, the public agency shall ensure that copies of the education and disciplinary record of the student are transmitted, to the extent the transmission is permitted by the Family Educational Rights and Privacy Act, for consideration by the appropriate authorities to whom it reports the crime.

(p) Except as specified in subsection (q), written and dated consent of the parent or eligible student shall be obtained before personally identifiable information is disclosed to anyone other than the parent, eligible student, or authorized public agency officials, or before the information is used for any purpose other than those specified in this rule. The consent shall specify the following:

(1) The record that may be disclosed.

(2) The purpose of the disclosure.

(3) The person or class of persons to whom the record may be disclosed.

(q) The public agency may allow access to, or disclose information from, an educational record without consent of the parent or eligible student under any of the following conditions:

(1) The disclosure is to authorized public agency officials whom the agency has determined to have legitimate educational interests.

(2) The disclosure is to officials of another public agency where the student is enrolled, or intends to enroll, subject to the following:

(A) The public agency must make a reasonable attempt to notify the parent or eligible student unless the disclosure is initiated by the parent or eligible student or the annual notice in subsection (a) includes notice that the agency forwards educational record to another public agency in which the student intends to or has enrolled.

(B) The public agency must provide, upon request of the parent or eligible student, a copy of the disclosed record.

(C) The public agency must provide the opportunity for a hearing at the request of a parent or eligible student.

(3) The disclosure is to federal or state education authorities for audit, evaluation, or accreditation purposes, or for the enforcement of, or compliance with, legal requirements related to federal and state supported education programs.

(4) The disclosure is in connection with financial aid for which the student applied or which the student has received, if the information is necessary for such purposes as:

- (A) determining eligibility for financial aid;
 - (B) determining the amount of financial aid;
 - (C) determining the conditions for the financial aid; or
 - (D) enforcing the terms and conditions of the financial aid.
- (5) The disclosure is to an organization, such as federal, state, or local agencies or independent organizations conducting a study for or on behalf of federal or state education agencies or institutions for any of the purposes listed in this subsection, providing the organization protects the confidentiality of the educational record and destroys all copies in its possession when the record is no longer needed for the purpose for which the study was conducted. Acceptable purposes of studies under this subsection are:
- (A) developing, validating, or administering predictive tests;
 - (B) administering student aid programs; or
 - (C) improving instruction.
- (6) The disclosure is necessary to comply with a judicial order or lawfully issued administrative or judicial subpoena, provided the public agency makes a reasonable effort to notify the parent or the eligible student of the order or subpoena in advance of the disclosure unless the disclosure is in compliance with:
- (A) a federal grand jury subpoena and the court has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed; or
 - (B) any other subpoena issued for a law enforcement purpose and the court or other issuing agency has ordered that the existence or the contents of the subpoena or the information furnished in response to the subpoena not be disclosed.
- (7) The disclosure is to the court where the public agency has initiated legal action against the parent or student. The disclosure may occur without a court order or subpoena, provided the public agency makes a reasonable effort to notify the parent or eligible student prior to the disclosure.
- (8) The disclosure is to appropriate parties in a health or safety emergency if knowledge of the information is necessary to protect the health and safety of the student or other individuals. Nothing in this rule shall prevent a public agency from:
- (A) including in the educational record of a student appropriate information concerning disciplinary action taken against the student for conduct that posed a significant risk to the safety or well-being of that student, other students, or other members of the school community;
 - (B) disclosing appropriate information maintained in clause (A) to teachers and school officials within the public agency who the public agency has determined have legitimate educational interests in the behavior of the student; or
 - (C) disclosing appropriate information maintained under clause (A) to teachers and school officials in other schools who have been determined to have legitimate educational interests in the behavior of the student.
- (9) The disclosure is information the public agency has designated as directory information.
- (10) The disclosure is to the parent of a dependent student as defined under Section 152 of the Internal Revenue Code of 1954.
- (11) The disclosure is to accrediting organizations to carry out their accrediting functions.
- (12) The disclosure is to the parent of a student who is not eligible or to the student.
- (r) The public agency shall, upon request, provide the parent or eligible student with a copy of the information that has been disclosed.
- (s) The public agency may disclose personally identifiable information from an educational record only on the condition that the party to whom the information is disclosed will not redisclose the information to any other party without the prior consent of the parent or eligible student, except for disclosures:
- (1) of directory information;
 - (2) to the parent or eligible student; or
 - (3) made pursuant to court orders or lawfully issued subpoenas.
- (t) The public agency shall not permit a third party access to personally identifiable information from educational record for at least five (5) years, if the Family Policy Compliance Office, United States Department of Education determines that the third party improperly redisclosed personally identifiable information from educational record.
- (u) In the event that a parent refuses to provide consent under this section, the public agency may initiate the due process procedures stated in 511 IAC 7-30-3. (*Indiana State Board of Education; 511 IAC 7-23-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2452*)

511 IAC 7-23-2 Procedures for amending educational records

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (a) A parent or eligible student who believes that information in an educational record collected, maintained, or used under this rule is inaccurate, misleading, or violates the privacy or other rights of the student may request the public agency that maintains the record to amend the information. The request shall:

- (1) be in writing;
- (2) be dated; and
- (3) specify the information that the parent or eligible student believes is inaccurate, misleading, or violates the student's privacy or other rights.

(b) If the public agency agrees to amend the information as requested, the public agency shall:

- (1) amend the information within ten (10) business days after the request is received; and
- (2) notify the parent or eligible student, in writing, that the change has been made, including the date the change was made.

(c) If the public agency refuses to amend the information as requested, the public agency shall notify the parent or eligible student of the refusal, in writing, within ten (10) business days after the request is received. The written notice shall include a statement of the parent's or eligible student's right to a hearing to challenge the information in the student's educational record and the procedures for the hearing, including the following:

(1) The parent or eligible student shall submit to the public agency a written request for a hearing, specifying the information challenged and the reasons the parent or eligible student believes the information to be inaccurate, misleading, or in violation of the student's privacy or other rights.

(2) The public agency shall convene a hearing within fifteen (15) business days after the request for the hearing is received.

(3) The public agency shall notify the parent or eligible student, in writing, of the hearing date, time, and location, not less than five (5) business days in advance of the hearing.

(4) The hearing may be conducted by any person, including an official of the public agency, who does not have a direct interest in the outcome of the hearing.

(5) The parent or eligible student shall be given a full and fair opportunity to present evidence relevant to the issues. The parent or eligible student may, at their own expense, be assisted or represented by one (1) or more persons, including an attorney.

(6) The hearing officer shall notify the parent or eligible student of the hearing decision in writing within ten (10) business days after the hearing. The decision shall be based solely on evidence and testimony presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

(7) If the hearing officer determines the information in question is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the public agency shall amend the information accordingly, and inform the parent or eligible student in writing of the amendment.

(8) If the hearing officer determines the information in question is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, the public agency shall inform the parent or eligible student in writing of the right to place a statement in the student's record commenting on the contested information or stating the reasons for disagreeing with the decision, or both.

(9) A statement placed in the record by the parent or eligible student under subdivision (8) shall be maintained by the public agency in the student's record as long as the record or the contested portion of the record is maintained by the public agency. The public agency shall disclose the statement whenever it discloses the record or the contested portion of the record to which the statement relates.

(d) If the public agency refuses to amend the information as requested, the public agency shall inform the parent of the refusal and advise the parent of the right to a hearing under 34 CFR 300.568. The public agency shall conduct a hearing upon the parent's request. A hearing conducted under this section must be conducted according to the procedures under 34 CFR 99.22. (*Indiana State Board of Education; 511 IAC 7-23-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2455; filed May 13, 2002, 2:00 p.m.: 25 IR 3154*)

511 IAC 7-23-3 Confidentiality safeguards in the collection, maintenance, and destruction of educational records

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) The public agency shall establish, maintain, and implement procedures to protect the confidentiality of personally identifiable information at the collection, storage, disclosure, and destruction stages. These procedures shall include, but are not limited to, those described in this rule and the following:

(1) The appointment of one (1) official in each building or administrative office to be responsible for ensuring compliance with the confidentiality provisions of this rule.

(2) The provision of training or instruction regarding the confidentiality provisions of this rule and the Family Educational Rights and Privacy Act for all persons collecting or using personally identifiable information.

(b) The public agency shall maintain for public inspection a current listing of the names and positions of those employees within the public agency authorized to access personally identifiable information.

(c) The public agency shall inform the parent or eligible student, in writing, when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student. The information shall be destroyed at the request of the parent or eligible student and in accordance with the public agency's record retention schedules.

(d) The public agency shall maintain a student's educational record for at least three (3) years after the student exits from the special education program and in accordance with the public agency's record retention schedules. The public agency shall not destroy any educational record if there is an outstanding request to inspect and review the record.

(e) The public agency may maintain a permanent record, without time limitation, of the following student information:

(1) Name, address, and telephone number.

(2) Grades.

(3) Classes attended.

(4) Grade level completed.

(5) Attendance record.

(6) The year the student exited from school.

(f) A public agency may maintain and store a student's educational record in any manner, provided the following requirements are met:

(1) The manner of maintenance and storage does not abridge any rights under this rule.

(2) The educational record can be reviewed and copies made if needed.

(Indiana State Board of Education; 511 IAC 7-23-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2456)

Rule 24. Educational Surrogate Parents

511 IAC 7-24-1 Method for determining whether a student needs an educational surrogate parent

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. (a) The public agency shall 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 7-17-57, can be identified.

(2) When, after reasonable efforts, the public agency cannot discover the whereabouts of a parent.

(3) When the student is a ward of the state under the laws of the state, unless the court order creating the wardship permits the student to remain in the home or expressly reserves to a parent the authority to make decisions regarding the student's education or upbringing.

(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) at 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.

(Indiana State Board of Education; 511 IAC 7-24-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2457)

511 IAC 7-24-2 Method for assigning an educational surrogate parent

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: 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 educational surrogate parents.
- (2) A system for determining the eligibility of individuals to serve as educational surrogate parents.
- (3) A system for training individuals to serve as educational surrogate parents.
- (b) The public agency shall document 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, except that an employee of a nonpublic agency that provides only noneducational care for the student and who meets the qualifications stated in subdivisions (2) through (4), may be selected as an educational surrogate parent;
 - (2) has no 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) A foster parent or relative with whom a student has been placed by a juvenile court or through the county office of family and children shall be assigned as the student's educational surrogate parent if the foster parent or relative:
 - (1) meets the criteria of subsection (b);
 - (2) has received educational surrogate parent training; and
 - (3) is willing to serve as the educational surrogate parent.
- (d) 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.
- (e) An educational surrogate parent may represent the student in all matters relating to the following:
 - (1) Identification and eligibility.
 - (2) Evaluation.
 - (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 permission for evaluation, services, or change of placement.
 - (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) The public agency may offer training concerning special education laws and rules or may contract with another agency or organization to provide training to develop a pool of educational surrogate parents from which the public agency may draw.
- (i) 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 school corporation of legal settlement or from the geographic area where the educational program is located, as agreed upon by the administrators of both programs involved.
- (j) The public agency shall keep a list of educational surrogate parents from which it makes its assignments. The list shall include the qualifications of each educational surrogate parent and the number of assignments for each educational surrogate parent. *(Indiana State Board of Education; 511 IAC 7-24-2; filed May 22, 2000, 8:52 a.m.; 23 IR 2457)*

Rule 25. Identification and Evaluation**511 IAC 7-25-1 In general**

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. No student shall be denied a free appropriate public education as a result of a public agency's inability to obtain parental consent for an initial evaluation, reevaluation, or special education services. The public agency may pursue mediation but shall pursue a due process hearing in an effort to resolve the issue of the public agency's inability to secure parental consent for an initial evaluation. (*Indiana State Board of Education; 511 IAC 7-25-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2458*)

511 IAC 7-25-2 Child identification

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (a) The public agency shall establish, maintain, and implement written procedures that ensure the location, identification, and evaluation of all students who:

- (1) have legal settlement within the jurisdiction of the public agency;
- (2) are from birth, but less than twenty-two (22) years of age; and
- (3) are in need of special education and related services regardless of the severity of their disabilities.

(b) The child identification procedures described in subsection (a) shall encompass the following:

- (1) Students in public and private schools, agencies, and institutions.
- (2) Students for whom the parent has expressed concern to certified personnel in writing, or orally if the parent is unable to read or to write, that the student is in need of special education and related services.
- (3) Students for whom a pattern of behavioral or performance concerns within the school setting demonstrates the need for such services.
- (4) Students for whom an educational evaluation has been requested either by the parent or the public agency.
- (5) Students for whom a teacher or other certified personnel have expressed behavioral or performance concerns to the director of special education of that agency, or to other administrative personnel of that agency.
- (6) Highly mobile students with disabilities, such as migrant and homeless children.
- (7) Students who are suspected of having a disability and in need of special education, even though the students are being advanced from grade to grade.
- (8) A method to determine which students are, and are not, receiving special education and related services.
- (c) Child identification procedures may be developed and implemented in conjunction with other public or private agencies.

The procedures shall include, but are not limited to, the following:

- (1) The public agency's referral, evaluation, and case conference procedures.
- (2) Public awareness and information activities through media, such as television, radio, newspapers, oral presentations, and posters, including how a referral may be made to the public agency.
- (3) Publication of a notice in newspapers with general circulation in the public agency's geographic area.
- (4) Publication or other informational activities in a non-English format designed to inform a known population group in the public agency's area whose native language or mode of communication is not English.

(*Indiana State Board of Education; 511 IAC 7-25-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2458*)

511 IAC 7-25-3 Educational evaluations; in general

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) This rule applies only to evaluation procedures for an individual student to determine the existence, nature, and extent of a disability, if any, and the special education and related services the student may need. These procedures do not apply to basic tests administered to, or procedures used with, all students in a building, grade, or class, or those required by state law.

(b) Each public agency shall establish, maintain, and implement a general education intervention procedure, implemented at the building level, for students whose classroom performance is adversely affecting educational outcomes. General education intervention shall not be a prerequisite to an educational evaluation.

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

- (1) A description of the way in which parents, teachers, school administrators, specialists, or the student may pursue or initiate an initial evaluation.

(2) A description of the methods used to assign a team of qualified professionals to conduct educational evaluations.

(3) A description of the procedures used for the required three (3) year reevaluations and additional evaluations.

(d) When referrals for any student from birth, but less than twenty-two (22) years of age are made directly to the Indiana School for the Deaf, the Indiana School for the Blind, Silvercrest Children's Development Center, 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 case conference committee meeting described in section 4 of this rule shall be the responsibility of the public school corporation of legal settlement.

(e) The public agency shall establish, maintain, and implement procedures to assure that the tests and other evaluation materials:

(1) are provided and administered in the student's native language or other mode of communication unless it is clearly not feasible to do so;

(2) are selected and administered so as not to be racially or culturally discriminatory;

(3) include materials designed to assess specific areas of educational need and not just those designed to provide a single general intelligence quotient;

(4) when administered to a student with impaired sensory, manual, or speaking skills, are capable of yielding results that 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, except where these skills are the factors the test purports to measure;

(5) are technically sound instruments that may assess the relative contribution of cognitive, behavioral, physical, and developmental factors;

(6) provide relevant information that directly assists in determining the educational needs of the student; and

(7) 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) Materials and procedures used to evaluate a student with limited English proficiency shall be selected and administered to ensure they measure the extent to which the student has a disability and needs special education rather than measuring the student's English language skills.

(g) The public agency shall assure that any standardized tests given to a student:

(1) have been validated for the specific purpose for which they are used; and

(2) are administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the tests.

(h) If an assessment is not conducted under standard conditions, a description of the extent to which the assessment varied from standard conditions shall be included in the evaluation report.

(i) The determination of eligibility for special education and appropriate special education services and placement must be made on the basis of more than a single test or procedure or sole criterion. Specific information and procedures required to determine a disability and eligibility are described in 511 IAC 7-26. A comprehensive educational evaluation conducted by a team of qualified professionals shall include a variety of assessments and information gathering procedures designed to provide relevant functional and developmental information in all areas that may be related to the suspected disability, including, where appropriate, information on the student's:

(1) health;

(2) vision;

(3) hearing;

(4) social and emotional status;

(5) general intelligence;

(6) academic performance;

(7) communication status; and

(8) motor abilities.

(j) The public agency shall ensure that information obtained from various sources, including information provided by the parent, aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive

behavior, is documented and carefully considered by the case conference committee in determining the following:

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

(k) The public agency must evaluate a student with a disability in accordance with the requirements of this rule before determining that the student is no longer a student with a disability, except when termination of the student's eligibility is due to graduation with a regular high school diploma or exceeding the age eligibility under this article. (*Indiana State Board of Education; 511 IAC 7-25-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2458; filed May 13, 2002, 2:00 p.m.: 25 IR 3155*)

511 IAC 7-25-4 Initial educational evaluation

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 4. (a) If the public agency intends to pursue an initial evaluation, the public agency shall hold a personal meeting with the parent to inform the parent of the public agency's intent. If the parent is unwilling or unable to attend a personal meeting, a notice shall be mailed to the parent. The information presented verbally and in writing at the personal meeting or in the mailed notice must include the following:

- (1) A description of the student's learning difficulties and the reasons an educational evaluation is needed.
- (2) A description of the review process to determine what data exists and what, if any, additional data is needed.
- (3) A description of the evaluation process, if additional data is needed, including proposed assessment techniques and what the tests or evaluation procedures will measure.
- (4) When general education intervention strategies have been used, a description of attempts to remediate the learning difficulties through general education intervention strategies and why those attempts were unsuccessful.
- (5) The timeline for conducting the educational evaluation and convening the case conference committee meeting.
- (6) An explanation of how to obtain a copy of the report of the initial educational evaluation prior to the case conference committee meeting, including asking the parent if the parent wishes to have a meeting with an individual who can explain the results of the evaluation prior to the case conference committee meeting.
- (7) Written notice of procedural safeguards described in 511 IAC 7-22-1.
- (8) A list of sources for parents to contact to obtain assistance with understanding the provisions of this section.

