



INDIANA STATE BOARD OF EDUCATION

To: Indiana State Board of Education
From: William Ottensmeyer, Staff Attorney
Date: December 6, 2023
RE: **Article 7 Rules (LSA Document #23-504) – Adoption of Final Rule**

MEMORANDUM

Recommendation(s): Adopt the Final Rule (LSA Document #23-504)

The Final Rule has been modified from the State Board of Education's ("Board") proposed rule, and adds 511 IAC 4-1.5-9 concerning instruction for students with injuries and temporary or chronic illnesses, adds 511 IAC 4-1.5-10 concerning medication administration, adds 511 IAC 6-7.1-12 concerning authority to award locally developed certificates, amends 511 IAC 7-32-32 to update the definition of "educational surrogate parent", amends 511 IAC 7-32-40 to update the definition of "free appropriate public education", amends 511 IAC 7-32-52 to update the definition of "institution of higher education", adds 511 IAC 7-32-103.5 to add a definition for "virtual instruction", amends 511 IAC 7-34-1 concerning special education and related services for parentally-placed students in nonpublic schools, amends 511 IAC 7-34-3 concerning educational evaluations for parentally-placed nonpublic school students attending nonpublic schools outside the school corporation of legal settlement, amends 511 IAC 7-34-4 concerning consultation with nonpublic school representatives and representatives of parents, amends 511 IAC 7-34-5 concerning decisions regarding services provided by the public agency and service plans, amends 511 IAC 7-34-6 concerning due process hearings and complaints, amends 511 IAC 7-34-7 concerning requirements pertaining to Part B funds, amends 511 IAC 7-35-2 concerning supports for public agency personnel, amends 511 IAC 7-36-10 concerning state and local assessments, amends 511 IAC 7-40-2 concerning comprehensive and coordinated early intervening services, amends 511 IAC 7-40-3 concerning educational evaluations in general, amends 511 IAC 7-40-5 concerning conducting an initial educational evaluation, amends 511 IAC 7-40-7 concerning independent educational evaluations, amends 511 IAC 7-40-8 concerning reevaluations, adds 511 IAC 7-40-9 concerning notice by electronic mail, amends 511 IAC 7-41-9 concerning multiple disabilities, amends 511 IAC 7-42-3 concerning case conference committee participants, amends 511 IAC 7-42-6 concerning developing an individualized education program, amends 511 IAC 7-42-8 concerning implementation and termination of

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

individualized education programs, amends 511 IAC 7- 42-9 concerning review and revision of the individualized education program, amends 511 IAC 7-42-10 concerning least restrictive environments and delivery of special education and related services, amends 511 IAC 7-42-11 concerning instruction for a student at the student's home or alternative setting, adds 511 IAC 7-42-16 concerning notice by electronic mail, amends 511 IAC 7-43-1 concerning related services, amends 511 IAC 7-43- 4 concerning the transition individualized education program, amends 511 IAC 7-43-7 concerning summary of performance, amends 511 IAC 7-44-1 concerning removals and services in general, amends 511 IAC 7-44-2 concerning disciplinary change of placement, amends 511 IAC 7-44-3 concerning removals of more than 10 cumulative days that do not result in a change of placement, amends 511 IAC 7-44-4 concerning removals of more than 10 consecutive days or 10 cumulative days that results in a change of placement, amends 511 IAC 7- 44-6 concerning interim alternative educational settings; weapons, drugs, and serious bodily injury, adds 511 IAC 7-45-0.5 concerning dispute resolution, amends 511 IAC 7-45-2 concerning mediation, amends 511 IAC 7-45-3 concerning due process hearing requests, amends 511 IAC 7-45-4 concerning sufficiency of the request for a due process hearing, amends 511 IAC 7-45-5 concerning responding to the request for a due process hearing, amends 511 IAC 7-45-6 concerning the resolution process, adds 511 IAC 7-45-6.5 concerning prehearing procedures, amends 511 IAC 7-45-7 concerning conducting a hearing, amends 511 IAC 7-45-8 concerning independent hearing officer qualifications, amends 511 IAC 7-45-10 concerning expedited due process hearings and petition for judicial review, amends 511 IAC 7-46-1 concerning federal child count procedures, amends 511 IAC 7-47-1 concerning application from a school corporation of legal settlement or charter school, amends 511 IAC 7-47-2 concerning appeal from denial of application, amends 511 IAC 7-49-2 to add a definition of "local school corporation", amends 511 IAC 7-49-4 concerning the choice special education plan, amends 511 IAC 7-49-10 concerning proportionate share, adds 511 IAC 7-50 concerning the Indiana education scholarship account education service plan, and repeals 511 IAC 7-32-67, 511 IAC 7-32-103, and 511 IAC 7-42-12.

Once the Board adopts the Final Rule, Indiana Department of Education (“Department”) Staff will proceed with the rulemaking process outlined in IC 4-22-2 on the Board’s behalf. The rulemaking process shall proceed as follows:

- 1) Department staff will compile the necessary materials and submit them, along with the Final Rule, to the Office of the Attorney General (“OAG”) for review and approval, as required by IC 4-22-2-32.
 - Per IC 4-22-2-32(g), OAG has 45 days from the date the Department submits the Final Rule for review to either approve or disapprove the rule.
- 2) Once OAG has completed its review and approved the Final Rule, Department staff will submit the Final Rule to the Governor’s Office for review and approval, as required by IC 4-22-2-33.

- Per IC 4-22-2-34, the Governor has 15 days from the date the Department submits the Final Rule for review to either approve or disapprove the rule.
- 3)** Once the Governor has completed his review and approved the Final Rule, Department staff will submit the Final Rule to the Publisher for filing, as required by IC 4-22-2-35.
- Per IC 4-22-2-36, the Final Rule will become effective 30 days after it is filed with the Publisher.

Both the Final Rule and the Public Comment Summary have been attached for the Board's review and consideration.

LSA 23-504
Public Comment Summary

511 IAC 4-1.5-9(a)

(1) **Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) First, subsection (a) states that students with injuries and temporary or chronic illnesses must be provided with instruction, even if their attendance at school is not possible.

Nonetheless, subsection (b), which describes evidence that a student's injury or illness prevents school attendance, addresses only those students who are absent for at least 20 days in a school year or who will miss the remaining days of a school year.

(B) Because the PR does not address students with injuries or illnesses that persist and preclude school attendance for 19 days or less, IDR suggests that the Board add a section to its final rule addressing the instruction of those students.

(2) **IDOE Conclusion:** No changes. Adding a section to the final rule addressing students with injuries or illnesses that persist and preclude school attendance for 19 days or less is a bigger change that would not fit within the current rulemaking.

511 IAC 4-1.5-9(b)

(1) **Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) Regarding subsection (b), IDR is concerned that the PR would require parents to provide written consent for a student's school to consult with the student's licensed health care provider about- in addition to the student's attendance, limitations, and anticipated date of return - "other matters affecting the student's ability to receive instruction."

(B) Specifically, IDR is concerned that subsection (b)(3)(D) is overbroad and asks parents to cede more of a student's privacy than is reasonable. Although Title I of the Americans with Disabilities Act (ADA) is not directly applicable to the PR's subject matter, it addresses employers and qualified applicants and employees with disabilities. Like an employer to an employee, a school directs the activities and majority of the student's day. Pursuant to the regulations implementing Title I of the ADA, it is generally unlawful for an employer to make inquiries regarding an employee's disability status and severity. Guidance materials from the Equal Employment Opportunity Commission reinforce that medical inquiries must be limited in scope; when assessing, for example, whether a qualified employee with a disability can return to work after a period of leave, an employer may ask only "what is needed to determine whether the employee is able to work."

(C) IDR suggests that students should be afforded a similar degree of confidentiality by the Board, and suggests that the Board limit the scope of acceptable inquiry in the PR by either: (1) enumerating discrete discussion topics or (2) amend subsection (b)(3)(D) to state, "other matters necessary to understand the student's ability to receive instruction."

(2) **IDOE Conclusion:** No changes.

511 IAC 4-1.5-9(e)

(1) **Comment submitted by:** Tammy Hurm (ICASE)

(A) Can 'provided by' be defined to include on-line options and include supervision vs direct instruction?

(2) **IDOE Conclusion:** No changes.

