

INDIANA STATE BOARD OF EDUCATION

100 N. Senate Ave., RM N1049
Indianapolis, IN 46204

To: State Board of Education Members
From: Michelle Gough McKeown
Date: August 1, 2014
Re: Proposed final rule language under HEA 1003 (2013)

A public hearing was held for the proposed final rule language for LSA 13-560 on June 5, 2014. A summary of the comments accompany this memorandum. Some of the comments raised were outside the purview of an administrative rule and some were already be addressed in the rule. One change was made in response to public comment. It is highlighted in red in the accompanying rule language.

This rule will replace the emergency rule that was adopted by the Board last Fall. As noted when the proposed language was brought to the Board in March, there are only minor changes to the rule language from the emergency rule language.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Final Rule

LSA Document #13-560(F)

DIGEST

Adds 511 IAC 7-49 to explain and implement the requirements for provision of special education and related services by choice schools, annual reporting requirements, monitoring, and consequences for noncompliance by the choice school. Effective 30 days after filing with the Publisher.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

511 IAC 7-49

SECTION 1. 511 IAC 7-49 IS ADDED TO READ AS FOLLOWS:

Rule 49. Provision of Special Education and Related Services by Choice Schools

511 IAC 7-49-1 Applicability

Authority: IC 20-51-4-4.6

Affected: IC 20-24-1-4; IC 20-28-2-16

Sec. 1. This rule applies to the following:

- (1) A choice school as defined in section 2 of this rule.
- (2) A school corporation as defined in IC 20-28-2-16.
- (3) A charter school as defined in IC 20-24-1-4.

(Indiana State Board of Education; 511 IAC 7-49-1)

511 IAC 7-49-2 Definitions

Authority: IC 20-51-4-4.6

Affected: IC 20-19-3-1; IC 20-35-2-1; IC 20-51-1-4.7; IC 20-51-4-4

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

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

(Indiana State Board of Education; 511 IAC 7-49-2)

511 IAC 7-49-3 Parent selection of school to provide services

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4; IC 20-35

Sec. 3. (a) The choice school shall, at the time a student with a disability applies for choice scholarship, inform the parent of a student with a disability of the special education and related services the choice school makes available.

(b) Subsequent to receiving information described in subsection (a) and prior to the submission of the choice scholarship application, the parent must select either the choice school or the local school

corporation as the provider of special education and related services for the student.

(c) The parent's selection under subsection (b) is valid for the school year at the choice school for which the choice scholarship was awarded.

(Indiana State Board of Education; 511 IAC 7-49-3)

511 IAC 7-49-4 Choice school education plan

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4

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

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

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

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

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

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

(d) Upon receipt of the written revocation, the choice school will stop implementing the CSEP. A parent may request a meeting at any time to review the CSEP. The choice school shall convene a meeting to review the CSEP within a reasonable time after receiving the request.

(e) For any choice scholarship student returning to the choice school, the student's previous year's CSEP shall be reviewed at the beginning of the school year to inform the planning and development of a CSEP for the current school year if the choice scholarship student selects the choice school as the special education service provider for the current year.

(Indiana State Board of Education; 511 IAC 7-49-4)

511 IAC 7-49-5 Parent consent

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4-4

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

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

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

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

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

(f) The choice school:

(1) shall terminate special education and related services upon receipt of the parent's written revocation; and

(2) is not required to provide special education and related services for the remainder of the school year.

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

(1) written notice to the school corporation within whose boundaries the choice school is located that the student's scholarship is no longer funded under IC 20-51-4-4(2); and

(2) the school corporation with a copy of the student's CSEP.

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

(Indiana State Board of Education; 511 IAC 7-49-5)

511 IAC 7-49-6 Reevaluation

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4

Sec. 6. If the parent of a choice scholarship student requests a reevaluation of the student:

(1) the school corporation shall conduct the reevaluation in accordance with 511 IAC 7-40-8; and

(2) the choice school shall collaborate with the school corporation and share all relevant information applicable to the reevaluation.

(Indiana State Board of Education; 511 IAC 7-49-6)

511 IAC 7-49-7 Complaint process

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4

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

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

(c) The complaint must:

(1) be in writing;

(2) include the name and address of the choice school;

(3) include a statement alleging that the choice school has failed to comply with one (1) or more requirements of this rule;

(4) include the facts on which the alleged noncompliance is based;

(5) be signed by the parent and include the parent's contact information; and

(6) be submitted to the choice school and the division of special education.

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

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

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

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

(Indiana State Board of Education; 511 IAC 7-49-7)

511 IAC 7-49-8 Student count

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4-4

Sec. 8. (a) On December 1 of each year, or such date as determined by the department, each choice school must count the number of school age students for whom both of the following apply:

(1) A choice scholarship under IC 20-51-4-4(2) has been awarded.

(2) The choice school is providing special education and related services pursuant to a CSEP to which the parent has provided written consent.

(b) The choice school shall comply with department's established procedures and format in submitting required data under this section.

(Indiana State Board of Education; 511 IAC 7-49-8)

511 IAC 7-49-9 Education records

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4

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

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

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

(Indiana State Board of Education; 511 IAC 7-49-9)

511 IAC 7-49-10 Proportionate share

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4-4.5

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

(b) A school corporation within whose boundaries the choice school is located may, but is not

required, choose to expend part of the proportionate share of federal special education funds on services to choice scholarship students.