(b) Informed parental consent must be obtained prior to conducting an initial educational evaluation. A written request for an evaluation, signed by the parent and submitted to certified personnel, shall constitute written consent for an evaluation. When the referral for an evaluation is made by public agency personnel or if the parent makes a verbal request for an evaluation, the public agency's consent form, when signed by the parent and received by certified personnel, constitutes the parent's written consent. The public agency shall follow the procedures in subsection (a) to assure the parent is fully informed and to obtain information on the parent's reasons for requesting the educational evaluation. The initial educational evaluation must be conducted and the case conference committee convened within sixty (60) instructional days of the date the written parental consent is received by certified personnel.

(c) Parental consent is not required to review existing data as part of an initial evaluation. Parental consent for evaluation shall not be construed as consent for any services other than the evaluation of the student.

(d) As part of an initial educational evaluation, if appropriate, the case conference committee and other qualified professionals, as appropriate, shall do the following:

- (1) Review existing evaluation data on the student, including evaluations and information provided by the parents of the student, current observations, and classroom-based assessments, and observations by teachers and related service providers.
- (2) On the basis of that review, and input from the student's parents, identify what additional data, if any, are needed to determine:
 - (A) whether the student has a particular category of disability as described in 511 IAC 7-26;
 - (B) the present levels of performance and educational needs of the student; and
 - (C) whether the student needs special education and related services.
- (e) The case conference committee members may conduct the review described in subsection (d) without a meeting.
- (f) The public agency shall administer tests and evaluation materials as may be needed to produce the data identified in

subsection (d).

(g) If the case conference committee, after reviewing existing evaluation data as described in subsection (d), determines no additional data are needed to determine the student's eligibility for special education, the public agency shall:

- (1) notify the parent of that determination and the reasons for the determination;
- (2) notify the parent of the right to request an assessment to determine whether the student is eligible for special education; and
- (3) not be required to conduct such an assessment unless requested to by the student's parents.

(h) A comprehensive individual evaluation to determine the existence of a disability and the student's educational needs that fulfills the requirements of this rule and 511 IAC 7-26 shall precede any action with regard to the initial identification and provision of special education and related services. The educational evaluation of a student shall be conducted by a team of qualified professionals, including at least one (1) teacher licensed in, or other specialist with knowledge in, the area of suspected disability, and a school psychologist, except in the following situations:

(1) For a student with suspected communication disability only, such as a speech disorder, the speech-language pathologist may serve as the sole evaluator.

(2) For a student with a suspected learning disability, the evaluation team of qualified professionals shall also include 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.

(i) For a student with a visual or hearing impairment, or suspected multiple disabilities, the public agency may request that representatives of the state-operated schools serve as part of the team of qualified professionals only if the parent has provided written consent, in addition to the written consent to conduct the initial evaluation, for the representative's participation in the evaluation.

(j) For a student with a suspected developmental delay, the evaluation team shall include the parent and at least two (2) qualified professionals from different disciplines based upon the evaluation needs of the student.

(k) The public agency shall ensure that a copy of the evaluation report is made available at the school the student attends no less than five (5) instructional days prior to the scheduled case conference committee meeting. The parent may go to the school during the five (5) instructional days prior to the case conference meeting to obtain a copy of the report. The public agency shall provide a copy of the evaluation report to the parent at that time. At the time of the meeting described in subsection (a), the public agency shall ensure that the parent is informed of the procedure to obtain a copy of the evaluation report prior to the case conference committee meeting.

(l) A parent who wishes to have the results of the evaluation explained prior to the scheduled case conference committee meeting may request that a meeting to discuss the evaluation be arranged. The request for such a meeting shall be made by the parent at the time of the meeting to discuss the referral for an educational evaluation as described in subsection (a). In accordance with subsection (a)(6), the public agency shall ask the parent if the parent wishes to have a meeting with an individual who can explain the evaluation results prior to the case conference committee meeting. The public agency shall arrange a meeting with the parent and an individual who can explain the evaluation results within five (5) instructional days prior to the case conference committee. The meeting shall be scheduled at a mutually agreed upon date, time, and place. A copy of the evaluation report shall be provided to and reviewed with the parent at this meeting.

(m) If the parent does not obtain a copy of the evaluation report prior to the case conference committee convened to consider the student's identification and eligibility for special education services, the public agency shall provide a copy of the evaluation report to the parent at the case conference committee meeting. (*Indiana State Board of Education; 511 IAC 7-25-4; filed May 22, 2000, 8:52 a.m.; 23 IR 2460; filed May 13, 2002, 2:00 p.m.; 25 IR 3156*)

511 IAC 7-25-5 Independent educational evaluation

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 5. (a) The public agency shall provide to parents, upon request, information about where an independent educational evaluation may be obtained and the public agency's criteria applicable to independent educational evaluations as described in subsection (h). An independent educational evaluation means an evaluation conducted by a qualified evaluator who is not employed by the public agency responsible for the student in question.

(b) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation conducted by the public agency, subject to the provisions of subsection (c). Public expense means that the public agency either pays

for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent. The public agency may ask the parent why the parent believes an independent educational evaluation is necessary, but the public agency cannot require such response, nor can it delay providing the evaluation or initiating the due process hearing as a result of the parent's response or lack of response.

(c) Upon a parent's request for an independent educational evaluation, or upon the parent's request for reimbursement for an independent educational evaluation obtained at the parent's expense, the public agency must take one (1) of the following actions within ten (10) business days of the date of the public agency's receipt of the parent's request:

(1) Initiate a due process hearing to show its educational evaluation is appropriate.

(2) Notify the parent in writing that the independent educational evaluation will be at public expense.

(d) If the public agency initiates a hearing to determine the appropriateness of its educational evaluation, and the hearing officer determines that the evaluation conducted by the public agency is appropriate, the parent may still seek an independent evaluation, but at the parent's expense.

(e) If the parent obtains an independent evaluation at the parent's expense, the results of the evaluation:

(1) shall be considered in any decisions made with respect to the provision of a free appropriate public education to the student if the independent educational evaluation complies with agency criteria for an evaluation; and

(2) may be presented by the parent as evidence at a due process hearing.

(f) In a hearing on the issue of the public agency's reimbursement of the parent's expense of an independent educational evaluation, the hearing officer may not order reimbursement if the hearing officer determines that the independent educational evaluation did not meet the public agency's criteria under subsection (h) unless applying those criteria would deny a parent's right to any independent educational evaluation as identified in 34 CFR 300.502(e).

(g) If an independent hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation shall be borne by the public agency.

(h) If all or any part of an independent educational evaluation is paid for by the public agency, the criteria under which the evaluation is obtained must be the same that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation, including the following:

(1) The location of the evaluation.

(2) The qualifications of the evaluator.

(i) Except for the criteria described in subsection (h), the public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense. (*Indiana State Board of Education; 511 IAC 7-25-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2461; filed May 13, 2002, 2:00 p.m.: 25 IR 3158*)

511 IAC 7-25-6 Reevaluation

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 6. (a) For each student receiving special education and related services, a reevaluation shall be conducted every thirty-six (36) calendar months.

(b) The public agency shall obtain informed parental consent prior to conducting a reevaluation of a student, except that such informed consent need not be obtained if the public agency can demonstrate that reasonable measures were taken to obtain such consent and the student's parent failed to respond. The informed parental consent shall contain a description of the proposed reevaluation procedures. To satisfy the reasonable measures requirement of this section, the public agency shall keep a record of attempts to obtain parental consent, such as the following:

(1) Detailed records of telephone calls made or attempted and the results of the calls.

(2) Copies of correspondence sent to the parent and any responses received.

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(c) The public agency may pursue mediation or a due process hearing in order to obtain parental consent for a reevaluation.

(d) In determining what shall be included in the triennial reevaluation, the case conference committee and other qualified professionals, as appropriate, shall do the following:

(1) Review any existing evaluation data on the student, including evaluations and information provided by the parents, current classroom-based assessments and observations, and observations of teachers and related services providers.

(2) On the basis of that review, and input from the student's parents, 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 7-26.
- (B) The present levels of performance and educational 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 enable the student to meet the measurable annual goals set out in the student's individualized education program and to participate, as appropriate, in the general curriculum.

(e) Parental consent is not required to review existing data as part of a reevaluation.

(f) The case conference committee may conduct the review described in subsection (d) without a meeting.

(g) If the case conference committee, after reviewing existing evaluation data as described in subsection (d), determines that no additional data are needed to determine whether the student continues to be eligible for special education, the public agency shall:

- (1) notify the parent of that determination and the reasons for the determination;
- (2) notify the parent of the right to request an assessment to determine whether the student continues to be eligible for special education; and
- (3) not be required to conduct such an assessment unless requested to by the student's parents.

(h) If the case conference committee, after reviewing existing evaluation data as described in subsection (d), determines that additional data are needed, the public agency shall administer tests and other evaluation materials as may be needed to produce the data identified pursuant to subsection (d). The public agency shall also conduct a reevaluation upon the request of the parent or a teacher in accordance with the requirements of subsection (b).

(i) The public agency shall provide the parent with adequate notice of its intent to conduct the reevaluation. The notice shall be:

- (1) given verbally at the student's case conference committee meeting and included in the case conference committee report the year before the reevaluation will be conducted; and
- (2) provided again, in writing, no less than twenty (20) instructional days prior to the projected date of reevaluation.

(j) Within twenty (20) instructional days after the reevaluation, the public agency shall provide the parent with written notice that the reevaluation has been conducted and shall include a copy of the reevaluation report with the written notice. Contingent upon the results of the reevaluation, the notice shall contain one (1) of the following:

- (1) The public agency will convene a case conference committee to discuss the results of the reevaluation and review the student's eligibility for special education and the appropriateness of the student's individualized education program.
- (2) The public agency does not plan to convene a case conference committee, but the parent may request that a case conference committee be convened, and the parent may request to meet with a representative of the public agency.
- (3) Unless otherwise requested by the parent or the public agency, the reevaluation results will be reviewed at the next case conference committee meeting.

(k) A reevaluation is subject to the procedures and assurances described in section 3(e) through 3(g) of this rule. (*Indiana State Board of Education; 511 IAC 7-25-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2462; filed May 13, 2002, 2:00 p.m.: 25 IR 3158*)

511 IAC 7-25-7 Additional evaluations

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 7. (a) A request for an evaluation, subsequent to an initial evaluation and at a time other than the time scheduled for the triennial reevaluation, shall be considered a request for an additional evaluation. An additional evaluation may be:

- (1) an assessment of an area or areas not previously evaluated; or
- (2) a reassessment of an area or areas previously evaluated.

(b) An additional evaluation may be requested by the parent or the public agency, including a teacher, at any time. An additional evaluation shall be conducted upon request or when conditions warrant such an evaluation. Section 4 of this rule, including timelines for conducting the evaluation and convening the case conference committee, is applicable to a request for an additional evaluation.

(c) Additional evaluations are subject to the procedures and assurances described in section 3(e) through 3(g) of this rule. (*Indiana State Board of Education; 511 IAC 7-25-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2463; filed May 13, 2002, 2:00 p.m.: 25 IR 3159*)

Rule 26. Eligibility Criteria**511 IAC 7-26-1 In general**

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. In making a determination of eligibility for special education under this rule, a student shall not be determined to be a student with a disability if the key factor for such a determination is lack of instruction in reading or math or limited English proficiency, and the student does not otherwise meet the eligibility requirements of this rule. (*Indiana State Board of Education; 511 IAC 7-26-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2463*)

511 IAC 7-26-2 Autism spectrum disorder

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (a) Autism spectrum disorder is a lifelong developmental disability that includes autism, Asperger's Syndrome, and other pervasive developmental disorders. The disability is generally evident before three (3) years of age and significantly affects verbal and nonverbal communication and social interaction and results in an adverse affect on the student's educational performance. Other characteristics often associated include the following:

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

(b) This term does not apply if a student's educational performance is adversely affected primarily because the student has an emotional disability as defined in this rule.

(c) Identification as a student with autism spectrum disorder and eligibility for special education shall be determined by the case conference committee based on, but not limited to, the following information:

- (1) An individualized standardized test of learning capability that, if necessary, includes a nonverbal psychological measurement.
- (2) An assessment of educational need.
- (3) An adaptive behavior evaluation.
- (4) A communication evaluation by a speech-language pathologist assessing receptive, expressive, pragmatic, and social communication skills.
- (5) A social and developmental history that includes family background information on communication, social interaction, play, sensory development, and physical milestones to assist in documenting the nature and extent of the student's learning difficulties and to help determine onset of the disability.
- (6) Observation of the student across various environments.
- (7) An evaluation of fine and gross motor skills and sensory processing abilities by trained personnel.
- (8) A checklist of characteristics exhibited by students with autism spectrum disorder that matches criteria designated in the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

(d) Professional and paraprofessional staff serving students with autism spectrum disorder shall receive specialized inservice training in this area. (*Indiana State Board of Education; 511 IAC 7-26-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2463*)

511 IAC 7-26-3 Communication disorder

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) A communication disorder is characterized by one (1) of the following disorders that adversely affects educational performance:

- (1) Articulation disorders that are incorrect productions of speech sounds, including omissions, distortions, substitutions, or additions.
- (2) Fluency disorders that are disruptions in the rate or rhythm of speech that occur frequently and are markedly noticeable

to the student or listener.

(3) Voice disorders that are abnormal productions of pitch, intensity, resonance, or quality.

(4) Language disorders that are impairments in the comprehension or expression of spoken or written language, including impairments in one (1) or more components of a language system, such as:

(A) language/auditory processing;

(B) word retrieval;

(C) phonology;

(D) morphology;

(E) syntax;

(F) semantics; or

(G) pragmatics.

(5) Severe communication deficits that may require the use of an augmentative communication system, such as:

(A) gestures;

(B) sign language;

(C) picture/word/sentence communication books or boards;

(D) electronic devices; or

(E) any other system.

(b) Identification as a student with a communication disorder and eligibility for special education shall be determined by the case conference committee based on a communication evaluation. The determination of eligibility shall not be made on the basis of a single test, procedure, or sole criterion. The communication disorder may be the result of organic or nonorganic causes, but must be nonmaturational in nature. If an organic cause is suspected, a statement shall be obtained from a physician with an unlimited license to practice medicine describing the student's medical needs and any consequent limitations to communication training.

(c) Students with hearing impairments or learning disabilities who have language deficits or auditory processing difficulties are not eligible for services designed solely for students with communication disorders in lieu of services designed for students with hearing impairments or learning disabilities. (*Indiana State Board of Education; 511 IAC 7-26-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2464*)

511 IAC 7-26-4 Deaf-blind

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 4. (a) Deaf-blind means an impairment that:

(1) is a concomitant hearing and vision impairment;

(2) causes severe communication and other developmental problems;

(3) adversely affects the student's educational performance; and

(4) cannot be accommodated by programs or services solely for students with hearing or visual impairments.

(b) Identification as a student who is deaf-blind and eligibility for special education shall be determined by the case conference committee based on the following:

(1) An individual standardized multifactor test of learning capability that:

(A) has been designed or adapted for use with students who are deaf-blind; and

(B) is administered by a professional knowledgeable in at least one (1) of the impairments.

(2) An assessment of educational need.

(3) A communication evaluation.

(4) An assessment of orientation and mobility.

(5) An observation of the student in the educational setting or other setting appropriate to the student.

(6) A social and developmental history.

(7) An assessment of fine and gross motor skills.

(8) An adaptive behavior evaluation.

(9) A written report containing the appropriate information from:

(A) an optometrist or an ophthalmologist; and

(B) an educational or clinical audiologist, otologist, or otolaryngologist.

(c) Students who are deaf-blind represent a heterogeneous group that includes the following:

(1) Students who are both deaf and blind with acuities measured or estimated with consideration of intellectual and adaptive functioning and supported by a description of pathology.

(2) Students with hearing and visual impairments of a mild to severe degree with additional learning or language disabilities that adversely affect educational performance and who may have been diagnosed as having a degenerative pathology or a disease that will affect visual or hearing acuity.

(3) Students with severe multiple handicaps due to generalized central nervous system dysfunction, who:

(A) exhibit auditory and visual impairments or deficits in auditory-visual functioning; and

(B) may demonstrate inconclusive responses during hearing and vision evaluations or inconsistent responses to auditory and visual stimuli in the environment.

(d) Professional and paraprofessional staff serving students who are deaf-blind shall receive specialized inservice training in this area. (*Indiana State Board of Education; 511 IAC 7-26-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2464*)

511 IAC 7-26-5 Developmental delay (early childhood)

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 5. (a) Developmental delay for students who are at least three (3) years of age and not more than five (5) years of age and not eligible to be enrolled in kindergarten means a delay that adversely affects daily life or educational performance 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) Identification as a student with a developmental delay and eligibility for special education shall be determined by the case conference committee based on, but not limited to, the following information:

(1) A developmental and basic health history, including vision and hearing screening.