511 IAC 4-1.5-10

(1) **Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) IDR is concerned that a parent's written consent for medication to be administered to a student is never valid for a period of time "longer than the current school or program year, per proposed subsection (a)(2)(B). Although IDR understands the risk of harm that may come with providing consent for an indeterminate period, using the school or program year puts an extra burden on the party consenting to medication administration.

(B) IDR notes that a case conference committee (CCC) is required to meet at least annually. For that reason, it suggests that the Board consider recognizing consent for medication administration for a period to last no more than 365 days, a full calendar year. This compromise recognizes the Board's desire to ensure that students are being appropriately medicated, as well as the fact that parents and guardians of students - and especially of students with chronic illnesses and/or disabilities - are often overburdened managing the students' care and treatment. If the Board adopts a calendar year, as opposed to the school or program year, many parents and guardians would benefit by signing consent paperwork at the annual CCC meeting.

(2) **IDOE Conclusion:** No changes. Schools operate on school years. Schools typically send home medications at the end of the school year.

511 IAC 7-34-1

(1) **Comment submitted by:** Tammy Hurm (ICASE)

(A) Needs to be a requirement for virtual non-public schools to notify the public school that they are set up.

(2) **IDOE Conclusion:** No changes. When a virtual school sets up, they are potentially serving students throughout the state of Indiana. The notification currently is the Virtual Public school must notify the school corporation when there is a student, which is more appropriate than saying "when you set up."

511 IAC 7-34-3(a)

(1) **Comment submitted by:** Tammy Hurm (ICASE)

(A) This needs to be put in writing, perhaps to the superintendent or the Director of Special Education.

(2) **IDOE Conclusion:** No changes. We do not want to force parents to put something in writing. The change we are making is that we are clarifying that you don't have to offer an IEP "every year".

511 IAC 7-34-4(a)(3)

- (1) **Comment submitted by:** Tammy Hurm (ICASE)
 - (A) Need to add a timeline, such as within 10 days of enrollment.
- (2) **IDOE Conclusion:** No changes.

511 IAC 7-35-2

- (1) **Comment submitted by:** Emily Munsen (Indiana Disability Rights)
 - (A) IDR seeks clarification about the Board's rationale for striking the subsection. Although the Board may believe that technical assistance and training can provide necessary knowledge and skills to implement IEPs, making the existing wording redundant, IDR disagrees. Even if the Department of Education (DOE) closely enforces the provision of highly tailored technical assistance and training to personnel, it is extremely unlikely that personnel will receive the needed detail to implement each specific IEP.
 - (B) Additionally, IDR is concerned that public agencies may interpret the removal of this regulatory language as eliminating the requirement that personnel receive the needed knowledge and skills to implement each IEP, even if that is not the Board's intention. At the very least, the proposed redaction will induce confusion, hampering the ability of public agencies and personnel to promptly and effectively serve students with IEPs.
- (2) **IDOE Conclusion:** No changes. Public agencies are already required to ensure that personnel are appropriately licensed and trained and have the knowledge and skills to implement the IEP. See 511 IAC 7-36-2, 511 IAC 7-36-3, and 511 IAC 7-42-6(f)(4). The language in 511 IAC 7-35-2 is repetitive. The Individuals with Disabilities Education Act does not provide that this is the responsibility of the IEP team.

511 IAC 7-36-10

- (1) **Comment submitted by:** Emily Munsen (Indiana Disability Rights)
 - (A) A more precise subsection might state that the CCC's determination cannot be based solely on "the student's disability category or diagnosis."
- (2) **IDOE Conclusion:** No changes.

511 IAC 7-40-2

- (1) **Comment submitted by:** Emily Munsen (Indiana Disability Rights)
 - (A) IDR is concerned about how parents and guardians will learn about their students' interventions and ability to request an evaluation for special education if the notice requirement is eliminated.
- (2) **IDOE Conclusion:** No changes. Not provided for under IDEA.

511 IAC 7-40-9

(1) **Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) IDR generally supports providing information to individuals in the format most accessible to them. For that reason, IDR asks why the Board would grant public agencies the discretion to deny parents the opportunity to receive written notice electronically. Some parents may need electronic communication as a reasonable accommodation. Moreover, IDR cannot think of a material burden or threat that public agencies would incur by communicating with parents electronically, rather than through the mail.

(B) For those reasons, IDR suggests that the Board consider removing the clause "if the public agency makes that option available" from the final rule.

(2) **IDOE Conclusion:** No changes.

511 IAC 7-45-0.5(c)

(1) **Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) DR is particularly concerned about proposed 511 IAC 7-45-0.5(c) explicit statement that individuals using the dispute resolution process - including pro se parents and adult students - cannot ever submit correspondence, documents, or pleadings to the DOE, investigators, or hearing officers. The prior subsection allows pro se parents and adult students to use fax or mailed service (as opposed to attorneys who, per subsection (a) must use the DOE's electronic filing system). In addition to concerns about parents, guardians, and adult students who may need to use electronic communication as a reasonable accommodation, IDR also notes that stamps and facsimile machine rental impose a cost burden, however minimal, on pro se litigants. IDR suggests that the DOE should take proactive steps to eliminate mandating any expenditures with the exercise of one's right to receive a FAPE.

(2) **IDOE Conclusion:** No changes. Commenter is misreading 511 IAC 7-45-0.5. IDOE has a free secure database and is trying to protect student confidentiality since email is not secure.

511 IAC 7-42-3(d)(2)(A)

(1) **IDOE Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) While IDR appreciates the consideration of student preferences and interests, IDR further suggests that the Board consider adding a requirement that public agency personnel will consult with the student following their CCC meeting, if the student did not attend, to review the contents of their transition IEP. In transitioning to adulthood, students need encouragement to take ownership of their choices and future. Informing students about transition objectives, explaining the purpose of transition services, and reviewing how their preferences and interests were incorporated into the transition IEP furthers this purpose.

(B) Although IDR strongly encourages students to attend their CCC meetings, consulting with those students who do not participate shortly after meetings is the next best alternative.

(2) **IDOE Conclusion:** No changes. Not a logical outgrowth of any proposed changes since this wasn't a proposed change in the first place.

511 IAC 7-43-1(u)(4)

(1) **IDOE Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) IDR asks for clarification as to why the Board would allow, but not require, public agencies to provide students with an appropriate vehicle to get to and from school.

(B) IDR is concerned that the discretion the proposed language affords to public agencies facing such situations may promote the tendency of public agency representatives at CCC meetings to place the transportation burden on parents, guardians, or adult students, in lieu of offering to provide an appropriate vehicle.

(2) **IDOE Conclusion:** No changes. 511 IAC 7-43-1(u)(4) provides more options and does not limit to only bus.

511 IAC 7-43-4(h)(5)

(1) **IDOE Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) First, IDR notes that BDDS no longer exists; earlier this year the General Assembly changed the subagency's name to the Bureau of Disabilities Services (BDS). Therefore, the Board will likely want to change the reference to BDDS to one for BDS in the final rule.

(B) Second, IDR notes that these adult services are not all compatible with Indiana's Employment First statute and related philosophy. Adopted by the General Assembly in 2017, the statute provides that the State of Indiana shall advance competitive integrated employment "as the first and preferred option" for all Hoosiers, including individuals with disabilities. Although referrals to some of the adult services listed in the current regulation, such as VR and DWD, may promote competitive integrated employment, referrals to services like those provided by the SSA do not. One might suggest that SSA personnel can provide students, parents, and guardians with vital information about impairment related work expenses. Nonetheless, IDR believes a more appropriate referral would be to the Indiana Institute on Disability and Community's Benefits Information Network or Indiana's Workforce Incentives Planning and Assistance programs, currently Aspire and SIRS.

(C) Further, IDR notes that referrals to CMHCs, CRPs, and AAAs focus on students' disability-related services, rather than empowerment and education to flourish as an adult. Because CMHCs, CRPs, and AAAs do valuable work and IDR promotes transparency, IDR does not recommend the removal of these potential referrals. Instead, IDR recommends that the Board consider adding disability-led organizations to the list of potential referrals. Centers for independent living, for example, can provide students and adults with disabilities services, information, and referrals in several core areas, including transition services.

(2) **IDOE Conclusion:** No changes.

511 IAC 7-44-2(a)

(1) **IDOE Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) IDR suggests that the Board remove the proposed language about "other relevant considerations." Its inclusion is duplicative, as subsection (a) notes that public agencies are not limited to consideration of only the enumerated unique circumstances. IDR does not

believe that amending the final rule as such would substantively affect the subsection's meaning.