(c) The school corporation within whose boundaries the choice school is located is not required to provide special education and related services for any choice scholarship student who has designated the choice school to provide their special education services, unless consent has subsequently revoked for the implementation of the CSEP ~~any choice scholarship student attending the choice school as described in IC 20-51-4-4.5.~~

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

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

(Indiana State Board of Education; 511 IAC 7-49-10)

511 IAC 7-49-11 Annual assurance

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4

Sec. 11. (a) As part of the annual assurances required of an eligible choice school, each choice school shall sign an assurance that as follows:

- (1) The choice school will inform the parent of special education and related services available from the choice school so that the parent is able to make an informed choice as to who will provide the special education and related services to the student.
- (2) The choice school and the parent will collaborate to develop the student's CSEP.
- (3) The CSEP will be in writing and will be implemented only upon the parent's written consent to the plan.
- (4) The choice school will inform the parent of the following:
 - (A) The consent requirement.
 - (B) The parent's right to revoke that consent.
 - (C) The consequences of revoking consent.
- (5) The choice school will provide student progress reports as described in the choice scholarship education plan.

(b) The division of special education may conduct random on-site reviews of the choice schools to verify compliance with the outcomes described in subsection (a) and will coordinate such reviews with other on-site reviews of choice schools conducted by the department.

(Indiana State Board of Education; 511 IAC 7-49-11)

Notice of Public Hearing

Posted: 05/14/2014 by Legislative Services Agency

An [html](#) version of this document.

To: State Board of Education Members
From: Michelle Gough McKeown
Date: August 1, 2014
Re: Proposed final rule language under HEA 1003 (2013)

SUMMARY OF PUBLIC COMMENTS DURING RULE 13-560 PUBLIC HEARING ON JUNE 5, 2014

John Elcesser, Director of the Indiana Non-Public Education Association.

Mr. Elcesser was concerned about aspects that limits participation in the program. One area deals with the finding timelines. He said the current special education count date is set at the end of the federal window, on December 1st, followed by a time allotment for subsequent enrollment reconciliation. This means choice schools don't receive special education funding until the end of February. This makes it tough or impossible for some schools (especially smaller schools) to float these expenses for 7 months.

A second area that is problematic deals with the timing required for child find services (for students to be assessed to get an IEP or ISP), and how that timing interfaces with the school voucher application timelines. Mr. Elcesser stated this can delay students from being able to select a non-public school provider.

Mr. Elcesser raised the issue of Section 10 of the rule. He said he believed this language was drafted before the Attorney General's opinion and could cause confusion if someone doesn't check the code reference. He stated the language currently reads that "The school corporation within whose boundaries the choice school is located is not required to provide special education and related services for any choice scholarship student attending the choice school as described in IC 20-51-4-4.5. He suggested a change to "any choice scholarship student who has designated the choice school to provide their special education services, unless consent has subsequently revoked for the implementation of the CSEP" as described in IC 20-51-4-4.5.

Joan McCormick from ICASE

Ms. McCormick said one concern is in the section of a parent revoking consent. She stated that the requirements that the choice school provide the school corporation with a copy of the CSEP, and written notice where the school is located are good things. However, she said, when you go to providing school information to the choice school/school corporation, it says the student, but it's the parent that owes money. Then they only have to give verbal information to the public school and she felt that was a concern because they have no legal document on the child's needs. Ms. McCormick said we need to look at that because it isn't the child who owes the money it's the child's IEP which does belong to that child.

Ms. McCormick went on to say their general concern was how long does the choice have to tell the private school that the child has been revoked and then the public school has another ten days to hold a meeting; a child could go without services for a month. And we just want to assist and watch that that doesn't happen.

She appreciated the fact that the proportionate share is in there; that it's very clear that the public schools are not required to share that money with the choice scholarship students. Ms. McCormick also said, with regard to the reevaluations, ICASE has a data collection effort from last December to next December regarding scholarship students in the private schools that have identified

disabilities and they are seeing how many kids are coming back and forth and the reevaluations. The reevaluations have been a serious concern for both ends, she said. Specifically, collaboration in there is undefined. She said they believe a lot of reevaluations are being requested, but what is not in there is that while child find is the public school's responsibility, they believe the choice scholarship school has a tremendous responsibility in the initial evaluation and there is nothing in here saying they have to do anything.

Kara Bratton, Director of Lutheran Special Education Ministries

Ms. Bratton agrees that the terminology in the reevaluations section needed to be more defined as to what the private schools need to provide.

Jonathan Lambeth, Faith Christian School

Mr. Lambeth's first concern for clarification was whether student special education funding follows that student if their parent chooses a choice school for services. Another area he asked for clarification around was in Section 4 only takes place if the parent chooses the choice school to provide the special education services. The third concern was in Section 5 where a parent revokes the SCEP. The question is then does the parent withdraw the student from the choice school? Fourth, in the very last line in Section 5 he asked if that would not be an IEP if they are going back into the public school, or is this referring to the development of an ISP to stay in the choice school. Mr. Lambeth added another point that may need to be clarified, pertaining to if this rule has any bearing on the process in place regarding choice scholarship students who become identified while in a choice scholarship school.