(2) A systematic observation of the child in a daily routine setting or other appropriate setting by an appropriate professional.

(3) Appropriate diagnostic instruments and procedures that measure differences between expected level of development and current level of functioning. Where norm-referenced instruments do not accurately reflect a student's performance because of the severity of the delay, other instruments or procedures shall be considered.

(4) Information from parents and other caregivers.

(c) The evaluation team and case conference committee may use the disability category of developmental delay or any of the other disability categories described in this article. (*Indiana State Board of Education; 511 IAC 7-26-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2465*)

511 IAC 7-26-6 Emotional disability

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 6. (a) An emotional disability is a condition that, over a long period of time and to a marked degree, consistently interferes with a student's learning process and adversely affects the student's educational performance. An emotional disability may include, but is not limited to, one (1) or more of the following conditions:

(1) A tendency to develop physical symptoms or fears associated with personal or school problems.

(2) A general pervasive mood of unhappiness or depression.

(3) An inability to learn that cannot be explained by intellectual, sensory, or health factors.

(4) An inability to build or maintain satisfactory interpersonal relationships.

(5) Inappropriate behaviors or feelings under normal circumstances.

(b) Identification as a student with an emotional disability and eligibility for special education shall be determined by the case

conference committee based on, but not limited to, the following:

- (1) An individual standardized, multifactored test of learning capability.
- (2) An assessment of educational need.
- (3) A behavioral/emotional evaluation.
- (4) A social and developmental history.
- (5) Observation of the student in the general education classroom or other appropriate setting that records the nature and incidence of behaviors leading to the referral for evaluation.
- (6) Documentation that the disability is not the result of a physical, sensory, or intellectual deficit.
- (7) Documentation that the student's learning process is consistently and significantly disrupted.

(Indiana State Board of Education; 511 IAC 7-26-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2465)

511 IAC 7-26-7 Hearing impairment

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 7. (a) A hearing impairment is a hearing loss that:

- (1) with or without amplification adversely affects educational performance and developmental progress;
- (2) may be permanent or fluctuating;
- (3) may be mild to profound in nature;
- (4) may be unilateral or bilateral; and
- (5) may also be referred to as hard of hearing or deaf.

(b) Identification as a student with a hearing impairment and initial eligibility for special education shall be determined by the case conference committee based on, but not limited to, the following information:

- (1) An individualized standardized multifactored test of learning capability utilizing instruments designed for individuals with hearing impairments and conducted by a professional knowledgeable in the area of hearing impairments.
- (2) An assessment of educational need.
- (3) A communication evaluation conducted in the language utilized for the student's instruction or the student's preferred mode of communication.
- (4) A written audiological report.
- (5) Upon audiological recommendation, a written determination as to the etiology of the hearing loss and the student's potential requirement for amplification.
- (6) A social and developmental history.

(Indiana State Board of Education; 511 IAC 7-26-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2466)

511 IAC 7-26-8 Learning disability

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 8. (a) A learning disability:

- (1) is characterized by severe specific deficits in perceptual, integrative, or expressive processes involved in understanding or in using language, spoken or written, that adversely affect the student's educational performance;
- (2) includes conditions referred to, or previously referred to, as:
 - (A) perceptual handicaps;
 - (B) brain injury;
 - (C) minimal brain dysfunction;
 - (D) dyslexia; and
 - (E) developmental aphasia;
- (3) may be manifested in disorders of:
 - (A) listening;
 - (B) thinking;
 - (C) speaking;

- (D) reading;
- (E) writing;
- (F) spelling; or
- (G) arithmetic; and

(4) does not include learning problems due primarily to:

- (A) visual;
- (B) hearing; or
- (C) motor disabilities;
- (D) mental or emotional disability; or
- (E) environmental, cultural, or economic disadvantage.

(b) Identification as a student with a learning disability and eligibility for special education shall be determined by the case conference committee upon finding that a severe discrepancy exists between the student's academic achievement and normal or near normal potential, based upon, but not limited to, the following information:

- (1) An individual standardized multifactored test of learning capability.
- (2) An assessment of educational needs.
- (3) An observation of the student in the general education classroom by a team member other than the student's general education teacher, or if the student is less than school age or not in school, in an environment appropriate for a student of that age.
- (4) Any educationally relevant medical information.
- (5) A social and developmental history.
- (6) A written report of the results of the evaluation.

(c) The severe discrepancy must be exhibited in at least one (1) of the following areas:

- (1) Basic reading skills.
- (2) Reading comprehension.
- (3) Written expression.
- (4) Expressive language.
- (5) Mathematical reasoning.
- (6) Mathematical calculation.
- (7) Listening comprehension.

(d) A written report of the results of the evaluation shall be presented to the case conference committee and shall include the following information:

- (1) A statement indicating whether the evaluation team of qualified professionals believes the student has a specific learning disability and the basis for making that determination.
- (2) The relevant behavior noted during the observation and the relationship of that behavior to the student's academic functioning.
- (3) Any educationally relevant medical findings.
- (4) Whether there is a severe discrepancy between academic achievement and potential that is not correctable without special education and related services.
- (5) The determination of the team concerning the effects of environmental, cultural, or economic disadvantages.
- (6) Written certification by each team member indicating whether the report reflects the team member's conclusions, and, if not, a separate statement giving that team member's conclusions.

(Indiana State Board of Education; 511 IAC 7-26-8; filed May 22, 2000, 8:52 a.m.: 23 IR 2466; errata filed Jun 9, 2000, 9:41 a.m.: 23 IR 2507)

511 IAC 7-26-9 Mental disability

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 9. (a) A mental disability:

- (1) is demonstrated by significantly below average general intellectual functioning existing concurrently with deficits in adaptive behavior; and

(2) adversely affects educational performance.

(b) Identification as a student with a mental disability and eligibility for special education shall be determined by the case conference committee based on, but not limited to, the following:

(1) An individual standardized multifactored test of learning capability.

(2) An assessment of educational need.

(3) An adaptive behavior evaluation.

(4) A social and developmental history.

(c) A student with a mild mental disability will generally exhibit:

(1) measured intelligence two (2) or more standard deviations below the mean or average of the testing instrument used; and

(2) an adaptive behavior profile within the range of a mild mental disability.

(d) A student with a moderate mental disability will generally exhibit:

(1) measured intelligence three (3) or more standard deviations below the mean or average of the testing instrument used; and

(2) an adaptive behavior profile within the range of a moderate mental disability.

(e) A student with a severe mental disability will generally exhibit:

(1) measured intelligence four (4) or more standard deviations below the mean or average of the testing instrument used; and

(2) an adaptive behavior profile within the range of a severe mental disability.

(Indiana State Board of Education; 511 IAC 7-26-9; filed May 22, 2000, 8:52 a.m.: 23 IR 2467; errata filed Jun 9, 2000, 9:41 a.m.: 23 IR 2507)

511 IAC 7-26-10 Multiple disabilities

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 10. (a) Multiple disabilities means concomitant impairments (such as mental disability-visual impairment and mental disability-orthopedic impairment), the combination of which results in such severe educational needs that the student's needs cannot be accommodated with special education services solely for one (1) of the impairments. The term does not include deaf-blind.

(b) Identification as a student with multiple disabilities and eligibility for special education shall be determined by the case conference committee based on, but not limited to, the following information:

(1) An individual standardized multifactored test of learning capability.

(2) An assessment of educational need.

(3) An adaptive behavior evaluation.

(4) A social and developmental history.

(c) The following information shall also be part of the initial educational evaluation as appropriate to the nature of the suspected multiple disabilities:

(1) A communication evaluation.

(2) An observation of the student in the educational environment or, if the student is not in school, in an environment appropriate for a student of that age.

(3) A written report of a medical evaluation.

(4) An evaluation of fine and gross motor skills.

(Indiana State Board of Education; 511 IAC 7-26-10; filed May 22, 2000, 8:52 a.m.: 23 IR 2467)

511 IAC 7-26-11 Orthopedic impairment

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 11. (a) An orthopedic impairment is a physically disabling condition that is determined to be a serious impairment of a student's locomotion or motor functions, and that adversely affects educational performance. The term may include impairments caused by congenital anomaly, disease, or other causes, such as:

(1) cerebral palsy;

(2) amputations; and

(3) fractures or burns that cause contractures.

(b) Identification as a student with an orthopedic impairment and eligibility for special education shall be determined by the case conference committee based on, but not limited to, the following information:

- (1) An individual standardized multifactored test of learning capability.
- (2) An assessment of educational need.
- (3) A social and developmental history.
- (4) Available medical background, including a written diagnostic statement by a physician with an unlimited license to practice medicine describing the orthopedic impairment.
- (5) Assessments of fine and gross motor skills and communication skills as necessary and appropriate to the nature of the impairment.
- (6) An adaptive behavior evaluation.

(Indiana State Board of Education; 511 IAC 7-26-11; filed May 22, 2000, 8:52 a.m.: 23 IR 2467)

511 IAC 7-26-12 Other health impairment

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 12. (a) Other health impairment means an impairment that adversely affects a student's educational performance and is manifested by limited strength, vitality, or alertness due to chronic or acute health problems. It may also be manifested by heightened alertness to environmental stimuli that results in limited alertness with respect to educational performance.

(b) Identification as a student as other health impaired and eligibility for special education shall be determined by the case conference committee based on, but not limited to, the following information:

- (1) An individual standardized multifactored test of learning capability.
- (2) An assessment of educational need.
- (3) A social and developmental history.
- (4) Available medical background, including a written diagnostic statement by a physician with an unlimited license to practice medicine, describing the health impairment.
- (5) An adaptive behavior evaluation.
- (6) Assessments of fine and gross motor skills and communication skills as necessary and appropriate to the impairment.

(c) Professional and paraprofessional staff serving students with an other health impairment shall receive specialized inservice training in this area. *(Indiana State Board of Education; 511 IAC 7-26-12; filed May 22, 2000, 8:52 a.m.: 23 IR 2468)*

511 IAC 7-26-13 Traumatic brain injury

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 13. (a) A traumatic brain injury is an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a student's educational performance. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as:

- (1) cognition;
- (2) language;
- (3) memory;
- (4) attention;
- (5) reasoning;
- (6) abstract thinking;
- (7) judgment;
- (8) problem-solving;
- (9) sensory, perceptual, and motor abilities;
- (10) psychosocial behavior;
- (11) physical functions;
- (12) information processing; and
- (13) speech.

(b) The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.

(c) Identification as a student with a traumatic brain injury and eligibility for special education shall be determined by the case conference committee based on, but not limited to, the following:

- (1) An individual standardized multifactored test of learning capability.
- (2) An assessment of educational need.
- (3) A social and developmental history.
- (4) Available medical background including a written diagnostic statement by a neurologist or a physician with an unlimited license to practice medicine describing the extent of the traumatic brain injury.
- (5) An adaptive behavior evaluation.
- (6) Assessments of fine and gross motor skills and communication skills as necessary and appropriate to the impairment.
- (d) Professional and paraprofessional staff serving students with traumatic brain injury shall receive specialized inservice training in this area. (*Indiana State Board of Education; 511 IAC 7-26-13; filed May 22, 2000, 8:52 a.m.: 23 IR 2468*)

511 IAC 7-26-14 Visual impairment

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 14. (a) A visual impairment is a vision loss that, even with best correction, adversely affects the student's educational performance. The term includes the following:

- (1) The inability to successfully utilize vision as a primary channel for learning and exhibiting such a low degree or amount of visual acuity or visual field that vision is not considered as a primary mode of learning.
- (2) A reduced visual acuity or limited visual field that inhibits optimal processing of information through the visual modality and generally requires modifications or specialized materials to enable the student to benefit from the educational program.
- (3) Both partial-sightedness and blindness.

(b) Identification as a student with a visual impairment and eligibility for special education shall be determined by the case conference committee based on, but not limited to, the following information:

- (1) An individual standardized multifactored test of learning capability that:
 - (A) has been designed or adapted for use with students with visual impairments; and
 - (B) is administered by a professional with knowledge in the area of visual impairment.
- (2) An assessment of educational need.
- (3) A social and developmental history.
- (4) An adaptive behavior evaluation.
- (5) An observation of the student in the classroom or, if the student is not in school, in an environment appropriate to the student's age, by an individual with knowledge in the area of visual impairment.
- (6) A functional literacy assessment that evaluates the efficacy of the student's reading medium.
- (7) A functional assessment of the student's visual capability.
- (8) A written report by a licensed ophthalmologist or optometrist that includes the following:
 - (A) Etiology and prognosis of the visual dysfunction.
 - (B) Secondary or accompanying visual conditions, such as nystagmus or photophobia, if appropriate.
 - (C) Near/distance and corrected/uncorrected acuity measures for left, right, and both eyes.
 - (D) Measures of visual fields for both eyes, if appropriate.
 - (E) Recommendations for use of aids, glasses, or lighting requirements, if appropriate.

(*Indiana State Board of Education; 511 IAC 7-26-14; filed May 22, 2000, 8:52 a.m.: 23 IR 2468*)

Rule 27. Determination of Special Education Services

511 IAC 7-27-1 Local procedures and training

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. (a) The public agency shall have in place written procedures to ensure the appropriate implementation of the case

conference committee process, including the following:

- (1) The title or position of the individuals designated as, or who may serve as, the representative of the public agency and a description of the roles and responsibilities of the public agency representative and of other public agency personnel before, during, and after the case conference committee meeting.
- (2) A description of the methods used to assure the parent is provided with adequate notice of the case conference committee meeting.
- (3) A description of the methods used to assure the parent understands the proceedings of the case conference committee meeting.
- (4) A description of the methods used to assure the parent is fully informed of the public agency's proposal prior to giving or denying permission for the proposed individualized education program and services.
- (5) A description of the methods used to ensure the continued provision of a free appropriate public education in the event the parent refuses to consent to any of the public agency's proposals pursuant to 511 IAC 7-27-5(d) [section 5(c) of this rule].

(b) The public agency shall provide information and training that addresses the requirements set forth in this article to ensure public agency staff have the necessary knowledge to perform the following duties:

- (1) Arrange and document case conference committee meetings.
- (2) Lead case conference committee meetings.
- (3) Act as the public agency representative at case conference committee meetings.
- (c) The public agency shall keep documentation of the information and training provided under subsection (b). The training shall include the following:

- (1) Procedures to assure compliance with procedural safeguards.
- (2) Information concerning individualized education programs.
- (3) Information concerning available services and least restrictive environment.

(Indiana State Board of Education; 511 IAC 7-27-1; filed May 22, 2000, 8:52 a.m.; 23 IR 2469)

511 IAC 7-27-2 Notice of case conference committee meetings

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (a) A case conference committee meeting shall be scheduled at a mutually agreed upon date, time, and place. If neither parent can attend in person, the public agency shall use other methods to ensure parent participation, including an individual or conference telephone call.

- (b) The public agency shall keep a record of attempts to arrange the case conference committee meeting, such as the following:
- (1) Detailed records of telephone calls made or attempted and the results of the calls.
 - (2) Copies of correspondence sent to the parent and any responses received.
 - (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(c) The parent shall be given adequate notice of the case conference committee meeting in the parent's native language or other mode of communication early enough to ensure that one (1) or both parents have the opportunity to attend. Notice of the meeting shall be sent to the following persons:

- (1) The parent, regardless of the age of the student.
- (2) The student, beginning with the first meeting at which the case conference committee will develop a statement of needed transition services.
- (3) The student who is eighteen (18) years of age and not adjudicated incompetent, regardless of the purpose of the case conference committee meeting.
- (d) The notice of the meeting shall include the following:
 - (1) The date, time, and place of the meeting.
 - (2) The purpose of the meeting.
 - (3) The name and title or position of the designated public agency representative and a list, by name and title or position, of other expected participants, including any other agency that will be invited to send a representative.
 - (4) A statement that the parent may bring any other individual of the parent's choosing, whom the parent has determined has knowledge or special expertise regarding the student, including the student, or request the participation of other individuals.
 - (5) A statement that the parent has protection under the procedural safeguards of special education law.

(6) A statement that a copy of the evaluation report will be provided to the parent at the meeting.

(7) A statement that the student will be invited to case conference committee meetings when a purpose of a meeting is the development of a statement of transition service needs or the consideration of needed transition services in accordance with 511 IAC 7-28-3.

(Indiana State Board of Education; 511 IAC 7-27-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2469)

511 IAC 7-27-3 Case conference committee participants

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) Except as provided in subsection (e), the public agency shall ensure that the case conference committee participants include the following:

(1) A representative of the public agency, other than the student's special education teacher, who has the following qualifications:

(A) Is qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities.

(B) Is knowledgeable about the general education curriculum.

(C) Is knowledgeable about the availability of resources of the public agency.

(2) The student's current teacher of record (or, in the case of a student with a communication disorder only, the speech-language pathologist) or, 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) One (1) of the student's general education teachers, if the student is or may be participating in the general education environment.

(4) The parent of a student less than eighteen (18) years of age, or the student, if the student is at least eighteen (18) years of age and has not been adjudicated incompetent.

(b) A public agency may designate any public agency participant of the case conference committee to also serve as the agency representative if the criteria of subsection (a)(1) are satisfied.

(c) For purposes of early childhood, a general education teacher may be:

(1) a general education teacher who provides services to nondisabled students in the public agency's preschool program;

(2) a general education kindergarten teacher who provides services to nondisabled students if the student is of kindergarten age; or

(3) an individual qualified to provide services to nondisabled students three (3) years of age, four (4) years of age, and five (5) years of age if the public agency does not have a general education preschool program.