(B) Moreover, removing the third enumerated unique circumstance will eliminate the potential belief that the Board or DOE included it for reasons of arcane significance.

(2) **IDOE Conclusion:** No changes.

511 IAC 7-45-5

(1) **Comment submitted by:** Jill Lambert (Greenwood Community Schools, ICASE)

(A) Something about giving the IHO a copy of the IEP and evaluation, that's what's being proposed, and what I'd like to just briefly explain is the time and expense on the school side of things that it takes for school personnel to do that if we have to provide those copies to both sides. We feel it is the job of the attorneys to present what is correct and incorrect at that present moment. We feel that the IHO needs to listen to both sides before given that information. That could lead to some wavering of one side versus the other if they have that information ahead of time.

(B) This just appears that if we're having to provide those documents up front ahead of time, that could be time consuming and an expense.

(2) **Comment submitted by:** Dr. Linda Watkins (Director of SPED at MSD Wayne Township)

(A) The new language requires schools to provide IEPs and evaluation reports from the two (2) years prior to the filing or the last completed evaluation report if prior to the 2-year window. This is an additional burden on the school corporation, which could sway the Independent Hearing Officer one way or the other by providing documentation without the critical explanation from the attorneys and school representatives involved. It takes the focus away from the preparation for resolution, which should always be the goal of the parties involved.

(3) **IDOE Conclusion:** No changes. We're not persuaded that this is an actual time consuming or expensive process. Further, 511 IAC 7-38 already provides parents the right to receive a copy of the student's complete education record at no cost prior to the resolution meeting.

511 IAC 7-45-5(c)

(1) **Comment submitted by:** Tammy Hurm (ICASE)

(A) Challenges to adding this language

(B) time and expense (school side of things)

(C) Job of the attorneys to present what is correct/incorrect

(D) IHO needs to listen to both sides before given that information that could lead to creating an opinion prior to evidence

(E) Time away from working on a resolution-intent should always be resolution

(F) This is nowhere in IDEA. It extends far out of the scope of Federal law which is what Article 7 needs to align.

(2) **Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) Noting the same financial obligations associated with disability as described supra in footnote 6, IDR suggests that the Board consider explicitly clarifying that the IEPs and educational evaluations shall be provided at no cost.

- (B) Additionally, IDR reiterates its concerns with the section's reference to the parent, as it in equitably excludes adult students, guardians, and other potential legal representatives.
- (3) **IDOE Conclusion:** No changes. Rule 38 already says that it will be provided at no cost. No need to repeat the language. The definition of "Parent" under Article 7 already includes guardian, adult students, etc. No need to specify all of them separately.

511 IAC 7-45-6(a)

- (1) **Comment submitted by:** Jill Lambert (Greenwood Community Schools, ICASE)
- (A) We'd like to clarify that the parent and the school or the LEA may determine their own participants in the case conference process. We saw the word "appointees" and didn't feel that matched the language of the CCC and those that are invited. Sometimes parents are unhappy with us if we need a building principal there or certain school personnel and they don't want that person present. We feel that we should be able to invite who we want to invite and they can invite who they would like to invite to that resolution session.
- (2) **Comment submitted by:** Tammy Hurm (ICASE)
- (A) In reference to the resolution meeting- Clarify- The parent and the public agency determine their *OWN* respective participants (appointees- does not match language) of the CCC to attend the meeting. Add the word OWN for clarity purposes. Align language to the language used by schools in regards to meeting.
- (3) **IDOE Conclusion:** Update language in Proposed Rule to address their concern that "appointee" is not common language used by the school or parent. The exact language of *34 CFR 510 (a)(4): is as follows: The parent and the LEA determine the relevant members of the CCC team to attend the meeting.*
- (4) **Original Proposed Rule Language:**
- (A) Sec. 6. (a) Within fifteen (15) calendar days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing, the public agency must convene a meeting with the parent and the relevant members of the CCC who have specific knowledge of the facts identified in the due process hearing request, ~~as determined by the parent and the public agency.~~ **The parent and the public agency determine their respective appointees of the CCC to attend the meeting.**
- (5) **Final Proposed Rule Language:**
- (A) Sec. 6. (a) Within fifteen (15) calendar days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing, the public agency must convene a meeting with the parent and the relevant members of the CCC who have specific knowledge of the facts identified in the due process hearing request, ~~as determined by the parent and the public agency.~~ **The parent and the public agency each determine their respective members of the CCC to attend the meeting.**

511 IAC 7-45-6(m)

(1) **Comment submitted by:** Dana Long (IDOE)

(A) Currently under 511 IAC 7-45-6(m), either the school or parent can utilize the complaint process to enforce a resolution agreement. The proposed amendment to 511 IAC 7-45-6(m) would restrict the school's ability to use the complaint process to enforce an agreement, although the parent could still enforce a resolution agreement by filing a complaint. The federal regulation concerning a written settlement agreement reached during the resolution process provides that it may be enforced in a state court of competent jurisdiction, a district court of the US, or by the SEA if the state has procedures that permit such enforcement. 34 CFR 300.510(d)(2). Nothing in the federal regulation contemplates that only one party rather than both would be able to enforce the agreement. To restrict the use of the complaint process for enforcement would deny schools a cost effective mechanism to enforce agreements, contrary to the intent of the IDEA.

(2) **IDOE Conclusion:** Decided to keep 511 IAC 7-45-6(m) the way it is currently. Process should be equally available to both sides, not just the parent.

(3) **Final Rule Language:**

(m) In addition to the enforcement mechanisms in subsection (k)(2), a written, signed resolution agreement under this section is enforceable through the complaint process in section 1 of this rule. However, use of the complaint process:

511 IAC 7-45-6.5(b)(2)

(1) **Comment submitted by:** Jill Lambert (Greenwood Community Schools, ICASE)

(A) We would really like that the party that's requesting the hearing shall provide facts that are specific to the issue. Sometimes it is based off of thoughts and emotion and we would prefer facts presented by the party that's proposing that. And there could be recourse of course.

(2) **Comment submitted by:** Tammy Hurm (ICASE)

(A) There needs to be some recourse if a party does not provide specific facts.

(3) **IDOE Conclusion:** No changes. They can file a notice of insufficiency or ask for a more definitive statement. There are already built in features that would allow them to get the additional info they're asking for here. Everything here is an attempt to provide the IHO with enough info to frame the issue.

511 IAC 7-45-6.5(b)(4), (5), (6), and (7)

(1) **Comment submitted by:** Tammy Hurm (ICASE)

(A) Comment: Numbers 4-7 should be discretionary. It is too early in the process to set these parameters.

(2) **IDOE Conclusion:** No changes.

511 IAC 7-45-6.5(c)

(1) **Comment submitted by:** Tammy Hurm (ICASE)

(A) Consideration that the lead attorney may be changed, but the original dates should be maintained even if the lead attorney changes.

(2) **IDOE Conclusion:** No changes. This is at the discretion of the IHO.

511 IAC 7-45-6.5(d)

(1) **IDOE Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) Neither the PR nor the current rule provides details about how the hearing officer is to advise parties of their rights.

(B) IDR suggests that the Board adopt a minimum expectation regarding the informational transaction, such as by specifying in the final rule that the hearing officer shall provide written notice advising the parties of their rights before the prehearing conference is initiated. Adding such language not only documents the transaction, but also ensures the timely provision of rights information.

(C) The final rule could be further improved by explicitly requiring that the parties receive notice of their rights in an accessible format, including in the recipient's native language.

(2) **IDOE Conclusion:** No changes.

511 IAC 7-45-6.5(e)

(1) **IDOE Comment submitted by:** Emily Munsen (Indiana Disability Rights)

(A) IDR supports further clarification about when parties are entitled to compel discovery.

(B) For example, what must be included in an "informal request"?

(C) Are interrogatories, requests for admission, requests for production, and similar discovery requests considered formal or informal?

(D) If they are informal, must the requesting party follow-up with the opposing party a second time before motioning to compel discovery?

(E) If the opposing party does not respond to the requesting party, how many days must the requesting party wait before the opposing party is considered to have "failed to respond"?