(d) The general education teacher shall participate in the development, review, and revision of a student's individualized education program, including, to the extent appropriate, assisting in the determination of:

(1) appropriate positive behavioral interventions and strategies for the student; and

(2) supplementary aids and services, program modifications, or supports for school personnel that will be provided for the student consistent with 511 IAC 7-27-6(a)(3) [section 6(a)(3) of this rule].

(e) The public agency shall ensure the participation in the case conference committee 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) member of the evaluation team of qualified professionals.

(2) When no other member of the case conference committee can interpret the instructional implications of evaluation results, an individual who can interpret the instructional implications of evaluation results.

(3) When a purpose of the meeting is the development of a statement of transition service needs or consideration of needed transition services, or both, the student shall be invited. If the student does not attend, the public agency shall take other steps to ensure that the student's preferences and interests are considered.

(4) When a purpose of the meeting is the consideration of needed transition services, a representative of any agency likely to be responsible for providing or paying for transition services shall be invited. If an invited agency representative does not participate, the public agency shall take other steps to obtain the invited agency's participation in the planning of any transition services.

(5) When a purpose of the meeting is the consideration of admission to a state-operated school, a representative of the state-operated school who is authorized to make a recommendation regarding admission to that program.

(6) When a purpose of the meeting is the development or review of an individualized education program of a student to be enrolled or currently enrolled in a state-operated school, a state-operated facility, or other public or private residential facility in which the student is being or has been placed by a public agency, the following persons shall participate in person or by other methods:

(A) A representative of the residential facility.

(B) A representative of the local school corporation or special education planning district providing the special education program services, if applicable.

(C) A representative of the public school corporation of the student's legal settlement.

(7) When the student has been unilaterally enrolled in a private school or facility by the student's parent or a noneducational agency, a representative of the private school or facility shall be invited. If an invited representative does not participate, the public agency shall take other steps to obtain the private school's or facility's participation in the planning of the individualized education program.

(8) The local director of special education or the local director's designee shall serve as the public agency representative described in subsection (a)(1) when a purpose of the meeting is the determination of whether the student's behavior is the result of:

(A) a manifestation of the student's disability; or

(B) deficiencies in the student's individualized education program or educational placement.

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

(g) At the discretion of the parent, the student may participate in any case conference committee meeting in addition to those meetings to which the student must be invited.

(h) A case conference committee meeting may be conducted without a parent in attendance if the parent chooses not to participate either in person or by telephone, but only if the public agency has documented its attempts to arrange a mutually agreed time, date, and place, in accordance with section 2(b) of this rule. (*Indiana State Board of Education; 511 IAC 7-27-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2470*)

511 IAC 7-27-4 Case conference committee meetings

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-33-8; IC 20-35

Sec. 4. (a) A case conference committee shall convene in the following circumstances:

(1) In accordance with the timelines in 511 IAC 7-25-4(b) after an initial evaluation is conducted and in accordance with 511 IAC 7-25-7 after an additional evaluation is conducted.

(2) Within twelve (12) months of the preceding case conference committee meeting for a student previously determined eligible for special education to determine whether the annual goals for the student are being achieved.

(3) Upon request of a teacher, parent, or administrator.

(4) When a change of placement is proposed or to be considered.

(5) Within ten (10) instructional days of the enrollment date of a student who has been receiving special education in another state or another district within the state.

(6) To determine whether the behavior is a manifestation of the disability in the event of disciplinary action proposed or taken in accordance with 511 IAC 7-29-6 or IC 20-33-8, or both.

(7) To determine the setting when school personnel order a change to an interim alternative educational setting in accordance with 511 IAC 7-29-3 or IC 20-33-8 or both, unless the setting has been included in the student's individualized education program or behavioral intervention plan.

(8) To develop a plan for assessing functional behavior, or to review and modify an existing behavioral intervention plan, to address behavior for which disciplinary action was proposed or taken in accordance with 511 IAC 7-29-5 or IC 20-33-8, or both.

(9) At least every sixty (60) instructional days when the setting in which the student is receiving educational services is the student's home or out-of-school location determined in accordance with section 10 of this rule.

(b) The public agency shall take whatever action is necessary to ensure the parent understands the proceedings of the case conference committee meeting, including arranging for an interpreter for a parent who is deaf or whose native language is not English.

(c) A case conference committee shall develop, review, or revise an individualized education program for each student who is eligible for special education and related services under this article, taking into consideration the following general and special factors:

(1) The strengths of the student and the concerns of the parent for enhancing the education of the student.

(2) The results and instructional implications of the initial or most recent educational evaluation and other assessments of the student.

(3) Strategies, including positive behavioral interventions and supports, to address a student's behavior that impedes his or her learning or that of others.

(4) The language needs of a student with limited English proficiency, as those needs relate to the student's individualized education program.

(5) The communication needs of the student, and in the case of a student who is hearing impaired, consider the student's language and communication needs, opportunities for direct communications with peers and professional personnel in the student's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the student's language and communication mode.

(6) The student's need for assistive technology devices and services.

(7) As appropriate, the results of the student's performance on any general statewide or local assessments.

(8) Any lack of expected progress toward the annual goals described in section 6(a)(2) of this rule and in the general curriculum, if appropriate.

(d) Instruction in Braille and the use of Braille for a student who is blind or visually impaired shall be provided unless the case conference committee determines, after a functional literacy assessment of the student's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the student's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the student.

(e) It is not necessary for a case conference committee to be convened in order for public agency personnel to discuss issues such as teaching methodology, lesson plans, or coordination of service provision if those issues are not addressed in the student's individualized education program. Public agency personnel may engage in preparatory activities to develop a proposal or response to a parent proposal that will be discussed at a later case conference committee meeting. (*Indiana State Board of Education; 511 IAC 7-27-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2471; filed May 13, 2002, 2:00 p.m.: 25 IR 3160; errata filed Jul 11, 2005, 10:00 a.m.: 28 IR 3308*)

511 IAC 7-27-5 Report of case conference committee meeting; notice and parental consent

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 5. (a) The public agency shall prepare a written report of the case conference committee meeting that shall include, but is not limited to, the following:

(1) The date and purpose of the meeting, and the names and titles of the participants.

(2) A description of each evaluation procedure, test, record, or report used as a basis for the determination of special education services and placement.

(3) A statement of eligibility for special education services.

(4) If a student is eligible for special education and related services, an individualized education program, including all components specified in section 6 of this rule, which may be attached to the case conference committee report rather than in the body of the report and must be provided at no cost to the parent.

(5) The reasons for the placement determination, including a description of any options considered and why those options were rejected.

(6) Other factors relevant to the proposed placement or denial of placement, such as information and justification if the amount of daily instructional time is less than that provided to nondisabled students of the same age.

(7) Written opinions, if any, that may be attached to the case conference committee report rather than included in the body of the report.

(8) A description of the action proposed, such as a recommendation for placement or denial of placement.

(b) The public agency shall provide the parent with written notice of the proposed placement or denial of placement in accordance with 511 IAC 7-22-2(d).

(c) The public agency shall provide the parent with a copy of the written report. The written report and notice may be provided to the parent at the conclusion of the case conference committee meeting or may be mailed to the parent at a later date. If mailed, the report and the notice must be received by the parent no later than ten (10) business days after the date of the case conference committee meeting.

(d) The public agency shall obtain written consent from a parent when the public agency proposes:

(1) the initial determination of the student's eligibility for special education and related services, including the student's classification under 511 IAC 7-26;

(2) the initial individualized education program and placement;

(3) a revised individualized education program that involves a change of placement as defined in 511 IAC 7-17-13;

(4) a change in the student's identified disability under 511 IAC 7-26;

(5) that additional evaluations be conducted pursuant to 511 IAC 7-25-7; or

(6) the termination of the student's eligibility for special education and related services.

(e) If the notice required under subsection (b) relates to an action proposed by the public agency that also requires parental consent, the public agency may give notice at the same time it requests parental consent.

(f) Whenever consent of a parent is required by subsection (d), the proposed services or placement or change of services or placement shall not be implemented until consent of a parent is obtained, except as otherwise provided in 511 IAC 7-29-2. A public agency may not use a parent's refusal to consent to one (1) service or activity to deny the parent or student any other service, benefit, or activity of the public agency, except as permitted by this article. Parental consent for evaluation under 511 IAC 7-25 shall not be construed as consent for any services other than the evaluation.

(g) When a parent provides written consent for the implementation of an individualized education program developed by the case conference committee, the individualized education program is considered an agreed-upon individualized education program. (*Indiana State Board of Education; 511 IAC 7-27-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2472; filed May 13, 2002, 2:00 p.m.: 25 IR 3161*)

511 IAC 7-27-6 Individualized education program; components

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 6. (a) An individualized education program shall contain the following:

(1) A statement of the student's present levels of educational performance, including:

(A) how the student's disability affects the student's involvement and progress in the general education curriculum; or

(B) for early childhood education students, as appropriate, how the disability affects the student's participation in appropriate activities.

(2) A statement of measurable annual goals that describe what the student can be expected to accomplish within a twelve (12) month period, including benchmarks or short term objectives, related to:

(A) meeting the student's needs that result from the student's disability to enable the student to be involved in and progress in the general education curriculum;

(B) for early childhood education students, as appropriate, to participate in appropriate activities; and

(C) meeting each of the student's other educational needs that result from the student's disability.

(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, and a statement of the program modifications or supports for school personnel that will be provided for the student:

(A) to advance appropriately toward attaining the annual goals;

(B) to be involved in and progress in the general education curriculum in accordance with subdivision (1) and to participate in extracurricular and other nonacademic activities; and

(C) to be educated and participate with other students with disabilities and nondisabled students in the activities

described in this article.

- (4) A statement regarding the student's participation in statewide or local assessments, including where indicated:
 - (A) appropriate accommodations in testing materials and procedures, if any, the student needs in order for the student to participate in the assessment; or
 - (B) the case conference committee's determination that the student will not participate in a particular statewide or local assessment (or part of such assessment), including:
 - (i) the reasons the assessment is not appropriate for the student; and
 - (ii) the alternate assessment in which the student will participate.
 - (5) The projected dates for initiation of services and program modifications described in subdivision (3) and the anticipated length, frequency, location, and duration of services and modifications.
 - (6) An explanation of the extent, if any, to which the student will not participate with nondisabled students in general education classes or settings and in extracurricular and other nonacademic activities.
 - (7) A statement of:
 - (A) how the student's progress toward annual goals, including benchmarks or short term objectives described in subdivision (2), will be measured; and
 - (B) how the student's parents will be regularly informed, at least as often as parents are informed of their nondisabled students' progress, of the student's progress toward the annual goals and the extent to which that progress is sufficient to enable the student to achieve the goals by the end of the twelve (12) month period.
 - (8) A statement of the student's need for extended school year services.
 - (9) A statement of transition service needs or needed transition services, or both, as described at 511 IAC 7-28-3.
 - (10) Identification of the placement in the least restrictive environment.
 - (11) Beginning at least one (1) year before the student reaches 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.
 - (12) A statement listing or describing any additional devices or services (including an intervention, accommodation, or other program modification) that the case conference committee determined, on the basis of the general and specific factors described in section 4(c) of this rule, that the student needs in order to receive a free and appropriate public education.
- (b) For a student convicted as an adult under state law and incarcerated in an adult prison, the requirements of subdivision (9) of this section [subsection (a)(9)] do not apply with respect to a student with a disability whose eligibility under this rule 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) Nothing in this section shall be construed to require the case conference committee to include information under one (1) component of the student's individualized education program that is already contained under another component of the student's individualized education program. (*Indiana State Board of Education; 511 IAC 7-27-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2473*)

511 IAC 7-27-7 Individualized education program; implementation

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 7. (a) An agreed-upon individualized education program, pursuant to section 5(g) of this rule, shall be implemented as written.

(b) The student's teacher of record shall do the following:

- (1) Monitor the implementation of the student's individualized education program.
- (2) Provide technical assistance and consultation to the student's general education teachers, related services providers, paraprofessionals, and other school personnel interacting with the student.
- (3) Be responsible for all other activities identified in 511 IAC 7-17-72.

(c) The services identified in the agreed-upon individualized education program shall be provided as soon as the necessary arrangements are completed, but no later than the following:

- (1) Ten (10) instructional days after parental consent to the student's initial individualized education program is received. However, if that date falls within the last twenty (20) instructional days of the end of the spring semester and the individualized education program does not require extended school year services to be provided during the summer, the services need not be provided until the first day of the following semester.

(2) Ten (10) instructional days after the case conference committee meeting for a newly-enrolled student who had received special education services in another state.

(3) Immediately upon enrollment from another district within the state.

(4) The initiation date stated in the student's individualized education program in all other circumstances.

(d) No public agency shall continue to implement an individualized education program for a period of more than twelve (12) months unless the duration has been extended by operation of the stay-put provision of 511 IAC 7-30-3(j).

(e) At the beginning of each school year, each public agency shall have an individualized education program in effect for each student with a disability within its jurisdiction. (*Indiana State Board of Education; 511 IAC 7-27-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2474; filed May 13, 2002, 2:00 p.m.: 25 IR 3161*)

511 IAC 7-27-8 Individualized education program; accountability

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 8. (a) The public agency shall:

(1) provide special education and related services in accordance with a student's individualized education program; and

(2) make a good faith effort to assist the student to achieve the goals and objectives or benchmarks listed in the student's individualized education program.

(b) The public agency, teacher, or other person may not be held accountable if a student does not achieve the growth projected in the annual goals and benchmarks or objectives. However, the public agency may establish an accountability system for staff or public agency performance.

(c) Nothing in this section limits a parent's right to ask for revisions of the student's individualized education program or invoke due process procedures if the parent feels that the public agency is not complying with the requirements of subsection (a). (*Indiana State Board of Education; 511 IAC 7-27-8; filed May 22, 2000, 8:52 a.m.: 23 IR 2474*)

511 IAC 7-27-9 Least restrictive environment and delivery of special education and related services

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 9. (a) Each public agency shall have in place written policies and procedures to ensure the following:

(1) To the maximum extent appropriate, students with disabilities, including those students placed in public or private institutions by the public agency outside the public agency's jurisdiction and those students placed in public or private institutions and other care facilities in the public agency's jurisdiction, are educated with nondisabled students.

(2) Special classes, separate schooling, or other removal of students from the general education environment occurs only when it is documented that education in general education classes using supplementary aids and services cannot be satisfactorily achieved.

(3) Unless the individualized education program requires some other arrangement, the student's placement is as close as possible to the student's home school and is in the school the student would attend if not disabled.

(4) The case conference committee determines the placement in which a student will receive services on the basis of the student's individualized education program, regardless of the identified disability, and the individualized education program shall be developed prior to the determination and reviewed at least annually.

(5) The services provided for each student are based on the goals and benchmarks or short term objectives in the student's individualized education program.

(6) A continuum of services is available to meet the individual needs of students with disabilities, including, but not limited to:

(A) instruction in general education classes;

(B) special classes;

(C) special schools;

(D) home instruction; and

(E) instruction in hospitals and institutions;

and makes provision for supplementary services to be provided in conjunction with general education placement.

(7) In selecting the least restrictive environment, consideration is given to any potentially harmful effects of the suggested services on the student or on the quality of services needed.

(8) Each student with a disability has an equal opportunity to participate with nondisabled students in nonacademic and extracurricular services and activities to the maximum extent appropriate.

(9) Special education and related services are delivered in the least restrictive environment determined by the case conference committee, regardless of the identified disability.

(10) The provision of services to students with different disabilities at the same time and in the same classroom is permitted.

(11) Students with disabilities are in classes and buildings with their chronological peers unless an alternative is determined appropriate by the case conference committee and the reasons for that determination are documented in the written case conference committee report required by section 5 of this rule.

(12) Students with disabilities are not removed from education in age-appropriate general education classrooms solely because of needed modifications in the general curriculum.

(b) The public agency shall make available to students with disabilities the variety of educational programs and services that are made available to nondisabled students served by the public agency, including vocational education, art, music, industrial arts, consumer and homemaking education, field trips, and convocations, as well as nonacademic and extracurricular activities, including meals and recess, athletics, clubs, employment assistance, and graduation ceremonies. Unless the student's individualized education program specifies otherwise, the student shall participate in these programs and activities with nondisabled students.

(c) The public agency shall make physical education, specially designed if necessary, available to all students with disabilities. Physical education shall be provided by a general education teacher of physical education, or a teacher specially licensed in adapted physical education as applicable to the physical education appropriate for the student. Each student with a disability shall be afforded the opportunity to participate in the general physical education program available to nondisabled students unless:

(1) the student is enrolled full time in a separate facility; or

(2) the student needs specially designed physical education, as prescribed in the student's individualized education program.

(d) The public agency shall ensure the availability of a continuum of placement options, and shall include the following:

(1) General education classroom with special education and related services provided during the instructional day.

(2) Resource room with special education and related services provided outside the general education classroom during the instructional day.

(3) Separate classroom in a general education school building with special education and related services provided outside the general education classroom during the instructional day.

(4) Separate public nonresidential school or facility with special education and related services provided.

(5) Private nonresidential school or facility with special education and related services provided at public expense.

(6) Public residential school or facility with special education and related services provided.

(7) Private residential school or facility with special education and related services provided.

(8) Homebound or hospital settings with special education and related services provided at the student's home, a hospital, or other noneducational site selected by the public agency.