(F) IDR suggests that due process must be equitable, and leaving discovery questions almost completely to the discretion of hearing officers is likely to lead to inequitable outcomes for students across the state. Although hearing officers, like judges, should have some discretion in interpreting procedural rules, the rules of procedure should be sufficiently clear that parties understand their obligations.

(G) IDR encourages the Board to add language to the final rule reducing this proposed subsection's vagueness.

(2) **IDOE Conclusion:** No changes.

511 IAC 7-50

(1) **Comment submitted by:** Tammy Hurm (ICASE)

- (A) So many questions on the pieces of what is written are not aligned to state and federal law.
- (B) Not clear enough to provide districts enough guidance on this process.
- (C) Undue burden on schools for students who don't ever enter their doors.
- (D) Comment submitted by: Amy Selby (HSE Schools, ICASE)
- (E) Concerns with proposed language that does not align to state and federal law.
- (F) Undue burden on schools for students who may never be serviced in a public school.

(2) **Comment submitted by:** Dr. Linda Watkins (Director of SPED at MSD Wayne Township)

- (A) We are also concerned about the accountability with the proposed rule only considering reevaluation every three (3) years. For all other students with disabilities in our district, we discuss this annually at the case conference as required, so it should be the same requirement in this case.
- (B) It also notes that parents are responsible for providing the data and information to inform the school of the student's progress. Depending on the parent and the services they are accessing, this may vary in consistency and quality.
- (C) Finally, there is nothing outlined to support the school in navigating a lack of growth or even regression. This is critical because parents are able to re-enroll with us at any time, and we are always obligated to serve since we are a public school corporation.

(3) **IDOE Conclusion:** No changes. The ESA is required by state law only. There is no federal counterpart.

511 IAC 7-50-3(b)

(1) **Comment submitted by:** Tammy Hurm (ICASE)

- (A) This is a very cumbersome process for when a parent has already decided that they only want an ESA Service plan.

(2) **IDOE Conclusion:** No changes.

511 IAC 7-50-3(c)(4)

(1) **Comment submitted by:** Tammy Hurm (ICASE)

- (A) This does not align to IDEA/Article 7 for IEPs, Service plans, and Choice plans require to meet and review every year:
- (B) How can we carve out something different than Federal/State law?
- (C) Plans need to be reviewed annually
- (D) Update the goals quarterly needs to be required
- (E) Accountability for growth needs to be included
- (F) Not a current structure for this process

(2) **Comment submitted by:** Amy Selby (HSE Schools, ICASE)

- (A) Students receiving special education services from a public school have service plans reviewed annually.

- (B) While this would add an additional expectation of schools, it is our stance that an ESA-SP is valid for one year rather than three years to align with Article 7 so all students in Indiana have similar rights.
 - (C) Reviewing the ESA-SP annually allows parents to provide data and information related to their child's disability to inform the student's corporation of legal settlement in developing a proposed IEP that becomes the ESA-SP.
 - (D) Additionally, will parents be held to the same requirements regarding progress on annual goals and other aspects such as accountability for growth?
- (3) **IDOE Conclusion:** No changes.

511 IAC 7-50-4(a)

- (1) **Comment submitted by:** Tammy Hurm (ICASE)
 - (A) This is confusing in using the verb MUST because IAC 7-40-8 states a public agency must consider a reevaluation at least once every 3 years; however, reevaluation if the parent and the public agency agree that it is unnecessary. The question of reevaluation is asked currently for IEP and SP students annually at the AR.
- (2) **Comment submitted by:** Amy Selby (HSE Schools, ICASE)
 - (A) This appears contradictory to 511 IAC 7-40-8 as 7-40-8(b) states the public agency must consider reevaluation and if parent and public agree that it is unnecessary it need not occur.
 - (B) This appears confusing and there is concern it will be interpreted as an ESA student must be evaluated every three years.
 - (C) Does 511 IAC 7-40-8(b) remain with consideration and if it is agreed a reevaluation will not be conducted? Or does the fact that the student is an ESA student they must be evaluated. This feels like we could get stuck in a circular pattern regarding the evaluation.
 - (D) Is it possible for reevaluations for an ESA student simply follow 511 IAC 7-40-8(b)?
- (3) **IDOE Conclusion:** No changes. ICASE misunderstood the language "in accordance with".

511 IAC 7-50-4(b)

- (1) **Comment submitted by:** Tammy Hurm (ICASE)
 - (A) Specify what data is required by the parent needs to provide. There is nothing in the language that provides any repercussions for lack of growth or data.
- (2) **Comment submitted by:** Amy Selby (HSE Schools, ICASE)
 - (A) Will parents be required to provide progress toward the student's goals, assessment data, or any other information or only the participating entity providers?
 - (B) How will participating entity providers be held accountable if they do not provide meaningful information?
 - (C) How will parents be held accountable if they do not provide meaningful information?
 - (D) Additionally, will parents and/or participating entities be required to provide progress toward the student's goals, assessment data, or any other information for the ESA service plan review or only as part of the reevaluation process?
 - (E) If a student is not making progress, the public agency must review the student's IEP and revise, as appropriate, to address any lack of expected progress, based on progress

monitoring data, toward annual goals and in the general education curriculum if appropriate as outlined in 511 IAC 7-42-5(a)(B)(i). Will parents need to initiate a meeting to revise the ESA-SP if the student is not making adequate progress?

- (3) **IDOE Conclusion:** Decided to change “or” to “and” in 511 IAC 7-50-4(b) so that it now reads “The parent of an eligible student or an emancipated eligible student shall provide to the SCOLS data on the student's progress toward the student's goals, assessment data, and any other information from participating entity providers as part of the reevaluation process.”

511 IAC 7-50-5(b)

- (1) **Comment submitted by:** Amy Selby (HSE Schools, ICASE)
- (A) How is immediately defined? Is within the 10 days of enrollment considered as meeting this requirement?
 - (B) Regarding immediately notifying the department, does the submission of information in Data Exchange meet this requirement?
 - (C) If the ESA student enrolls in a public school that is not their SCOLS, how will the SCOLS be notified? Will the SCOLS be notified if there are errors within Data Exchange that another public agency is claiming the student?
- (2) **IDOE Conclusion:** No changes. This is in the statute.

511 IAC 7-50-5(c)

- (1) **Comment submitted by:** Amy Selby (HSE Schools, ICASE)
- (A) Can the SCOLS (School Corporation of Legal Settlement) be notified by the Treasurer of State as well? This will let the SCOLS know if the student enrolls in a district outside of the student's SCOLS?
- (2) **IDOE Conclusion:** No changes.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule LSA Document #23-504

DIGEST

Adds 511 IAC 4-1.5-9 concerning instruction for students with injuries and temporary or chronic illnesses; Adds 511 IAC 4-1.5-10 concerning medication administration; Adds 511 IAC 6-7.1-12 concerning authority to award locally developed certificates; Amends 511 IAC 7-32-32 to add a definition for "Educational surrogate parent"; Amends 511 IAC 7-32-40 to add a definition for "Free appropriate public education"; Amends 511 IAC 7-32-52 to add a definition for "Institution of higher education"; Amends 511 IAC 7-32-103 to add a definition for "Virtual instruction"; Amends 511 IAC 7-34-1 concerning special education and related services for parentally-placed students in nonpublic schools; Amends 511 IAC 7-34-3 concerning educational evaluations for parentally-placed nonpublic school students attending nonpublic schools outside the school corporation of legal settlement; Amends 511 IAC 7-34-4 concerning consultation with nonpublic school representatives and representatives of parents; Amends 511 IAC 7-34-5 concerning decisions regarding services provided by the public agency and service plans; Amends 511 IAC 7-34-6 concerning due process hearings and complaints; Amends 511 IAC 7-34-7 concerning requirements pertaining to Part B funds; Amends 511 IAC 7-35-2 concerning supports for public agency personnel; Amends 511 IAC 7-36-10 concerning state and local assessments; Amends 511 IAC 7-40-2 concerning comprehensive and coordinated early intervening services; Amends 511 IAC 7-40-3 concerning educational evaluations in general; Amends 511 IAC 7-40-5 concerning conducting an initial educational evaluation; Amends 511 IAC 7-40-7 concerning independent educational evaluation; Amends 511 IAC 7-40-8 concerning reevaluation; Adds 511 IAC 7-40-9 concerning notice by electronic mail; Amends 511 IAC 7-41-9 concerning multiple disabilities; Amends 511 IAC 7-42-3 concerning case conference committee participants; Amends 511 IAC 7-42-6 concerning developing an individualized education program; Amends 511 IAC 7-42-8 concerning implementation and termination of individualized education programs; Amends 511 IAC 7-42-9 concerning review and revision of the individualized education program; Amends 511 IAC 7-42-10 concerning least restrictive environment and delivery of special education and related services; Amends 511 IAC 7-42-11 concerning instruction for student at student's home or alternative setting; Adds 511 IAC 7-42-16 concerning notice by electronic mail; Amends 511 IAC 7-43-1 concerning related services; Amends 511 IAC 7-43-4 concerning transition individualized education program; Amends 511 IAC 7-43-7 concerning summary of performance; Amends 511 IAC 7-44-1 concerning removals and services in general; Amends 511 IAC 7-44-2 concerning disciplinary change of placement; Amends 511 IAC 7-44-3 concerning removals of more than 10 cumulative days that do not result in a change of placement; Amends 511 IAC 7-44-4 concerning removals of more than 10 consecutive days or 10 cumulative days that results in a change of placement; Amends 511 IAC 7-44-6 concerning interim alternative educational setting; weapons, drugs, and serious bodily injury; Adds 511 IAC 7-45-0.5 concerning dispute resolution; Amends 511 IAC 7-45-2 concerning mediation; Amends 511 IAC 7-45-3 concerning due process hearing requests; Amends 511 IAC 7-45-4 concerning sufficiency of the request for a due process hearing; Amends 511 IAC 7-45-5 concerning responding to the request for a due process hearing; Amends 511 IAC 7-45-6 concerning the resolution process; Adds 511 IAC 7-45-6.5 concerning prehearing procedures; Amends 511 IAC 7-45-7 concerning conducting the hearing; Amends 511 IAC 7-45-8 concerning independent hearing officer qualifications; Amends 511 IAC 7-45-10 concerning expedited due process hearings and petition for judicial review; Amends 511 IAC 7-46-1 concerning federal child count procedures; Amends 511 IAC 7-47-1 concerning application from school corporation of legal settlement or charter school; Amends 511 IAC 7-47-2 appeal from denial of application; Amends 511 IAC 7-49-2 to add a definition of "Local school corporation"; Amends 511 IAC 7-49-4 concerning the Choice special education plan; Amends 511 IAC 7-49-10 concerning proportionate share; Adds 511 IAC 7-50 concerning the Indiana Education Scholarship Account Education Service Plan. Repeals 511 IAC 7-32-67; Repeals 511 IAC 7-42-12. Effective 30 days after filing with the Publisher.

511 IAC 4-1.5-9; 511 IAC 4-1.5-10; 511 IAC 6-7.1-12; 511 IAC 7-32-32; 511 IAC 7-32-40; 511 IAC 7-32-52; 511 IAC 7-32-67; 511 IAC 7-32-103; 511 IAC 7-34-1; 511 IAC 7-34-3; 511 IAC 7-34-4; 511 IAC 7-34-5; 511 IAC 7-34-6; 511 IAC 7-34-7; 511 IAC 7-35-2; 511 IAC 7-36-10; 511 IAC 7-40-2; 511 IAC 7-40-3; 511 IAC 7-40-5; 511 IAC 7-40-7; 511 IAC 7-40-8; 511 IAC 7-40-9; 511 IAC 7-41-9; 511 IAC 7-42-3; 511 IAC 7-42-6; 511 IAC 7-42-8; 511 IAC 7-42-9; 511 IAC 7-42-10; 511 IAC 7-42-11; 511 IAC 7-42-12; 511 IAC 7-42-16; 511 IAC 7-43-1; 511 IAC 7-43-4; 511 IAC 7-43-7; 511 IAC

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

7-44-1; 511 IAC 7-44-2; 511 IAC 7-44-3; 511 IAC 7-44-4; 511 IAC 7-44-6; 511 IAC 7-45-0.5; 511 IAC 7-45-2; 511 IAC 7-45-3; 511 IAC 7-45-4; 511 IAC 7-45-5; 511 IAC 7-45-6; 511 IAC 7-45-6.5; 511 IAC 7-45-7; 511 IAC 7-45-8; 511 IAC 7-45-10; 511 IAC 7-46-1; 511 IAC 7-47-1; 511 IAC 7-47-2; 511 IAC 7-49-2; 511 IAC 7-49-4; 511 IAC 7-49-10; 511 IAC 7-50.

SECTION 1. 511 IAC 4-1.5-9 IS ADDED TO READ AS FOLLOWS:

511 IAC 4-1.5-9 Instruction for students with injuries and temporary or chronic illnesses

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

Affected: IC 20-19-2; IC 20-35

Sec. 9. (a) All students with injuries and temporary or chronic illnesses that preclude their attendance in school must be provided with instruction.

(b) Before instruction for a student unable to attend school can begin, the parent must provide the school corporation or charter school with a written statement from a licensed healthcare provider with prescriptive authority 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.

(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.

(3) The student has an illness or injury that will require the student's absence for the remainder of the school year if there are fewer than twenty (20) instructional days remaining in the school year.

The school may also require the parent to provide written consent for the school to consult with the licensed healthcare provider concerning the student's ability to attend school, required limitations on the student's activities, the student's anticipated date of return to school attendance, or any other matters affecting the student's ability to receive instruction.

(c) For a student who is:

(1) eligible for special education and related services; and

(2) unable to attend school as described in subsection (b);

special education and related services, including access to the general education curriculum, must be provided in accordance with the IEP as determined by the CCC.

(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 who is eligible for special education and related services, instruction and related services must be provided by appropriately licensed personnel. For all other students, instruction must be provided by teachers licensed to teach the grade level of the student.

(Indiana State Board of Education; 511 IAC 4-1.5-9)

SECTION 2. 511 IAC 4-1.5-10 IS ADDED TO READ AS FOLLOWS:

511 IAC 4-1.5-10 Medication Administration

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

Affected: IC 20-19-2; IC 20-35

Sec. 10. (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:

(A) only for the period specified on the consent form; and

(B) never longer than the current school or program year.

(3) A licensed healthcare provider's prescription, a copy of the original prescription, or the pharmacy label must be:

(A) provided by the parent; and

(B) on file with the public agency.

(4) Medication shall be:

(A) maintained in a secure location; and

(B) administered in accordance with the licensed healthcare provider's prescription.

(5) The parent may, upon request, obtain a copy of the public agency's policies and procedures on medication administration.

(6) 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.

(7) 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.

(c) Public agency and state personnel are prohibited from requiring a parent to obtain a prescription for medication for a student as a condition for:

(1) attending school;

(2) receiving an educational evaluation under 511 IAC 7-40; or

(3) receiving special education or related services under this article.

(d) Nothing in subsection (c) shall be construed to prohibit teachers and other school personnel from consulting or sharing classroom based observations with a parent regarding his or her student's:

(1) academic and functional performance;

(2) behavior in the classroom or school; or

(3) need for evaluation for special education and related services under 511 IAC 7-40-2, related to child identification.

(Indiana State Board of Education; 511 IAC 4-1.5-10)

SECTION 3. 511 IAC 6-7.1-12 IS ADDED TO READ AS FOLLOWS:

511 IAC 6-7.1-12 Authority to award locally developed certificates

Authority: IC 20-19-2-8; IC 20-26-3

Affected: IC 20-26-3; IC 20-26-13

Sec. 12. (a) Nothing in this rule shall be construed as limiting a school corporation's authority under IC 20-26-3 to award a locally developed certificate, such as a certificate of completion, to a student who does not meet the graduation requirements set forth in IC 20-32-4.

(b) A locally developed certificate is not considered an Indiana diploma or an alternative diploma, and a student awarded a locally developed certificate is not considered a graduate for purposes of determining a school corporation's or school's graduation rate under IC 20-26-13 or 511 IAC 6.2-10 unless that student has met the graduation requirements set forth in IC 20-32-4.

(Indiana State Board of Education; 511 IAC 6-7.1-12)

SECTION 4. 511 IAC 7-32-32 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-32-32 "Educational surrogate parent" defined

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

Affected: IC 20-19-2; IC 20-35

Sec. 32. "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 the following:

(1) Identification.

(2) Evaluation.

(3) Placement.

An educational surrogate parent is appointed in accordance with 511 IAC 7-39.