(e) The public agency shall ensure the availability of a continuum of placement options that shall include the following:

(1) Early childhood programs designed primarily for students without disabilities.

(2) Early childhood special education programs, designed primarily for students with disabilities, located in a general education building or community setting.

(3) Home-based early childhood special education and related services provided in the residence of the student's family or caregivers.

(4) Separate nonresidential school or facility for students with disabilities that provides early childhood special education and related services.

(5) A residential school or facility with early childhood special education and related services provided.

(f) The placement options listed in subsections (d) and (e) shall not be exclusive placement options, and a student's placement may be a combination of the options listed, as determined appropriate by the case conference committee.

(g) For a student with a disability who is convicted as an adult under state law and incarcerated in an adult facility, the case conference committee may modify the student's individualized education program or educational placement without regard to the requirements of this section where there is demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated. (*Indiana State Board of Education; 511 IAC 7-27-9; filed May 22, 2000, 8:52 a.m.; 23 IR 2474; filed May 13, 2002, 2:00 p.m.; 25 IR 3162*)

511 IAC 7-27-10 Instruction for student at student's home or alternative setting

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 10. (a) Providing special education instruction to a student identified as disabled in the student's home or alternative setting, for reasons other than identified in section 11 of this rule, is an option if the case conference committee determines it to be the least restrictive environment appropriate to enable the student to benefit from special education. If the case conference committee determines the student's placement to be the student's home or an alternate setting, the case conference committee report shall include:

- (1) the reason the student is not attending school;
- (2) other options tried or considered; and
- (3) the reasons the other options were rejected.

(b) The case conference committee shall convene at least every sixty (60) instructional days to review the individualized education program. The type, length, frequency, and duration of the special education and related services shall be determined by the case conference committee. (*Indiana State Board of Education; 511 IAC 7-27-10; filed May 22, 2000, 8:52 a.m.: 23 IR 2476*)

511 IAC 7-27-11 Instruction for students with injuries and temporary or chronic illnesses

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 11. (a) All students with injuries and temporary or chronic illnesses that preclude their attendance in school shall be provided with instruction.

(b) Before instruction for a student unable to attend school can begin, the parent must provide the school corporation with a written statement from a physician with an unlimited license to practice medicine that states one (1) of the following:

(1) The student has a temporary illness or injury that will require the student's absence from school for a minimum of twenty (20) consecutive instructional days. If the illness or injury occurs less than twenty (20) instructional days prior to the end of the school year and the student needs instruction to meet promotion or graduation requirements, the physician's statement must indicate that the student will be unable to attend school through the end of the current school year.

(2) The student has a chronic illness or other medical condition that will require the student's absence for an aggregate of at least twenty (20) instructional days over the period of the school year.

(c) For a student with a disability who is unable to attend school as described in subsection (b), special education and related services, including access to the general education curriculum, shall be provided in accordance with the individualized education program as determined by the case conference committee.

(d) Instruction provided under this rule may continue through the summer to enable a student to complete a semester to meet promotion requirements.

(e) For a student identified as disabled under this article, instruction and related services shall be provided by appropriately licensed personnel. For all other students, instruction shall be provided by teachers licensed to teach the grade level of the student.

(f) The due process procedures provided in 511 IAC 7-30 do not apply to nondisabled students who receive instruction under this rule. (*Indiana State Board of Education; 511 IAC 7-27-11; filed May 22, 2000, 8:52 a.m.: 23 IR 2476*)

511 IAC 7-27-12 Community-supported services; residential services

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 12. (a) Before a public agency places a student with a disability in or refers a student to a private school or facility, the public agency shall convene a case conference committee and develop an individualized education program for the student in accordance with sections 4(c) and 6 of this rule. In accordance with section 3(e)(6) of this rule, the public agency shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls, if the representative cannot attend in person. Upon the recommendation of the case conference committee, the public agency may apply to the division of special education for financial support when a student requires community-supported services or residential services for educational reasons. The division of special education shall establish an application process.

(b) Nothing in this section shall be construed as restricting a public agency from obtaining the recommended community-supported services or residential services utilizing its own resources.

(c) This section is not applicable to the following situations:

(1) Placement in a state-operated school upon the recommendation of the case conference committee.

(2) Unilateral action of the parent in placing a student with disabilities in a private school.

(3) Placement in any residential facility by any other public agency for other than educational reasons.

(d) All procedural safeguards under 511 IAC 7-22 and due process protections of 511 IAC 7-30 apply to this section.

(e) The division of special education shall approve or deny, in whole or in part, an application for financial support for community-supported services or residential services.

(f) Within ten (10) business days of approving or denying the application, the division of special education shall send written notice of approval or denial of financial support to the public agency, the parent, and, as applicable, other public agencies with whom the student is involved.

(g) If the decision is to deny financial support for all or any part of the proposed community-supported services or residential services, the public agency and the parent have the right to appeal the decision through the due process hearing procedures described in 511 IAC 7-30-3. If no request for a due process hearing is filed within ten (10) calendar days of the date the decision is received by the parent or the public agency, the decision is deemed accepted.

(h) After the financial support is approved, the effective date of the financial support for all or part of community-supported services or residential services shall be determined by the mutual agreement of the service provider, the parent, and the public agency.

(i) When a student is placed in a state-operated facility pursuant to this rule, the state-operated facility shall not bill the parent or the public agency for the costs associated with the placement. The state-operated facility shall assume the costs of room and board, special education, and related services normally provided by the residential facility.

(j) If the parent or public agency obtains community-supported services or places the student in residential services prior to or during the application process, the parent or the public agency that obtained the services for the student is responsible for all costs of the placement incurred up to the date of approval for financial support by the division of special education. Approval of financial support shall not be retroactive, and expenses incurred prior to the date of approval are not eligible for reimbursement.

(k) When a student is placed in a private residential facility, the costs of room and board, educational, and nonmedical related services are the responsibility of the state, the public agency of the student's residence, and, as applicable, any other public agency with responsibility for the student. The school corporation of legal settlement is responsible for an amount equal to the per capita expenditure of that school corporation for educating a nondisabled student.

(l) The parent of a student placed in a public or private residential facility or other out-of-home placement is financially responsible for all costs for which the parent would be responsible if the student were living in the home, including, but not limited to, the following:

(1) Clothing and personal items as specified by the residential facility.

(2) All medical costs, including medications, emergency treatment, or dental costs incurred that are not incorporated into the daily, weekly, or monthly charges.

(3) Personal allowance, if applicable.

(m) If the student is in a public or private residential facility or other out-of-home or out-of-community placement, or there is a contracted third-party provider of services, the state educational agency and the school corporation of legal settlement are responsible for ensuring the following:

(1) That the public agency initiates at least two (2) contacts with the residential service staff or third-party provider during the period specified by the current contract for services and payment and that those contacts are documented.

(2) That, if the public agency permits the facility or provider to initiate and conduct case conference committee meetings on behalf of the student, all case conference committee procedures, including all required components of this section, are followed.

(3) That a representative of the residential service staff or third-party provider participates in the development, review and revision of the student's individualized education program by a method agreed upon by the public agency and the provider.

(4) That the parent and the school corporation are involved in all decisions with respect to the student's individualized education program and agree to any proposed changes in the services provided prior to the time any changes are implemented.

(5) That the case conference committee determines which public agency shall issue credits and diploma, if applicable, during the student's placement at the facility.

(6) That the facility or provider implements the student's individualized education program.

(7) That the state educational agency disseminates a copy of this article and the Procedural Manual for Community Supported and Residential Services to each private school or facility to which the public agency has referred or placed a student with a disability.

(Indiana State Board of Education; 511 IAC 7-27-12; filed May 22, 2000, 8:52 a.m.: 23 IR 2476; filed May 13, 2002, 2:00 p.m.: 25 IR 3163)

511 IAC 7-27-13 Transportation of students in public or private residential placements

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 13. (a) The school corporation of legal settlement is responsible for the cost of transporting students placed in public or private residential facilities by the public agency or the division of special education. The school corporation shall pay for the number of round trips as determined appropriate by the case conference committee in accordance with statutory requirements and this rule.

(b) The frequency, length, and timing of home visits shall be mutually agreed upon by the residential facility, the parent, and the school corporation of legal settlement. Transportation for the student for home visits shall be arranged to assure the welfare and safety of the student, including, if necessary, paying the cost for a responsible adult to accompany the student during the travel.

(c) If a parent travels to the residential facility, that travel may be in lieu of a student home visit. The school corporation of legal settlement shall pay the cost for the parent to travel to the residential facility if the case conference committee determines any of the following is essential to the student's educational, emotional, or behavioral progress:

(1) The nature or severity of the student's disability precludes home visits.

(2) The residential facility provides family counseling and training essential to the student's educational, emotional, or behavioral progress.

(3) The student cannot travel home unaccompanied.

(d) When a parent travels to the residential facility under subsection (c), the school corporation of legal settlement shall reimburse or pay for travel-associated costs, such as meals and lodging, in accordance with the policies established for school employees.

(e) At the time a residential placement is made, the public agency shall:

(1) establish guidelines and procedures concerning transportation; and

(2) inform the parent of those guidelines and procedures.

(f) The guidelines and procedures established under subsection (e) shall include at least the following information:

(1) The modes of transportation for which payment or reimbursement will be made.

(2) The method by which transportation will be paid.

(3) The length of advance notice required.

(4) The travel-associated costs allowed under public agency policy.

(Indiana State Board of Education; 511 IAC 7-27-13; filed May 22, 2000, 8:52 a.m.: 23 IR 2477)

Rule 28. Related Services; Transitions; Transfer of Rights

511 IAC 7-28-1 Related services

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. (a) The public agency shall provide related services to a student if the case conference committee determines the student requires the related services in order to benefit from special education. A student who may need a related service but does not need special education is not eligible for services under this article. Related services, which may be provided as direct services by qualified professionals or as integrated services by teachers or paraprofessionals acting in accordance with the instructions of qualified professionals, include, but are not limited to, the following:

(1) Audiological services.

(2) Counseling.

(3) Early identification and assessment.

(4) Medical services for evaluation.

- (5) Occupational therapy.
- (6) Orientation and mobility services.
- (7) Parent counseling and training.
- (8) Physical therapy.
- (9) Psychological services.
- (10) Recreation.
- (11) Rehabilitation counseling.
- (12) School health services.
- (13) Social work services in schools.
- (14) Transportation.
- (15) Other supportive services.

(b) Requirements for audiological services are as follows:

(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 language habilitation, auditory training, hearing evaluation, speech/lip reading, and speech conservation;
- (D) creation and administration of programs for prevention of hearing loss;
- (E) consultation 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.

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

(c) Requirements for counseling services are as follows:

(1) May include:

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

(2) May be provided:

- (A) in the instructional setting or another setting; and
- (B) on a regular schedule or an as-needed basis.

(3) May be provided by:

- (A) 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.

(d) Early identification and assessment of disabilities includes, but is not limited to, an ongoing child identification process as required by the Individuals with Disabilities Education Act and this article.

(e) Medical services for the purpose of diagnosis and evaluation shall be:

- (1) considered a related service provided at no cost to the parent, only if a diagnosis and evaluation of a medically related disability is needed or recommended by the case conference committee or 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.

(f) Requirements for occupational therapy services are as follows:

(1) May include:

- (A) evaluating developmental levels, gross and fine motor functioning, and self-care skills;
 - (B) designing and implementing interventions to develop, improve, or restore impaired gross or fine motor functions impaired or lost through illness, injury, or deprivation, and the ability to perform tasks in the educational environment as independently as possible;
 - (C) designing or adapting materials, equipment, or the educational environment to meet a student's needs;
 - (D) consulting with parents, teachers, paraprofessionals, and other related services personnel regarding activities that can assist in meeting the goals of therapy; and
 - (E) preventing, through early intervention, initial or further impairment or loss of function.
- (2) Shall be provided by a certified occupational therapist or a certified occupational therapy assistant under the supervision of a certified occupational therapist.
- (g) Requirements for orientation and mobility services are as follows:
- (1) Are provided to visually impaired students by qualified professionals to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community.
- (2) May include:
- (A) teaching students 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 (for example, using sound at a traffic light to cross the street);
 - (B) teaching students to use the long cane, as appropriate, to supplement visual travel skills or as a tool for safely negotiating the environment for students with no available travel vision;
 - (C) teaching students to understand and use remaining vision and distance low vision aids; and
 - (D) teaching students other concepts, techniques, and tools.
- (h) Requirements for parent counseling and training are as follows:
- (1) May include:
- (A) assisting the parents in understanding the special needs of their child;
 - (B) providing information on child development;
 - (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 individualized education program;
 - (D) providing information and training in due process procedures; and
 - (E) providing information on services from other agencies and how to gain access to those services.
- (2) May be provided:
- (A) as part of the case conference committee process; or
 - (B) in the form of special meetings or conferences.
- (3) May be provided by any of the persons listed in subsection (c)(3). The nature of the parent counseling and training needs shall guide the selection of the appropriate individual and manner in which the counseling and training are provided.
- (i) Requirements for physical therapy are as follows:
- (1) May include:
- (A) evaluating developmental levels, gross motor function, reflex levels, range of motion, muscular strength, and respiratory function;
 - (B) designing and implementing activities to prevent, correct, treat, or alleviate impairments;
 - (C) evaluating, designing, and recommending adaption of assistive devices and equipment; and
 - (D) consulting with parents, teachers, paraprofessionals, and other related services personnel regarding activities that can assist in meeting the goals of therapy.
- (2) Shall be provided:
- (A) by a licensed physical therapist or a certified physical therapist assistant under the direct supervision of a licensed therapist; and
 - (B) only upon referral or order of a licensed physician, podiatrist, psychologist, chiropractor, or dentist, as required by state law governing licensing of physical therapists.
- (j) Requirements for psychological services are as follows:
- (1) May include:
- (A) administering psychological and educational evaluations as a member of the team of qualified professionals;
 - (B) interpreting assessment results and integrating them with other information regarding behavior and conditions related

- to learning;
- (C) consulting and working with school personnel and parents in planning and developing a student's individualized education program and school programs to meet the special needs of students;
- (D) providing counseling for students and parents; and
- (E) assisting in developing positive behavioral intervention strategies.
- (2) Shall be provided by a licensed school, clinical, or child psychologist, or a psychiatrist.
- (k) Recreation services may include the following:
 - (1) Assessment of how a student spends leisure time as it relates to the student's educational program.
 - (2) Therapeutic recreation services.
 - (3) Recreation programs in the school, agency, and community.
 - (4) Leisure education.
- (l) Rehabilitation counseling services may include the following:
 - (1) Services provided by qualified professionals in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and 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.
- (m) Requirements for school health services are as follows:
 - (1) May include:
 - (A) provisions for emergency care in case of injury and sudden illness;
 - (B) maintenance of records and monitoring of students with medically related needs including the administration of medication as prescribed; and
 - (C) participation in case conference committee meetings for students with medically related disabilities or needs.
 - (2) Shall be provided or coordinated by a licensed school nurse.
- (n) Requirements for social work services in schools are as follows:
 - (1) May include:
 - (A) serving as a member of the evaluation team of qualified professionals, with responsibilities that may include the preparation of a social or 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) facilitating the utilization of 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.
 - (2) Shall be provided by a licensed school social worker.
- (o) Requirements for transportation are as follows:
 - (1) May include:
 - (A) travel to and from the educational setting and between educational settings;
 - (B) travel in and around the educational setting;
 - (C) travel to and from related services that are provided outside the educational setting;
 - (D) travel for participation in extracurricular activities if transportation is provided to nondisabled students; or
 - (E) 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) Shall be provided by:
 - (A) the public agency, directly or by contract; or
 - (B) the 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.

(3) Shall be provided:

- (A) when the student needs assistance moving from place to place within the educational setting;
- (B) when the student 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;
- (C) when the student is enrolled as a residential student in a public or private residential facility, in accordance with 511 IAC 7-27-12;
- (D) 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;
- (E) when the student requires a shortened instructional day;
- (F) when the student needs a related service that is provided at a site other than the school attended by the student or that is provided outside of the instructional day; or
- (G) when, for other reasons, the student cannot be transported with nondisabled students or needs special assistance or consideration.

(p) Other supportive services may include, but are not limited to, the following:

- (1) Interpreters.
- (2) Paraprofessionals assigned to a student or group of students to assist in instructional, social, personal, or vocational needs such as classroom program assistants, interveners, job coaches, school bus monitors, interpreters, and others.
- (3) Peer tutoring and cadet teacher programs.
- (4) Artistic and cultural programs.

(Indiana State Board of Education; 511 IAC 7-28-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2478)

511 IAC 7-28-2 Transition from early intervention services (Part C) to early childhood special education (Part B)

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (a) The public agency shall establish, maintain, and implement policies and procedures to assist the child participating in early intervention programs under Part C of the Individuals with Disabilities Education Act who will be participating in early childhood special education experience a smooth and effective transition in a manner consistent with Part C of the Act.

(b) The public agency shall participate in transition planning conferences convened by the Part C service coordinator, with the approval of the family of the child. The transition planning conferences shall be conducted in accordance with Part C of the Individuals with Disabilities Education Act.

(c) The public agency's obligation to make a free appropriate public education available to a student with a disability begins on the student's third birthday.

(d) With parental consent, at least six (6) months prior to a student's third birthday, the state-operated or state-supported program shall transmit to the school corporation of legal settlement, the following information:

- (1) The most recent individualized family service plan.
- (2) The most recent family service plan report.
- (3) The most recent evaluation reports from any appropriate sources.