(Indiana State Board of Education; 511 IAC 7-32-32; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.:

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204

▪ (317) 232-2000 ▪ www.in.gov/sboe

20201230-IR-511200548RFA)

SECTION 5. 511 IAC 7-32-40 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-32-40 “Free appropriate public education” or “FAPE” defined

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

Affected: IC 20-19-2; IC 20-35

Sec. 40. “Free appropriate public education” or “FAPE” 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 an appropriate early childhood education, elementary education, or secondary education in the state involved;
- (4) are provided in conformity with an IEP that meets the requirements of this article; and
- (5) include the award of credit and diploma for completion of academic requirements to the same extent the credit is awarded to students without disabilities.

(Indiana State Board of Education; 511 IAC 7-32-40; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 6. 511 IAC 7-32-52 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-32-52 "Institution of higher education" defined

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

Affected: IC 20-19-2; IC 20-35

Sec. 52. "Institution of higher education":

- (1) has the meaning given the term in Section 101 of the Higher Education Act of 1965, as amended, 20 U.S.C. ~~4021~~ **1001** et seq.; and
- (2) includes any community college receiving funds from the Secretary of the Interior under the Tribally Controlled Community College or University Assistance Act of 1978, 25 U.S.C. 1801, et seq.

(Indiana State Board of Education; 511 IAC 7-32-52; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 7. 511 IAC 7-32-103 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-32-103 ~~"Veteran teacher"~~ “Virtual instruction” defined

Authority: IC 20-19-2-8; IC 20-19-2-16; IC 20-43-1-34

Affected: IC 20-19-2; IC 20-35

Sec. 103. ~~“Veteran teacher” means a teacher who has earned at least one (1) year of teaching experience while holding a valid teaching license.~~ **“Virtual instruction” has the meaning set forth in IC 20-43-1-34.**

(Indiana State Board of Education; 511 IAC 7-32-103; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 8. 511 IAC 7-34-1 IS AMENDED TO READ AS FOLLOWS:

Rule 34. Nonpublic Schools ~~or Facilities~~

511 IAC 7-34-1 Special education and related services for parentally-placed students in nonpublic schools

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

Authority: IC 20-19-2-8; IC 20-19-2-1

Affected: IC 20-19-2; IC 20-35

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

(b) This section and sections 2 through 9 of this rule apply to parentally-placed nonpublic students with disabilities, including students who reside outside of the state.

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

(1) Students three (3) years of age through five (5) years of age, unless the student has been unilaterally enrolled by his or her parent in a nonpublic school that meets the definition of an elementary school in 511 IAC 7-32-33.

(2) Students with disabilities who have been placed in or referred to a nonpublic school by a public agency.

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

(1) locate, identify, and evaluate all students with disabilities as specified in 511 IAC 7-40;

(2) consult, in accordance with section 3 of this rule, with nonpublic school representatives and representatives of parents of nonpublic school students with disabilities;

(3) provide information, as specified in section 2(c) of this rule, to the division of special education related to parentally-placed nonpublic school students covered under this rule; and

(4) make available special education and related services to all students with disabilities.

(e) For purposes of this rule, a student attending a virtual nonpublic school is considered to be attending a nonpublic school located within the boundaries of the student's school corporation of legal settlement.

(Indiana State Board of Education; 511 IAC 7-34-1; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 9. 511 IAC 7-34-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-34-3 Educational evaluations for parentally-placed nonpublic school students attending nonpublic schools outside the school corporation of legal settlement

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

Affected: IC 20-19-2; IC 20-35

Sec. 3. (a) All students who are determined eligible for special education and related services have the right to be offered a free appropriate public education from their school corporation of legal settlement. **After a student's school corporation of legal settlement has made an offer of a FAPE available to the student, if the student's parent or a student of legal age makes clear his or her intent to decline the offer and attend a nonpublic school, the student's school corporation of legal settlement is not obligated to develop an IEP for the student for the following year or any year thereafter until the parent expresses an intent to enroll the student in their school corporation of legal settlement, except as required by rule 50 for a student with an education scholarship account.**

(b) If a student, who attends a nonpublic school that is outside of the student's school corporation of legal settlement, is referred to the public agency where the nonpublic school is located for an educational evaluation, the public agency must conduct the evaluation in accordance with the procedures and timelines set forth in 511 IAC 7-40, unless the public agency documents the following:

(1) The public agency explained the following:

(A) The concept of a free appropriate public education to the student's parent.

(B) That the parent has the right to obtain an offer of a free appropriate public education from the school corporation of legal settlement.

(2) As a result of the explanations in subdivision (1), the student's parent chose to have the school corporation of legal settlement conduct the evaluation.

(c) Before any personally identifiable information about a student can be released between officials from the:

(1) public agency where the nonpublic school is located; and

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204

▪ (317) 232-2000 ▪ www.in.gov/sboe

(2) school district of legal settlement;
the student's parent must provide consent as defined in 511 IAC 7-32-17.

(d) If the parent chooses to receive the evaluation from the public agency of legal settlement, the public agency of legal settlement must conduct the evaluation in accordance with the procedures and timelines set forth in 511 IAC 7-40.

(e) If a student's CCC determines that the student is eligible for special education and related services, the:

(1) school corporation of legal settlement must make an offer of a free appropriate public education to the student; and

(2) public agency must document this offer in the written notice described in 511 IAC 7-42-7.

(f) If the offer of a free appropriate public education is rejected, and the parent decides to continue enrollment in the nonpublic school, the student is entitled to services from the public agency where the nonpublic school is located. In order for the school district of legal settlement to forward:

(1) the educational evaluation;

(2) the written notice described in 511 IAC 7-42-7; and

(3) any other relevant documents;

to the public agency where the nonpublic school is located, the student's parent must provide consent as defined in 511 IAC 7-32-17.

(g) After receiving the documents specified in subsection (f), the public agency where the nonpublic school is located must convene a CCC meeting within ten (10) instructional days to develop a service plan described in section 5 of this rule.

(h) If a student is evaluated by the public agency where the nonpublic school is located, the CCC must determine eligibility for special education and related services and develop a service plan if the student is eligible. After the service plan is developed, the student's parent is entitled to seek an offer of a free appropriate public education from the school district of legal settlement. In order for the public agency where the nonpublic school is located to forward:

(1) the educational evaluation;

(2) the written notice described in 511 IAC 7-42-7; and

(3) any other relevant documents;

to the school district of legal settlement, the parent must provide consent as defined in 511 IAC 7-32-17. After receiving the documents, the school district of legal settlement has ten (10) instructional days to convene the CCC and offer the student a free appropriate public education.

(Indiana State Board of Education; 511 IAC 7-34-3; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 10. 511 IAC 7-34-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-34-4 Consultation with nonpublic school representatives and representatives of parents

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

Affected: IC 20-19-2; IC 20-35

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

(1) Nonpublic school representatives from the nonpublic schools located in the geographic boundaries of the public agency.

(2) Representatives of parents of students with disabilities in nonpublic schools.

(3) Representatives of virtual nonpublic schools that have students with disabilities who have legal settlement within the geographic boundaries of public agency. The virtual nonpublic school shall notify the school corporation of legal settlement of each of its students with disabilities so that the nonpublic school will be included in the consultation process.

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

(1) afford all parties a genuine opportunity to express their views and have those views considered by the public agency;

and

- (2) discuss the subjects set forth in subsection (c).
- (c) The following subjects must be discussed during a consultation:
- (1) The child find process, including the following:
- (A) How nonpublic school students suspected of having a disability will be:
 - (i) located;
 - (ii) identified; and
 - (iii) evaluated.
 - (B) How:
 - (i) parents;
 - (ii) teachers; and
 - (iii) nonpublic school officials;will be informed of the child find process.
- (2) The determination of the proportionate amount of federal funds, as specified in section 7 of this rule, available to serve nonpublic school students, including how the proportionate amount of those funds was calculated.
- (3) An explanation of how the consultation process between the:
- (A) public agency;
 - (B) nonpublic school representatives; and
 - (C) parent representatives of nonpublic school students;
- will operate throughout the school year to ensure that nonpublic school students with disabilities identified through the child find process can meaningfully participate in special education and related services.
- (4) How, where, and by whom, in accordance with sections 8 and 9 of this rule, special education and related services will be provided for nonpublic school students with disabilities, including a discussion of the following:
- (A) The types of services, which may include direct services and alternate service delivery mechanisms.
 - (B) How special education and related services will be offered to all nonpublic school students with disabilities if the proportionate amount of Part B funds, as specified in section 7 of this rule, is insufficient to serve all nonpublic school students with disabilities.
 - (C) How and when those decisions will be made.
- (5) If the public agency disagrees with the views of the nonpublic school officials on the provision of services or the types of services, whether provided directly or through a contract, the public agency must explain how it will provide to the nonpublic school officials a written explanation of the reasons why the public agency chose not to accept the views of the nonpublic school officials.
- (d) When consultation required in subsections (a) through (c) has occurred, the public agency must obtain a written affirmation, signed by the representatives of participating nonpublic schools, affirming that the public agency engaged in consultation that met the requirements of subsections (b) and (c). A public agency does not need to obtain written affirmation from nonpublic schools that do not participate in the consultation process.
- (e) If the representatives of the participating nonpublic schools do not provide the written affirmation to the public agency within twenty (20) instructional days of the date the consultation occurred, the public agency must forward documentation of the consultation process to the division of special education.
- (f) A nonpublic school official has the right to submit a complaint to the division of special education alleging that the public agency did not:
- (1) engage in consultation that was timely and meaningful as required in subsections (b) and (c); or
 - (2) give due consideration to the views of the nonpublic school official.
- (g) Complaints submitted under subsection (f) must:
- (1) be filed with the division of special education according to the complaint procedures set forth in 511 IAC 7-45-1;
 - (2) specify how the public agency failed to comply with the consultation requirements set forth in subsections (b) and (c); and
 - (3) contain appropriate documentation related to the complaint.
- (h) If the nonpublic school official is dissatisfied with the decision of the division of special education, the official may submit a complaint to the Secretary of the United States Department of Education by providing the information on noncompliance described in subsection (g)(2) and (g)(3). The division of special education must forward appropriate documentation to the Secretary of the United States Department of Education.

(Indiana State Board of Education; 511 IAC 7-34-4; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 11. 511 IAC 7-34-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-34-5 Decisions regarding services provided by the public agency and service plans

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

Affected: IC 20-19-2; IC 20-35

Sec. 5. (a) After consulting with nonpublic school representatives and representatives of parents as described in section ~~34~~ of this rule, the public agency must make final decisions with respect to the services that will be provided to nonpublic school students with disabilities.

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

(c) For each parentally-placed student in a nonpublic school that has been determined eligible to receive special education and related services from the public agency, the public agency must initiate and conduct ~~a CCC meeting~~ **a CCC meeting to develop or review and revise a service plan**. A service plan must describe the specific special education and related services that the public agency will provide to the student in light of the services that the public agency has determined, through the consultation process described in section 34 of this rule, it will make available to parentally-placed nonpublic school students with disabilities. **The public agency must obtain written consent from the parent before the initial provision of special education services. If the student previously received special education, the public agency must implement the proposed service plan unless:**

(1) the parent specifically declines the services;

(2) the student has received a choice scholarship and the parent has elected to have the choice school provide special education and related services; or

(3) the student has an education scholarship account and the parent has declined the service plan and elected to arrange for the provision of special education and related services as identified in the education scholarship account education service plan developed under rule 50 of this article.

A CCC meeting required under this subsection must be initiated and conducted at least annually for parentally-placed students with disabilities who are receiving services from the public school under a service plan.

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

(1) 511 IAC 7-42-2 regarding notice of CCC meetings.

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

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

(1) A statement of the student's present levels of educational performance.

(2) A statement of measurable annual goals ~~related to the services that will be provided~~, describing what the student can be expected to accomplish within a twelve (12) month period.

(3) A statement of the special education and related services and supplementary aids and services to be provided to the student or, on behalf of the student, by the public agency, or supports for school personnel that will be provided.

(4) If applicable, a statement regarding the student's participation in statewide or district assessments, including documentation of any appropriate testing accommodations that will be utilized by the student, according to the requirements in 511 IAC 7-36-10.

(5) The projected dates for initiation of services by the public agency and the anticipated length, frequency, location, and

duration of services.

(6) A statement of the student's progress toward annual goals including how the parents will be informed of the progress.

(f) Special education and related services provided by the public agency to parentally-placed nonpublic school students with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools.

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

(Indiana State Board of Education; 511 IAC 7-34-5; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 12. 511 IAC 7-34-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-34-6 Due process hearings and complaints

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

Affected: IC 20-19-2; IC 20-35

Sec. 6. (a) The procedures for mediation in 511 IAC 7-45-2 and the procedures for due process hearings and appeals in 511 IAC 7-45-3 through 511 IAC 7-45-11 are not available to resolve disputes regarding the requirements set forth in this rule, **rule 49, or rule 50**, unless the dispute concerns one (1) of the following issues:

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

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

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

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

(d) A complaint that a public agency has failed to meet the requirements of this rule, **rule 49, or rule 50**, may be filed under the procedures described in 511 IAC 7-45-1, except for complaints filed by nonpublic school officials under section 4(f) of this rule, which must be filed in accordance with section 4(f) through 4(h) of this rule.

(Indiana State Board of Education; 511 IAC 7-34-6; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 13. 511 IAC 7-34-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-34-7 Requirements pertaining to Part B funds

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

Affected: IC 20-19-2; IC 20-35

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

- (1) Offer services to each student who is:
 - (A) eligible to receive special education and related services; and
 - (B) parentally-placed by his or her parent in a nonpublic school within the boundaries of the public agency. Public agencies may use state funds and Part B funds to provide services under this rule.

(2) Control and administer Part B funds that are used to provide special education and related services under this rule.
(3) Determine the number of parentally-placed nonpublic school students with disabilities attending nonpublic schools located in the public agency. The count:

(A) must be conducted annually on December 1; and

(B) is used to determine the amount of Part B funds that the public agency must spend on providing special education and related services to parentally-placed nonpublic school students with disabilities in the next subsequent school year.

(4) Spend a proportionate share of its Part B funds to serve parentally-placed nonpublic school students with disabilities. The proportionate amount of Part B funds must be calculated according the specifications set forth in subsections (b) through (e).

(b) The public agency, in providing special education and related services to students in nonpublic schools must expend at least an amount that is the same proportion of the public agency total subgrant under 20 U.S.C. 1411(f) as the number of nonpublic school students with disabilities, who are enrolled by their parents in nonpublic schools ~~or facilities~~ within its boundaries, is to the total number of students with disabilities of the same age range.

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

(1) Using data from the previous calendar year's December 1 count, divide the number of parentally-placed nonpublic school students with disabilities by the total number of students with disabilities (public school and nonpublic school students).

(2) The quotient obtained in subdivision (1) is multiplied by the public agency's current total subgrant under 20 U.S.C. 1411(f).

(3) The product obtained in subdivision (2) equals the public agency's proportionate amount of Part B funds that must be spent on parentally-placed nonpublic school students.

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

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

(1) Using data from the previous calendar year's December 1 count, divide the number of parentally-placed students with disabilities three (3) years of age through five (5) years of age, who attend nonpublic schools that meet the definition of an elementary school in 511 IAC 7-32-33, by the total number of students with disabilities three (3) years of age through five (5) years of age (public school and nonpublic school students).

(2) The quotient obtained in subdivision (1) is multiplied by the public agency's current total subgrant under 20 U.S.C. 1419(g).

(3) The product obtained in subdivision (2) equals the public agency's proportionate amount of Part B funds that must be spent on parentally-placed nonpublic school students three (3) years of age through five (5) years of age who attend nonpublic schools that meet the definition of elementary school in 511 IAC 7-32-33.

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

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

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

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

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

(1) Fund existing levels of instruction currently provided by the nonpublic school, or otherwise benefit the nonpublic school.

- (2) Meet the needs of the nonpublic school.
- (3) Meet the general needs of the students enrolled in the nonpublic school.
- (4) Fund classes that are organized separately on the basis of school enrollment or religion of the students if the classes:
 - (A) are at the same site; and
 - (B) include students enrolled in public schools and students enrolled in nonpublic schools.
- (k) The public agency may use Part B funds for the following:
 - (1) To make public school personnel available in places other than public facilities:
 - (A) to the extent necessary to provide special education and related services to students with disabilities in nonpublic schools; and
 - (B) if those services are not normally provided by the nonpublic school.
 - (2) To pay for the services of an employee of the nonpublic school to provide special education and related services if the employee performs the services:
 - (A) outside of the employee's regular hours of duty; and
 - (B) under public supervision and control.