(e) By the date of the third birthday of a student who may be eligible for early childhood special education, the public agency shall:

- (1) complete its evaluation;
 - (2) convene a case conference committee to determine eligibility for special education and related services;
 - (3) develop an individualized education program for the student; and
 - (4) implement the individualized education program.
- (f) If a student's third birthday occurs during the summer and the case conference committee determines the student:
- (1) requires extended school year services, the student's individualized education program shall state that services will be initiated during the summer of the student's third birthday; or
 - (2) does not require extended school year services, the student's individualized education program shall state that services will be initiated at the beginning of the upcoming school year.

(Indiana State Board of Education; 511 IAC 7-28-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2481)

511 IAC 7-28-3 Transition to adult life

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) Beginning at fourteen (14) years of age, or earlier if determined appropriate by the case conference committee, and updated annually, the individualized education program shall include a statement of the student's transition service needs under the applicable components of the student's individualized education program, based on career considerations and focused on the student's courses of study (such as participation in academic honors or advanced placement courses, Core 40, technical preparation courses, or vocational education courses). The statement shall also indicate whether the student will pursue a high school diploma or a certificate of completion.

(b) Beginning at the case conference prior to the student's entry into high school or sixteen (16) years of age, whichever comes first, or earlier if determined appropriate by the case conference committee, and at least annually thereafter, the student's individualized education program shall include a statement of needed transition services that guides the development of the special education and related services and the student's course of study, goals, benchmarks, and short term objectives, and includes the following:

(1) A coordinated set of activities designed within an outcome-oriented process that promotes movement from the public agency to postsecondary school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must meet the following criteria:

(A) Be based on the individual student's needs, taking into account the student's preferences and interests.

(B) Include the following:

(i) Instruction.

(ii) Related services.

(iii) Community experiences.

(iv) The development of employment and other postsecondary school adult living objectives.

(v) Where appropriate, acquisition of daily living skills and a functional vocational evaluation.

(2) The individuals and agencies responsible for implementing the activities and services, including, if appropriate, a statement of the interagency responsibilities or any needed linkages, or both, before the student leaves the secondary education program.

(3) An indication whether there is an expectation that the student will need adult services provided through state or local agencies, following graduation or exiting the secondary education program.

(c) When a purpose of a case conference committee meeting is to discuss transition services, the student shall be invited. The case conference committee shall review, based on areas addressed in the statement of needed transition services, the available adult services provided through state and local agencies and present written information on those services to the student and the parent. Adult services are provided by public agencies and other organizations to enhance adult life. Adult services may include, but are not limited to, the following:

(1) Services provided by a vocational rehabilitation services program.

(2) The department of workforce development.

(3) The Social Security Administration.

(4) The bureau of developmental disabilities services.

(5) A mental health center.

(6) A community rehabilitation program.

(7) An area agency on aging.

(d) Upon obtaining authorization to disclose confidential information, the public agency and the vocational rehabilitation counselor shall confer at least one (1) time per year to review transition-age students. If the public agency and the vocational rehabilitation counselor believe a student may be eligible for and benefit from vocational rehabilitation services, the public agency shall do the following:

(1) Provide adequate notice to the vocational rehabilitation counselor regarding the case conference committee meeting to be conducted during the school year before the student's projected final year of school. The notification to the vocational rehabilitation counselor shall include the name, address, age, and identified disability of the student for whom the case conference committee meeting is being conducted.

(2) At the case conference committee meeting, orally advise and provide written materials to the student and the parent that

describe the array of vocational rehabilitation services that may be available and the process to access those services.

(e) 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.

(f) If a participating agency, other than the public agency, fails to provide the transition services described in an agreed upon individualized education program, the public agency shall reconvene the case conference committee to identify alternative strategies to meet the transition objectives for the student set out in the individualized education program.

(g) Transition services may be special education, if provided as specially designed instruction, or related services, if required to assist a student with a disability to benefit from special education.

(h) The requirements of this section do not apply to students who are convicted as adults under state law and incarcerated in adult prisons whose eligibility for special education and related services 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. (*Indiana State Board of Education; 511 IAC 7-28-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2481; filed May 13, 2002, 2:00 p.m.: 25 IR 3164*)

511 IAC 7-28-4 Transfer of rights to student

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35; IC 29-3-1

Sec. 4. (a) Except as provided in subsection (b), when a student attains eighteen (18) years of age, all of the rights that were formerly provided to the student's parents under this article shall transfer to the student.

(b) If a student who has attained eighteen (18) years of age has a guardian appointed pursuant to IC 29-3-1, the rights under this article shall transfer to the guardian unless specifically otherwise provided in the guardianship proceeding.

(c) When a student who is incarcerated in an adult or juvenile, state or local correctional institution attains eighteen (18) years of age, the student shall have all of the rights that were formerly provided to the student's parents under this article.

(d) At a case conference committee meeting, no later than the student's seventeenth birthday, the public agency shall provide written notice to the student and the parent of the transfer of rights at eighteen (18) years of age unless a guardianship of the student has been obtained. The student's individualized education program must include a statement that the student and the parent have been provided with the aforementioned written notice.

(e) At the time the student attains eighteen (18) years of age and unless a guardianship has been established for the student, the public agency shall provide written notice to the parent and the student that the rights under this article have transferred to the student. (*Indiana State Board of Education; 511 IAC 7-28-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2482*)

Rule 29. Discipline Procedures

511 IAC 7-29-1 Suspension

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-33-8; IC 20-35

Sec. 1. (a) A suspension is the unilateral, temporary removal of a student from the student's current placement by the public agency.

(b) A short term removal of a student pursuant to the student's individualized education program is not a suspension.

(c) Suspension of a student for part of a day constitutes a day of suspension.

(d) A principal or principal's designee may suspend a student with a disability from the student's current placement for:

(1) up to ten (10) consecutive instructional days in a single period of suspension for any violation of school rules for which a nondisabled student could be suspended; or

(2) additional suspensions of not more than ten (10) consecutive instructional days at a single time in the same school year for separate incidents of misconduct as long as those removals do not constitute a change of placement as described in subsection (j).

(e) A public agency is not required to provide services to a student with a disability during any of the first ten (10) cumulative instructional days of suspension if services are not provided to a nondisabled student who has been similarly suspended.

(f) When a student with a disability has been suspended for more than ten (10) cumulative instructional days in the same school year, the public agency shall:

- (1) provide services to enable the student to progress appropriately in the general curriculum;
- (2) provide services to enable the student to advance appropriately toward achieving the goals set out in the student's individualized education program; and
- (3) comply with the requirements of section 5 of this rule.

(g) An in-school suspension is not considered a suspension for purposes of this rule if, during the in-school suspension, the student has the opportunity to:

- (1) progress appropriately in the general curriculum;
- (2) receive the special education services specified in the student's individualized education program; and
- (3) participate with nondisabled students to the extent the student would have in the student's current placement.

(h) If an additional suspension is for ten (10) instructional days or less and does not constitute a change of placement under subsection (j), the principal or the principal's designee, in consultation with the student's special education teacher, shall determine the extent to which services are necessary to meet the requirements of subsection (f).

(i) If an additional removal constitutes a change of placement under subsection (j), and the behavior resulting in the removal is not a manifestation of the student's disability, the case conference committee shall determine the extent to which services are necessary to meet the requirements of subsection (f).

(j) A suspension under this rule constitutes a change of placement in either of the following situations:

- (1) The period of suspension is for more than ten (10) consecutive instructional days.
- (2) The student is subjected to a series of suspensions that constitute a pattern because they cumulate to more than ten (10) instructional days in a school year and because of such factors as:
 - (A) the length of each suspension;
 - (B) the cumulative time of the suspensions; and
 - (C) the proximity of the periods of suspension.

(k) The determination of whether a series of suspensions constitutes a pattern that effectively results in a change of placement for the student shall be made by an independent hearing officer when a due process hearing on the issue has been requested pursuant to 511 IAC 7-30-3.

(l) A public agency's suspension procedures must comply with Indiana statutes and this article. (*Indiana State Board of Education; 511 IAC 7-29-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2483*)

511 IAC 7-29-2 Expulsion

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-33-8; IC 20-35

Sec. 2. (a) An expulsion is:

- (1) the temporary removal of a student from the student's current placement for more than ten (10) consecutive instructional days; or
- (2) a series of suspensions that constitute a pattern because they cumulate to more than ten (10) instructional days in a school year and because of such factors as:
 - (A) the length of each suspension;
 - (B) the cumulative time of the suspensions; and
 - (C) the proximity of the periods of suspension.

(b) An expulsion constitutes a change of placement, and the public agency must follow appropriate change of placement procedures, described in 511 IAC 7-27-5, including prior written notice and the right of the student to remain in the student's current educational placement in accordance with section 7 of this rule, unless any of the following apply:

- (1) The expulsion is for a weapon or drug offense.
 - (2) The parents of the student agree with the removal.
 - (3) The behavior is determined not to be a manifestation of the student's disability.
- (c) When a student with a disability has been expelled, the public agency shall:
- (1) provide services to enable the student to progress appropriately in the general curriculum;
 - (2) provide services to enable the student to advance appropriately toward achieving the goals set out in the student's

individualized education program; and

(3) comply with the requirements of section 5 of this rule.

(d) The case conference committee shall determine the extent to which services are necessary to meet the requirements of subsection (c). (*Indiana State Board of Education; 511 IAC 7-29-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2484*)

511 IAC 7-29-3 Interim alternative educational setting; weapons and drugs

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) The public agency may remove a student to an appropriate interim alternative educational setting for the same amount of time a student without a disability would be subject to discipline, but for not more than forty-five (45) calendar days if the student engages in either of the following:

(1) Carries a weapon to school or to a school function under the jurisdiction of a public agency.

(2) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a public agency.

(b) The case conference committee shall determine the interim alternative educational setting, which must do the following:

(1) Enable the student to continue to:

(A) progress in the general curriculum, although in another setting; and

(B) receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in that individualized education program.

(2) Include services and modifications to address and prevent the recurrence of the behavior described in subsection (a).

(c) A parent may request a due process hearing, pursuant to 511 IAC 7-30-3, to challenge the interim alternative educational setting. The department of education shall arrange for an expedited hearing pursuant to 511 IAC 7-30-5.

(d) In reviewing a decision under this section to place the student in an interim alternative educational setting, the independent hearing officer shall do the following:

(1) Determine whether the public agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(2) Consider the appropriateness of the student's current placement.

(3) Consider whether the public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services.

(4) Determine whether the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher will enable the child to continue to:

(A) progress in the general curriculum, although in another setting;

(B) receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in that individualized education program; and

(C) include services and modifications to address and prevent the recurrence of the behavior described in subsection (a).

(*Indiana State Board of Education; 511 IAC 7-29-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2484*)

511 IAC 7-29-4 Interim alternative educational setting; dangerous students

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 4. (a) If a public agency believes that maintaining the student in the current educational placement (the student's placement prior to suspension or expulsion) is substantially likely to result in injury to the student or others, the public agency may request an expedited due process hearing to determine an appropriate placement for the student.

(b) A independent hearing officer may order a change in the placement of a student with a disability to an appropriate interim alternative educational setting for not more than forty-five (45) calendar days if the hearing officer does the following:

(1) Determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(2) Considers the appropriateness of the student's current placement.

(3) Considers whether the public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services.

(4) Determines that the interim alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher will enable the child to continue to:

(A) progress in the general curriculum, although in another setting;

(B) receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in that individualized education program; and

(C) include services and modifications to address and prevent the recurrence of the behavior described in subsection (a).

(c) Nothing in this rule shall prohibit a public agency from seeking injunctive relief to remove a student with a disability from school or to change a student's current educational placement if the public agency believes that maintaining the student in the current educational placement is substantially likely to result in injury to the student or others. (*Indiana State Board of Education; 511 IAC 7-29-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2485*)

511 IAC 7-29-5 Functional behavioral assessment and behavioral intervention plan procedures

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 5. (a) Either before but not later than ten (10) business days after either first suspending the student for more than ten (10) cumulative instructional days in a school year, placing the student in an interim alternative educational setting, expelling the student, or otherwise commencing a removal that constitutes a change of placement, the public agency shall convene a case conference committee meeting for one (1) of the following purposes:

(1) To develop a plan for assessing the student's functional behavior if no functional behavioral assessment was conducted or behavioral intervention plan was implemented prior to the occurrence of the behavior that resulted in the removal.

(2) To review a student's existing behavioral intervention plan and its implementation and to modify the plan and its implementation as necessary to address the behavior.

(b) After an assessment plan has been developed as described in subsection (a)(1) and the assessments required by the plan are completed, the public agency shall convene a case conference committee meeting within ten (10) instructional days of the completion of the assessments to develop a behavioral intervention plan and provide for its implementation.

(c) If a student has an existing behavioral intervention plan and has been removed from the student's current placement for more than ten (10) cumulative instructional days in a school year and is subjected to a removal that does not constitute a change of placement, the case conference committee shall review the behavioral intervention plan and its implementation to determine whether modifications are necessary.

(d) If one (1) or more of the case conference committee members believe that modifications to an existing behavioral intervention plan are needed, the case conference committee shall meet to modify the plan and its implementation, to the extent the case conference committee determines necessary. (*Indiana State Board of Education; 511 IAC 7-29-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2485; filed May 13, 2002, 2:00 p.m.: 25 IR 3165*)

511 IAC 7-29-6 Manifestation determination

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 6. (a) If a public agency contemplates action for a student with a disability that involves removing a student with a disability from the student's current placement for a behavior described in sections 3(a) and 4(b) of this rule or that involves a removal that constitutes a change of placement for a student who has engaged in other behavior that violated any rule or code of conduct of the public agency that applies to all students, the public agency shall, no later than the date on which the decision to take action is made:

(1) notify the parent of the public agency's decision; and

(2) provide the parent with the notice of procedural safeguards.

(b) Immediately, if possible, but in no case later than ten (10) instructional days after the date on which the decision to take action is made, the case conference committee and other qualified professionals as appropriate shall conduct a review of the

relationship between the student's disability and the behavior subject to the disciplinary action. This review may be conducted at the same case conference committee meeting that is convened to develop or review the functional behavior assessment and behavior intervention plan as described in section 5 of this rule.

(c) The local director of special education or the local director's designee shall serve as the public agency representative to the case conference committee when the case conference committee is convened to determine whether the student's behavior is:

- (1) a manifestation of the student's disability; or
- (2) the result of deficiencies in the student's individualized education program or special education placement.

(d) In carrying out this review, the case conference committee and other qualified professionals may determine that the student's behavior is not a manifestation of the student's disability only if the case conference committee and other qualified professionals do the following:

- (1) First consider, in terms of the behavior subject to disciplinary action, all relevant information, including the following:
 - (A) Evaluation and diagnostic results, including the results or other relevant information supplied by the parents of the student.
 - (B) Observations of the student.
 - (C) The student's individualized education program and placement.

(2) Then determine the following:

- (A) In relationship to the behavior subject to the disciplinary action, the student's individualized education program and placement were appropriate.
- (B) The special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's individualized education program and placement.
- (C) The student's disability did not impair the student's ability to understand the impact and consequences of the behavior subject to the disciplinary action.
- (D) The student's disability did not impair the student's ability to control the behavior subject to disciplinary action.

(e) If the case conference committee and other qualified professionals determine that any of the standards in subsection (d)(2) were not met, the behavior must be considered a manifestation of the student's disability.

(f) If, as a result of the case conference committee's review, the public agency identifies deficiencies in the student's individualized education program, placement, or their implementation, the public agency shall take immediate steps to remedy the identified deficiencies.

(g) If the case conference committee and other qualified professionals determine that the student's behavior is a manifestation of the student's disability, the student may not be suspended or expelled for the behavior. The case conference committee shall review all of the following:

- (1) The student's current educational placement.
- (2) The student's individualized education program.
- (3) Current educational evaluation data.

(h) The case conference committee and other qualified professionals shall, if necessary, revise the student's individualized education program or change the student's placement.

(i) If the case conference committee determines that the behavior of the student with a disability is not a manifestation of the student's disability, the written report of the case conference committee's findings shall be given to the parent and the superintendent of the public agency in which the student's current educational placement is located.

(j) Upon receipt of the case conference committee report, the superintendent shall decide whether or not to appoint an expulsion examiner in accordance with Indiana statute. If an expulsion examiner is appointed, the expulsion examiner shall give the student's parent notice of the right to request and appear at an expulsion meeting in accordance with Indiana statute. The public agency's expulsion procedures must comply with Indiana statute.

(k) The public agency shall ensure that the special education and disciplinary records of the student with a disability are transmitted for consideration by the expulsion examiner.

(l) The parent of a student with a disability who disagrees with a determination that the student's behavior was not a manifestation of the student's disability or with any decision regarding a student's change of placement under this rule may do the following:

- (1) Request mediation in accordance with 511 IAC 7-30-1.
- (2) Request a due process hearing in accordance with 511 IAC 7-30-3 or 511 IAC 7-30-5.
- (3) Request, simultaneously, mediation and a due process hearing.

(m) Upon a parent's request for a due process hearing, the department of education shall arrange for an expedited hearing pursuant to 511 IAC 7-30-5.

(n) In reviewing a decision with respect to the manifestation determination, an independent hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of the student's disability consistent with the requirements of subsection (d).

(o) Except as provided in section 7 of this rule, during the pendency of any proceeding to challenge the result of the manifestation determination, the student involved in the due process hearing must remain in the student's current educational placement unless the public agency and the parents of the student agree otherwise.

(p) In the event the student is expelled, the public agency shall provide services to enable the student to appropriately:

(1) progress in the general curriculum; and

(2) advance toward achieving the goals set out in the student's individualized education program.

(q) The student's case conference committee shall determine the extent to which services described in subsection (p) are necessary. (*Indiana State Board of Education; 511 IAC 7-29-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2485; filed May 13, 2002, 2:00 p.m.: 25 IR 3166*)

511 IAC 7-29-7 Placement of the student during due process hearings or appeals of disciplinary action

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 7. (a) If a parent requests a hearing or an appeal to challenge the interim alternative educational setting or the manifestation determination, the student must remain in the interim alternative educational setting pending the decision of the independent hearing officer or until the expiration of the forty-five (45) calendar day time period provided for in this rule, whichever occurs first, unless the parent and the public agency agree otherwise.

(b) If a student is placed in an interim alternative educational setting pursuant to section 3 or 4 of this rule and the public agency proposes to change the student's placement after expiration of the interim alternative placement, the student must return to the current placement (the student's placement prior to the interim alternative educational setting) during the pendency of any proceeding to challenge the proposed change in placement, unless public agency personnel maintain that it is dangerous for the student to be in the current placement.

(c) If public agency personnel maintain that it is dangerous for the student to be in the current placement (the student's placement prior to removal to the interim alternative educational setting) during the pendency of the due process proceedings, the public agency may request an expedited due process hearing. An expedited due process hearing shall be conducted pursuant to 511 IAC 7-30-5.

(d) In determining whether the student may be placed in the alternative educational setting or in another appropriate placement ordered by the independent hearing officer, the independent hearing officer shall do the following:

(1) Determine whether the public agency has demonstrated by substantial evidence that maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

(2) Consider the appropriateness of the student's current placement.

(3) Consider whether the public agency has made reasonable efforts to minimize the risk of harm in the student's current placement, including the use of supplementary aids and services.

(4) Determine whether the alternative educational setting that is proposed by school personnel who have consulted with the student's special education teacher, will enable the child to continue to:

(A) progress in the general curriculum, although in another setting;

(B) receive those services and modifications, including those described in the student's current individualized education program, that will enable the student to meet the goals set out in that individualized education program; and

(C) include services and modifications to address and prevent the recurrence of the behavior.

(e) A placement ordered pursuant to subsection (d) may not be longer than forty-five (45) calendar days.

(f) The expedited hearing procedure described in subsection (c) may be repeated as necessary. (*Indiana State Board of Education; 511 IAC 7-29-7; filed May 22, 2000, 8:52 a.m.: 23 IR 2487*)

511 IAC 7-29-8 Protections for children not yet eligible for special education and related services

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 8. (a) A student who has not been determined eligible for special education and related services under this article and who has engaged in behavior that violated any rule or code of conduct of the public agency, including any behavior described in this rule, may assert any of the protections provided for in this article if the public agency had knowledge, as described in subsection (b), that the student was a student with a disability before the behavior that precipitated the disciplinary action occurred.

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

(1) The parent of the student has expressed concern in writing (or orally if the parent does not know how to write or has a disability that prevents a written statement) to certified personnel of the public agency that the student is in need of special education and related services.

(2) The behavior or performance of the student demonstrates the need for these services.

(3) The parent of the student or the public agency has requested an evaluation of the student pursuant to 511 IAC 7-25-4.

(4) The teacher of the student, or other certified personnel of the public agency, has expressed concern about the behavior or performance of the student to the director of special education of the public agency or to other administrative personnel in accordance with the agency's established child find or special education referral system.

(c) A public agency shall not be deemed to have knowledge if, as a result of receiving the information described in subsection (b), the public agency has done either of the following:

(1) Conducted an evaluation and determined that the student was not a student with a disability under this article, and provided notice to the student's parents of this determination consistent with 511 IAC 7-22-2.

(2) Determined that an evaluation was not necessary, and provided notice to the student's parents of its determination consistent with 511 IAC 7-22-2.

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

(e) If a referral is made for an initial evaluation of a student during the time period in which the student is subjected to suspension, expulsion, or placement in an interim alternative educational setting, the evaluation must be conducted in an expedited manner. Until the evaluation is completed, the student remains in the educational placement determined by school authorities, which may include suspension or expulsion without educational services.

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

(g) If the student is determined to be a student with a disability, taking into consideration information from the evaluation conducted by the public agency and information provided by the parents, the public agency shall provide special education and related services in accordance with this article, including the requirements of this rule. (*Indiana State Board of Education; 511 IAC 7-29-8; filed May 22, 2000, 8:52 a.m.: 23 IR 2487; filed May 13, 2002, 2:00 p.m.: 25 IR 3167*)

511 IAC 7-29-9 Referral to law enforcement and judicial authorities

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 9. (a) Nothing in this article prohibits a public agency from reporting a crime committed by a student with a disability to appropriate authorities or prevents state law enforcement and judicial authorities from exercising their responsibilities with regard to the application of federal and state law to crimes committed by a student with a disability.

(b) A public agency reporting a crime committed by a student with a disability shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom it reports the crime to the extent permitted by the Family Educational Rights and Privacy Act and 511 IAC 7-23-1. (*Indiana State Board of Education; 511 IAC 7-29-9; filed May 22, 2000, 8:52 a.m.: 23 IR 2488*)

Rule 30. Due Process Procedures**511 IAC 7-30-1 Mediation**

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 4-21.5-3.5; IC 20-35

Sec. 1. (a) A request for mediation may be initiated by either the parent or the public agency, but the mediation process cannot begin unless both parties agree to participate. Mediation may be requested to resolve disputes regarding any of the following:

- (1) A student's identification and eligibility for services under this article.
- (2) The appropriateness of the educational evaluation.
- (3) The appropriateness of the student's proposed or current special education services or placement.
- (4) Any other dispute involving the provision of a free appropriate public education to the student.
- (5) Reimbursement for services obtained by the parent.

(b) Mediation may occur prior to or concurrent with a request for a due process hearing. A request for mediation shall not preclude or delay a due process hearing or deny any other rights afforded in this article. Mediation is not an alternative to the complaint process under section 2 of this rule for alleged violations of state or federal laws in special education programs, nor is mediation under this section to address issues unrelated to the identification, evaluation, placement, or provision of a free appropriate public education to a student.

(c) The division of special education shall bear the cost of the mediation process.

(d) Persons who serve as mediators shall:

- (1) be trained in effective mediation techniques;
- (2) have no personal or professional conflict of interest regarding the parties involved in the process;
- (3) be impartial;
- (4) have knowledge of laws and regulations relating to the provision of special education and related services;
- (5) be qualified as determined by the division of special education; and
- (6) not be an employee of the department of education if the department of education is providing direct services to a student who is the subject of the mediation process or any public agency receiving funding under Part B of the Individuals with Disabilities Education Act.

(e) The division of special education shall maintain a current list of the persons who serve as mediators, including information on the qualifications of those persons. The division of special education shall, on a general rotation basis within the geographic region, select a mediator from the list for each mediation requested. A person who otherwise qualifies as a mediator is not considered an employee of the department of education solely because he or she is paid by the department of education to serve as a mediator.

(f) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute as determined by the mediator.

(g) Any agreement reached by the parties in the mediation process must be set forth in a written mediation agreement.

(h) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings. The parties to the mediation process may be asked to sign a confidentiality pledge prior to the beginning of the mediation session.

(i) The public agency may establish procedures to require parents who elect not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who:

- (1) is under contract with a parent training and information center or an appropriate alternative dispute resolution entity; and
- (2) would explain the benefits of the mediation process and encourage the parents to use the process.

Such procedures must be approved by the division of special education prior to implementation by the public agency, and the public agency may not use these procedures to deny or delay a parent's right to a due process hearing if the parent fails to participate in the meeting. The division of special education shall bear the cost of the meetings in accordance with the written procedures. (*Indiana State Board of Education; 511 IAC 7-30-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2488; filed May 13, 2002, 2:00 p.m.: 25 IR 3168*)

511 IAC 7-30-2 Complaints

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (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 shall:

- (1) be in writing;
- (2) state the alleged violations of this article or the Individuals with Disabilities Education Act and the facts on which the allegations are based;
- (3) be signed by the complainant or complainants; and
- (4) be submitted to the division of special education.

(b) 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 unless a longer period is reasonable due to one (1) of the following circumstances:

- (1) The alleged violation is continuing or systemic.
- (2) The complainant is requesting compensatory services for a violation that occurred not more than three (3) years prior to the date the complaint is received by the division of special education.

(c) The division of special education shall develop and implement written procedures to investigate complaints. These procedures shall be available upon request and shall include a process for the following:

- (1) Identifying issues in a complaint.
- (2) Assigning a complaint investigator.
- (3) Conducting an independent investigation, both on-site and off-site, including:
 - (A) giving the parties the opportunity to submit additional information; and
 - (B) reviewing the relevant information and making an independent determination.
- (4) Obtaining an extension of time for the investigation.
- (5) Preparing a written complaint investigation report, including findings of fact, conclusions, and reasons for the decision.
- (6) Conducting a reconsideration of the decision.
- (7) Monitoring compliance with the final decision, including corrective action, technical assistance activities, and negotiations.
- (d) The written procedures shall also include timelines for the investigation, issuance of a report, reconsideration, and monitoring compliance.

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

(f) The final written report of the department of education shall be issued within thirty (30) calendar days of the date the written complaint is received by the division of special education. An extension of time may be granted by the director of the division of special education only if exceptional circumstances exist with respect to a specific complaint. In that event, all parties shall be notified in writing of the extension and the reasons for it.

(g) Corrective action required by the department of education shall be binding on the public agency. The timelines for the public agency to submit a corrective action plan and to 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.

(h) 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.

(i) Either the public agency or the complainant may request reconsideration of any part of a complaint report by the director of the division of special education. A request for reconsideration must be submitted to the division of special education within fifteen (15) calendar days of the date the complaint report is received by the public agency or the complainant. 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.

(j) Reconsideration of a complaint report shall be conducted by the director of the division of special education. In no case shall the complete complaint process, from receipt of the complaint to issuance of the reconsideration results, if any, exceed sixty (60) calendar days unless a written extension of time has been granted where exceptional circumstances existed with respect to a complaint.

(k) Complaint investigations conducted under this section are not a substitute for due process procedures in subsections (l) through (n).

- (l) 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.

(m) If an issue is raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties, the hearing decision is binding, and the department of education shall inform the complainant to that effect.

(n) 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 7-30-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2489*)

511 IAC 7-30-3 Due process hearings

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 4-21.5-3; IC 20-35

Sec. 3. (a) A parent, a public agency, or the state educational agency may initiate a due process hearing that is conducted by an independent hearing officer when there is any dispute regarding any of the following:

- (1) A student's identification and eligibility for services under this article.
- (2) The appropriateness of the educational evaluation.
- (3) The appropriateness of the student's proposed or current level of special education services or placement.
- (4) Any other dispute involving the provision of a free appropriate public education for the student.
- (5) Reimbursement for services obtained by the parent.

(b) This section does not apply to allegations of violations of this article or the Individuals with Disabilities Education Act unless the allegations are directly related to a due process hearing issue with respect to the student. Due process hearing issues must present a dispute regarding a student.

(c) A request for a due process hearing and for the appointment of an independent hearing officer shall:

- (1) be in writing and signed;
 - (2) include the student's name and address and the name of the school the student attends;
 - (3) specify the reasons for the hearing request, including a description of the nature of the problem and any facts related to the problem;
 - (4) include a proposed resolution of the problem to the extent known and available to the parents at the time; and
 - (5) be sent simultaneously to the superintendent of public instruction, the division of special education, and the public agency, if the request is made by the parent. If the request is made by the public agency, the request shall be sent simultaneously to the superintendent of public instruction, the division of special education, and the parent.
- (d) The right to a due process hearing shall not be denied or delayed for failure to provide the notice required in subsection (c).

(e) The state superintendent of public instruction shall appoint the independent hearing officer. When a due process hearing request is received, the department of education shall send the public agency and the parent a written notice of the name of the independent hearing officer who has been appointed and a copy of the letter requesting a due process hearing.

(f) The public agency shall inform the parent of the availability of mediation as a means of dispute resolution. The public agency shall inform the parent of the availability of free or low-cost legal and other relevant services available in the area if:

- (1) the parent requests the information; or
 - (2) the parent or the public agency initiates a hearing under this section.
- (g) A person who may be appointed as an independent hearing officer shall:
- (1) be trained in the due process hearing procedures;
 - (2) have no personal or professional interest that would conflict with the person's objectivity in the hearing;
 - (3) not be an officer, employee, or agent of the public agency, the department of education, or any other agency that may be involved in the education or care of the student;
 - (4) have knowledge of laws and regulations relating to the provision of special education and related services; and
 - (5) be subject to any other qualifications established by the superintendent of public instruction.

(h) A person who otherwise qualifies as an independent hearing officer is not considered an employee of the public agency solely because the person is paid by the public agency to serve as an independent hearing officer. The division of special education shall maintain a current list of the persons who serve as independent hearing officers, including information on the qualifications

of those persons.

(i) The due process hearing timeline begins on the date a request for a due process hearing is received by the department of education. Due process hearings shall be conducted, a final written decision reached, and a copy of the written decision mailed to each of the parties not later than forty-five (45) calendar days after the request for a hearing is received. An independent hearing officer may grant specific extensions of time beyond the forty-five (45) day timeline at the request of a party. Any extension of time granted by the independent hearing officer shall be in writing to all parties and included in the record of the proceedings.

(j) Except as provided in 511 IAC 7-29-3 and 511 IAC 7-29-7, the student shall remain in the student's current educational placement during a due process hearing, administrative appeal, or judicial proceeding, unless the parties agree otherwise. If the proceedings extend beyond the end of the school year and the 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.

(k) 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.

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

- (1) be accompanied and advised by legal counsel and by individuals with knowledge and training with respect to special education or the problems of children with disabilities;
- (2) present evidence, confront, cross-examine, and compel the attendance of any witnesses;
- (3) prohibit the introduction of any evidence at the hearing that has not been disclosed at least five (5) business days prior to the hearing;
- (4) a separation of witnesses who are not parties to the dispute;
- (5) obtain a written or, at the option of the parents, an electronic verbatim transcript of the hearing;
- (6) obtain written or, at the option of the parents, electronic findings of facts and decision;
- (7) 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; and
- (8) obtain from the other party all evaluations completed and recommendations based on the offering party's evaluations that the party intends to use at least five (5) business days prior to a hearing.

(m) The independent hearing officer has the discretion and authority to:

- (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 (l)(8) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party; and
- (6) order a student with a disability to be placed in an interim alternative educational setting for not more than forty-five (45) calendar days if the requirements of 511 IAC 7-29-4(b) have been met.

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

- (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 fees if a court determines the parent ultimately prevailed at the due process hearing, administrative appeal, or judicial review;
- (5) obtain a written or electronic verbatim transcript of the proceedings at no cost; and
- (6) obtain written or electronic findings of fact and decisions at no cost.

(o) 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.

(p) Due process hearings under this section shall be conducted pursuant to IC 4-21.5-3 and this section. The hearing shall be

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 such funds shall not be used to pay attorney's fees or costs of a party. When the hearing is initiated by or against the department of education regarding the proposal or denial of funding for community-supported intensive services or residential services under 511 IAC 7-27-12, the department of education shall be responsible for the aforementioned costs.

(r) The decision of the independent hearing officer shall be based solely upon the oral and written evidence presented at the hearing. The party requesting the due process hearing shall present evidence and testimony first regarding the appropriateness of the proposed or refused action.

(s) A verbatim transcript of the hearing shall be made. The independent hearing officer is responsible for ensuring the hearing is transcribed and for 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.

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

(1) Findings of fact and conclusions of law.

(2) A decision and orders, if necessary.

(3) A notice of the right and the process to appeal the decision and orders.

(4) A notice that an action for attorney's fees must be filed in a civil court within thirty (30) calendar days after receipt of the independent hearing officer's final decision if no request for review is filed with the board of special education appeals.

(u) 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.

(v) If, as a result of the due process hearing, the independent hearing officer's decision concurs with the parents' contention that a change of placement is appropriate, the placement ordered by the independent hearing officer shall be treated as a placement agreed upon by the parent and the public agency.

(w) The independent hearing officer shall mail a copy of the hearing decision via certified mail, return receipt requested, to each party involved in the hearing. The independent hearing officer's decision is a final order unless appealed pursuant to section 4 of this rule.

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

(1) implement the order or orders in the hearing decision; or

(2) initiate an appeal as described in section 4 of this rule.

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

(1) The original hearing decision.

(2) The transcript of the hearing.

(3) The exhibits admitted by the independent hearing officer.

(4) All notices, pleadings, exceptions, motions, requests, and other papers filed in the hearing.

(z) 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 7-30-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2490; filed May 13, 2002, 2:00 p.m.: 25 IR 3169)

511 IAC 7-30-4 Due process hearing appeals

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 4-21.5-3; IC 4-21.5-5-5; IC 20-35

Sec. 4. (a) The state board of special education appeals (board) is established. The board shall have three (3) members appointed by the state superintendent of public instruction. Each member shall be appointed for a three (3) year term, with the year of appointment alternating to preclude all three (3) members being appointed at once. The members of the board shall alternate as chair when conducting impartial reviews. A member of the board:

- (1) may not be an officer, employee, or agent of a public agency involved in the education or care of a student;
- (2) may not have any personal or professional interest that conflicts with the member's objectivity in the appeal process; and
- (3) must be a resident of Indiana.

(b) The general counsel for the department of education shall serve as the agent for the board for receipt of all correspondence and the filing of documents.

(c) Due process hearing appeals under this section shall be conducted pursuant to IC 4-21.5-3 and this section.

(d) A petition for an impartial review of the independent hearing officer's decision by the board may be initiated by any party to the hearing. The petition shall be:

- (1) in writing;
- (2) filed simultaneously with the department of education and the opposing party;
- (3) specific as to the reasons for the exceptions to the independent hearing officer's decision, identifying those portions of the findings, conclusions, and orders to which exceptions are taken; and
- (4) filed within thirty (30) calendar days of the date the independent hearing officer's decision is received by the party.

(e) When a petition for review of an independent hearing officer's decision is received by the department of education, the department of education shall do the following:

- (1) Notify each member of the board that a petition for review has been filed.

- (2) Provide each member with a copy of:

- (A) the petition for review;
- (B) the independent hearing officer's findings, conclusions, and orders;
- (C) a transcript of the hearing;
- (D) exhibits, pleading, exceptions, motions, and requests; and
- (E) any other papers filed with the independent hearing officer or the department of education regarding the hearing.

(f) Any party to a due process hearing for which a petition for review has been filed may, within ten (10) calendar days from the date on which the petition for review is filed with the department of education, file a reply to the petition for review.

(g) Any petition for review that does not comply with the requirements of subsection (d) may be dismissed, in whole or in part, at the discretion of the board. Only matters raised in the initial due process hearing may be raised in a petition for review.

(h) If no petition for review is filed, or is not filed in a timely manner, the decision of the independent hearing officer shall become the decision of the board.

(i) Within thirty (30) calendar days of the receipt of a petition for review by the department of education, the board shall conduct an impartial review, prepare a written decision, and mail the written decision via certified mail, return receipt requested, to all parties. At the option of the parents, the parent's copy of the decision may be in written or electronic format. Specific extensions of time may be requested by any party to the appeal and granted by the chair of the board. The chair shall respond, in writing, to all parties when a request for extension is made.

(j) The board, in conducting an impartial review, shall review the entire record of the due process hearing to ensure the procedures of the hearing were consistent with the requirements of section 3 of this rule. The board may decide the matter with or without oral argument. The board shall not disturb the findings of fact, conclusions of law, or orders of the independent hearing officer unless the board finds the independent hearing officer's decision to be one (1) or more of the following:

- (1) Arbitrary or capricious.
- (2) An abuse of discretion.
- (3) Contrary to law, contrary to a constitutional right, power, privilege, or immunity.
- (4) In excess the jurisdiction of the independent hearing officer.
- (5) Reached in violation of an established procedure.
- (6) Unsupported by substantial evidence.

(k) If the board decides to hear oral argument, the parties shall be notified of the decision in advance of the scheduled proceeding. The oral argument shall be held at a time and place reasonably convenient to all parties in the proceeding.

(l) When the board permits oral argument, each party has the right to be represented by counsel or other individuals with knowledge and training with respect to special education or the problems of children with disabilities. Each party has the opportunity for argument and rebuttal. The board may ask questions of any person present to clarify the record. The board may, at its discretion, exercise the same powers as an independent hearing officer under section 3 of this rule. When the board receives evidence or testimony, the parties shall have the same rights as under section 3(l) of this rule.

(m) The board, upon completion of its impartial review, shall prepare an independent written decision that:

(1) contains findings of fact, conclusions of law, and, if necessary, orders; and

(2) includes a notice of the following:

(A) The right to seek judicial review of the board's decision.

(B) A party has thirty (30) calendar days from the date the party receives the board's written decision in which to seek judicial review.

(C) An action for attorney's fees must be filed in a civil court with jurisdiction within thirty (30) calendar days after receipt of the board's final decision if no request for judicial review is filed in federal or state civil court.

(D) The decision of the board is a final order unless judicial review in federal or state civil court is sought.

(n) Any party disagreeing with the decision of the board may appeal to a civil court with jurisdiction. Pursuant to IC 4-21.5-5-5, an appeal to a state or federal civil court must be filed within thirty (30) calendar days after the date the board's written decision is received by the party. The court shall:

(1) receive the record of administrative proceedings;

(2) hear additional evidence at the request of a party; and

(3) grant the relief it determines to be appropriate, basing its decision on a preponderance of the evidence.

(o) Nothing in this article shall be construed to restrict or limit the rights, procedures, and remedies available under the federal or state Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other federal laws protecting the rights of students with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this article, the procedures under sections 3 and 4 of this rule shall be exhausted to the same extent as would be required had the action been brought under this article.

(p) A parent represented by legal counsel during the proceedings of a due process hearing, appeal, or civil court action is entitled to reimbursement for legal fees if the parent ultimately prevails. Determination of which party prevails and the amount of reimbursement shall be determined by negotiation between the parent and the public agency. If agreement cannot be reached, either party may proceed to civil court for resolution under section 6 of this rule. Mediation, as described in section 1 of this rule, is not available for resolution of legal fees.

(q) The costs of the board, including travel, associated expenses, and reporting services, shall be borne by the department of education.

(r) The division of special education, after deleting personally identifiable information from the findings, conclusions, and orders of the board, shall 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.

(s) If, as a result of the board's review, the board's decision concurs with the parent's contention that a change of placement is appropriate, the placement ordered by the board shall be treated as a placement agreed upon by the parent and the state or local public agency. (*Indiana State Board of Education; 511 IAC 7-30-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2493; filed May 13, 2002, 2:00 p.m.: 25 IR 3171*)

511 IAC 7-30-5 Expedited due process hearings and appeals

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 4-21.5-3; IC 20-35

Sec. 5. (a) An expedited due process hearing will be conducted in the following situations:

(1) The parent requests a hearing because the parent disagrees with a determination that the student's behavior was not a manifestation of the student's disability.

(2) The parent requests a hearing because the parent disagrees with the public agency's decision regarding the student's disciplinary change of placement under 511 IAC 7-29-3.

(3) The public agency requests an expedited hearing because the public agency maintains that it is dangerous for the student to return to the current placement (placement prior to removal to the interim alternative educational setting) after the expiration of the student's placement in an interim alternative educational setting.

(b) An expedited due process hearing shall be conducted pursuant to IC 4-21.5-3 and section 3 of this rule, except that:

(1) the independent hearing officer must issue a written decision within ten (10) business days of the date the request was received by the department of education;

(2) all evidence intended to be introduced must be submitted not less than two (2) business days prior to the hearing; and

(3) the independent hearing officer shall not grant any extensions of time.

(c) An expedited due process hearing must be conducted by an independent hearing officer who meets the requirements under section 3 of this rule.

(d) The independent hearing officer's decision in an expedited due process hearing is appealable to the board of special education appeals (board). Such appeal shall be conducted pursuant to IC 4-21.5-3 and section 4 of this rule, except that:

(1) the request for review by the board must be filed with the department of education and received by the other parties no later than three (3) business days from the petitioning party's receipt of the independent hearing officer's decision;

(2) any reply to the petition for review must be filed and received by the other parties within three (3) business days of the date the petition for review is filed;

(3) the board shall issue a written decision no later than ten (10) business days from the date of receipt of the request for review;

(4) the board shall not grant any extensions of time;

(5) the board shall not hear oral argument in reviewing the decision in an expedited due process hearing; and

(6) the board, at its discretion, may elect to nominate one (1) of its members to review the independent hearing officer's decision and issue a final decision without the participation of the other two (2) board members.

(e) At any time after the initiation of an expedited due process hearing or appeal, the parties may agree to waive the requirements of the expedited process and proceed under section 3 of this rule for a due process hearing or section 4 of this rule for a due process hearing appeal. (*Indiana State Board of Education; 511 IAC 7-30-5; filed May 22, 2000, 8:52 a.m.: 23 IR 2494*)

511 IAC 7-30-6 Attorneys' fees

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 6. (a) Independent hearing officers and the board of special education appeals shall include a notice in their written decisions stating that an action for attorneys' fees must be filed in a civil court with jurisdiction within thirty (30) calendar days after:

(1) receipt of the independent hearing officer's final decision if no request for review is filed with the board of special education appeals; or

(2) receipt of the board of special education appeals' final decision if no request for judicial review is filed in federal or state civil court.

(b) Attorneys' fees awarded shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded.

(c) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding for services performed subsequent to the time of a written offer of settlement to a parent if:

(1) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than ten (10) calendar days before the proceeding begins;

(2) the offer is not accepted within ten (10) calendar days; and

(3) the court finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.

(d) Notwithstanding subsection (c), a court may award attorneys' fees and related costs to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.

(e) Attorneys' fees may not be awarded relating to any meeting of the case conference committee unless such meeting is convened as a result of an administrative proceeding or judicial action. Attorneys' fees may not be awarded for a mediation described in section 1 of this rule that is conducted prior to the filing of the due process hearing.

(f) Unless a court finds that the public agency unreasonably protracted the final resolution of the action or proceeding or any other violation of this rule, a court may reduce the amount of attorneys' fees awarded if the court finds any of the following:

- (1) During the course of the action or proceeding, the parent unreasonably protracted the final resolution of the controversy.
- (2) The amount of attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of comparable skills, reputation, and experience.
- (3) The time spent and legal services furnished were excessive considering the nature of the action or proceeding.
- (4) The attorney representing the parent did not provide to the public agency appropriate information in the due process hearing request pursuant to section 3(c) of this rule.

(g) A public agency may not use funds under Part B of the Individuals with Disabilities Education Act to pay attorneys' fees or costs of a party related to an action or procedure under the Individuals with Disabilities Education Act and this article. (*Indiana State Board of Education; 511 IAC 7-30-6; filed May 22, 2000, 8:52 a.m.: 23 IR 2495; filed May 13, 2002, 2:00 p.m.: 25 IR 3173*)

Rule 31. Child Count and Data Collection

511 IAC 7-31-1 Federal child count procedures

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 1. (a) On December 1 of each year, each public agency shall count the number of students identified as disabled and receiving special education and related services on that date. If December 1 is not a school or program day, the closest instructional day shall be used for the count.

(b) The division of special education shall report no later than February 1 each year to the United States Secretary of Education a total, noncumulative, unduplicated count of students identified and provided special education and related services under this article. The division of special education shall include in its report a certification signed by an authorized official of the department of education that the count is accurate and unduplicated.

(c) The child count report shall include the following:

(1) A count of students enrolled on December 1 in a school or program operated by a public agency that provides students with either:

- (A) special education and related services that meet the standards of this article;
- (B) only special education services if related services are not necessary for the students to benefit from special education; or
- (C) in the case of students with disabilities enrolled by their parents in private schools, the special education and related services provided must meet the standards of this article.

(2) A count of students specified by age on the child count date from three (3) years of age, but less than twenty-two (22) years of age within each disability category.

(3) Students placed in private residential special schools under 511 IAC 7-27-12.

(d) The following students shall not be included in the child count report to the United States Secretary of Education:

- (1) Those not enrolled in a school or program operated or supported by a public agency.
- (2) Those provided special education that does not meet the requirement of this article.
- (3) Those not provided with a related service needed to assist them in benefitting from special education.
- (4) Those receiving special education funded solely by the federal government, except when no local or state funds are available for nondisabled students three (3) years of age through five (5) years of age, then the students in these age groups may be counted when funds under subsection (b) are used for all special education costs.

(e) The division of special education shall do the following:

- (1) Establish procedures for taking the December 1 count.
- (2) Set a date by which public agencies must submit the child count report.
- (3) Obtain certification from each public agency that the child count report submitted by the public agency is noncumulative, unduplicated, and accurate.
- (4) Aggregate the data obtained from each public agency and prepare the required reports in a form which protects personally identifiable information.
- (5) Ensure that documentation is maintained at the state and local level to audit the accuracy of the count.

(f) The division of special education shall collect and report annually required data to the United States Secretary of Education. (*Indiana State Board of Education; 511 IAC 7-31-1; filed May 22, 2000, 8:52 a.m.: 23 IR 2495*)

511 IAC 7-31-2 State child count procedures

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 2. (a) On December 1 of each year, each public agency shall count the number of school-age students identified as disabled and receiving a free appropriate public education consistent with the requirements of this article on that date. For purposes of this count, school-age students are students who are five (5) years of age and are eligible to be enrolled in kindergarten during the count year and less than twenty-two (22) years of age. This count determines the additional state special education funds allocated to the public agency. If December 1 is not a school or program day, the closest instructional day shall be used for the count.

(b) The division of special education shall, no later than February 5 each year, report to the Indiana state budget committee an unduplicated count of students in programs for severe, mild, and moderate disabilities and a duplicated count for students in programs for communication disorders who are also served in another special education program. This count determines the amount of additional state special education funds available to public agencies for the operation of special education programs.

(c) The state child count report shall include the following:

(1) A nonduplicated count of students receiving a free appropriate public education consistent with the requirements of this article in one (1) of the programs for severe disabilities as defined by IC 21-3-10-3 [*IC 21-3-10 was repealed by P.L. 1-2002, SECTION 172, effective March 14, 2002.*]. A student may not be included in the nonduplicated count in programs for severe disabilities and in the nonduplicated count in programs for mild or moderate disabilities.

(2) A nonduplicated count of students receiving a free appropriate public education consistent with the requirements of this article in one (1) of the programs for mild and moderate disabilities as defined by IC 21-3-10-4 [*IC 21-3-10 was repealed by P.L. 1-2002, SECTION 172, effective March 14, 2002.*]. A student may not be included in the nonduplicated count in programs for mild or moderate disabilities and in the nonduplicated count in programs for severe disabilities.

(3) A duplicated count of students in programs for communication disorders, even if the student is served in another program.

(d) The state child count report must also include a cumulative count of students who received homebound instruction up to and including December 1 of the current year and each student who received homebound instruction after December 1 of the prior school year. A student may be included in the cumulative count of students in homebound programs even if the student also is included in any of the following:

(1) Nonduplicated count in programs for severe disabilities.

(2) Nonduplicated count in programs for mild and moderate disabilities.

(3) Duplicated count in programs for communication disorders.

(4) State preschool count.

(e) The division of special education shall do the following:

(1) Establish procedures for taking the December 1 count.

(2) Set a date by which public agencies must submit the child count report.

(3) Obtain certification from each public agency that the child count report submitted by the public agency is accurate and meets all state reporting requirements.

(4) Aggregate the data obtained from each public agency and prepare the required reports in a form which protects personally identifiable information.

(5) Ensure that documentation is maintained at the state and local level to audit the accuracy of the count.

(*Indiana State Board of Education; 511 IAC 7-31-2; filed May 22, 2000, 8:52 a.m.: 23 IR 2496*)

511 IAC 7-31-3 State preschool child count procedures

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 3. (a) On December 1 of each year, each public agency shall count the number of preschool students identified as disabled and receiving a free appropriate public education consistent with the requirements of this article on that date. For purposes of this count, preschool students are three (3) years of age through five (5) years of age and are not eligible to enroll in kindergarten during

the count year. This count determines the state preschool special education funds allocated to the public agency. If December 1 is not a school or program day, the closest instructional day shall be used for the count.

(b) The division of special education shall, no later than February 5 each year, report to the Indiana state budget committee an unduplicated count of students in preschool special education programs. This count determines the amount of state preschool special education funds available to public agencies for the operation of special education programs.

(c) The division of special education shall do the following:

(1) Establish procedures for taking the December 1 count.

(2) Set a date by which public agencies must submit the child count report.

(3) Obtain certification from each public agency that the child count report submitted by the public agency is accurate and meets all state reporting requirements.

(4) Aggregate the data obtained from each public agency and prepare the required reports in a form which protects personally identifiable information.

(5) Ensure that documentation is maintained at the state and local level to audit the accuracy of the count.

(Indiana State Board of Education; 511 IAC 7-31-3; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

511 IAC 7-31-4 Data collection

Authority: IC 20-19-2-8; IC 20-19-2-16

Affected: IC 20-35

Sec. 4. (a) Each public agency shall, on an annual basis, count the number of students with disabilities by race, ethnicity, and disability category:

(1) who are receiving a free appropriate public education;

(2) who are participating in general education;

(3) who are in separate classes, separate schools or facilities, or public or private residential facilities;

(4) who, for each year from fourteen (14) years of age to twenty-one (21) years of age, stopped receiving special education and related services because of program completion or other reasons and the reasons why those children stopped receiving special education and related services; and

(5) who, under 511 IAC 7-29-3 or 511 IAC 7-29-4, are removed to an interim alternative educational setting, the acts or items precipitating those removals, and the number who are subject to long term suspensions or expulsions.

(b) Each public agency shall, on an annual basis, provide the division of special education with any other program information that may be required by the Secretary of the United States Department of Education. The division of special education will annually inform the public agency of the child count procedures and categorical criteria required for the December 1 count.

(c) With regard to the child count data collected, the division of special education shall annually examine the data collected and report to the state advisory council on the education of children with disabilities on whether there is a significant disproportionality based on race with respect to:

(1) the identification of students as a student with a disability; and

(2) the placement of students in a particular educational setting.

(Indiana State Board of Education; 511 IAC 7-31-4; filed May 22, 2000, 8:52 a.m.: 23 IR 2497)

*