(Indiana State Board of Education; 511 IAC 7-34-7; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 14. 511 IAC 7-35-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-35-2 Supports for public agency personnel

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

Affected: IC 20-19-2; IC 20-35

Sec. 2. ~~(a)~~ Each public agency must carry out activities to ensure that public agency personnel are:

- (1) fully informed about their respective responsibilities for implementing this article; and
- (2) provided with:

- ~~(A) technical assistance and training necessary to assist them in this effort. and~~
- ~~(B) the necessary knowledge and skills to implement each student's IEP.~~

~~(b) A student's CCC, during the development, review, or revision of a student's IEP, must consider, under 511 IAC 7-42-6(c)(2), whether any support is necessary to provide public agency personnel with the knowledge and skills necessary to implement the student's IEP.~~

~~(c) If the CCC determines that supports are necessary under subsection (b), the CCC must document the following:~~

- ~~(1) The types of supports that will be provided.~~
- ~~(2) The intent of the supports, which can be related to public agency personnel or the student, or both.~~

(Indiana State Board of Education; 511 IAC 7-35-2; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 15. 511 IAC 7-36-10 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-36-10 State and local assessments

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

Affected: IC 20-19-2; IC 20-35

Sec. 10. (a) **For purposes of this section, "adaptive behavior" means the actions and behavior that are essential for someone to live independently and function safely in daily life.**

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

~~(b)~~ (c) The:

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

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

(e) (d) Appropriate accommodations for the state assessment programs are:

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

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

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

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

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

(h) (h) The CCC may determine that a student **with the most significant cognitive disability** will participate in an alternate **statewide assessment program** in lieu of participating in the general **statewide assessment program**. ~~For state assessments, the CCC's determination must be based upon the criteria in 511 IAC 5-2-4.5.~~ **if the CCC determines that the student:**

- (1) **has a disability that significantly impacts intellectual functioning and adaptive behavior;**
- (2) **requires extensive, repeated, individualized direct instruction and substantial support that is not of a temporary nature; and**
- (3) **requires substantially adapted materials and individualized methods of accessing information in alternative ways to achieve measurable gains on the state academic content standards for the grade in which the student is enrolled.**

(i) **The CCC's determination that a student with the most significant cognitive disability will participate in the alternate statewide assessment program:**

- (1) **must be based on a comprehensive understanding of the whole student, including a review of relevant educational considerations and data obtained through the IEP process; and**
- (2) **may not be based solely on:**

- (A) **the student's disability category or label;**
- (B) **the student's attendance;**
- (C) **the student's native language;**
- (D) **social, cultural or economic differences;**
- (E) **how the student is expected to perform on statewide assessments;**
- (F) **the student's special education placement and services;**
- (G) **the student's emotional, behavioral, or physical challenges;**
- (H) **the student's English Language Learner status; or**
- (I) **the accommodations the student requires in order to participate in the assessment process.**

In making its determination, the CCC may not consider or base its determination on the extent to which the student's participation in a statewide assessment may impact a school's category or designation of school performance under IC 20-31-8.

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

(k) (k) If the CCC determines that a student will participate in an alternate assessment, the public agency must ensure that the parent is informed that the student's performance will be measured against grade-level aligned alternate academic achievement standards.

(Indiana State Board of Education; 511 IAC 7-36-10; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 16. 511 IAC 7-40-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-40-2 Comprehensive and coordinated early intervening services

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

Affected: IC 20-19-2; IC 20-35

Sec. 2. (a) A public agency may not use more than fifteen percent (15%) of the amount the public agency receives under Part B of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., for any fiscal year, less any amount reduced by the public agency pursuant to 34 CFR 300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement comprehensive and coordinated early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12 (with a particular emphasis on students in kindergarten through grade 3) who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

(b) In implementing comprehensive and coordinated early intervening services under this section, a public agency may carry out activities that include, but are not limited to, the following:

(1) Professional development, which may be provided by entities other than public agencies, for teachers and other school staff to enable such personnel to deliver scientifically based academic and behavioral interventions, including the following:

(A) Scientifically based literacy instruction.

(B) Where appropriate, instruction on the use of adaptive and instructional software.

(2) Providing educational and behavioral evaluations, services, and supports, including scientifically based literacy instruction.

(c) Nothing in this section shall be construed to either:

(1) limit or create a right to a free appropriate public education under this article; or

(2) delay appropriate evaluation of a child suspected of having a disability.

(d) Each public agency that develops and maintains comprehensive and coordinated early intervening services under this section must annually report the following to the ~~department of education~~ **state educational agency**:

(1) The number of children served under this section who received early intervening services.

(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under this article during the preceding two (2) year period.

(e) Funds made available to carry out this section may be used to carry out comprehensive and coordinated early intervening services aligned with activities funded by and carried out under the Elementary and Secondary Education Act of 1965, as amended, 20 U.S.C. 6301 et seq. (ESEA) if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

~~(f) The parent of a student who participates in a process that assesses the student's response to scientific, research-based interventions must be provided with written notification when a student requires an intervention that is not provided to all students in the general education classroom. The written notification must contain the following information:~~

~~(1) The:~~

~~(A) amount and nature of student performance data that will be collected; and~~

~~(B) general education services that will be provided.~~

~~(2) the evidence based strategies that will be utilized for increasing the student's rate of learning to grade level.~~

~~(3) The parent's right to request an educational evaluation to determine eligibility for special education and related services.~~

~~(4) An explanation that:~~

~~(A) the public agency will initiate a request for an educational evaluation if the student fails to make adequate progress after an appropriate period of time, as determined by the parent and the public agency, when provided with scientific, research based interventions; and~~

~~(B) when the public agency initiates a request for a educational evaluation under clause (A), the public agency will provide written notice to the parent regarding the evaluation before requesting written parental consent for the~~

~~evaluation as specified in section 4 of this rule. After obtaining written parental consent, the public agency must evaluate the student and convene the CCC within twenty (20) instructional days.~~

(Indiana State Board of Education; 511 IAC 7-40-2; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 17. 511 IAC 7-40-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-40-3 Educational evaluations; in general

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

Affected: IC 20-19-2; IC 20-32-4-14; IC 20-33-2-28.5; IC 20-35

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

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

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

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

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

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

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

(1) The state-operated school shall refer the person making the contact back to the public school corporation of legal settlement.

(2) The referral, evaluation, and CCC meeting described in section 4 of this rule shall be the responsibility of the public school corporation of legal settlement.

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

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

(A) Provided and administered in the:

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

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

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

(D) Administered as follows:

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

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

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

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

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

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

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

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

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

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

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

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

- (1) graduation with a high school diploma as defined in 511 IAC 6-7.1-1(e); or
- (2) exceeding the age eligibility under this article; or
- (3) a parent's revocation of consent for special education and related services in accordance with 511 IAC 7-42-15.

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

- (1) A student graduates with a high school diploma as defined in 511 IAC 6-7.1-1.
- (2) A student graduates with an alternate diploma as defined in 511 IAC 6-7.1-10.**
- ~~(3)~~ **(3) A student leaves high school with a locally developed certificate, such as a certificate of completion, as identified in 511 IAC 6-7.1-12.**
- ~~(4)~~ **(4) A student exceeds the age eligibility for special education and related services under this article.**
 - (i) A public agency may provide a student with a summary of performance when the:
 - (1) student withdraws from high school after an exit interview is conducted; and
 - (2) student's parent and principal consent to the withdrawal;

as specified in IC 20-33-2-28.5(b).

(Indiana State Board of Education; 511 IAC 7-40-3; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; filed Dec 3, 2009, 1:50 p.m.: 20091230-IR-511090057FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 18. 511 IAC 7-40-5 IS AMENDED TO READ AS FOLLOWS:

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

511 IAC 7-40-5 Conducting an initial educational evaluation

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

Affected: IC 20-19-2; IC 20-35

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

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

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

- (1) At least one (1) teacher licensed in, or other specialist with knowledge in, the area of suspected disability.
- (2) A school psychologist, except for a student with a suspected:

(A) developmental delay, in which case the multidisciplinary team shall be at least two (2) qualified professionals from different disciplines based upon the needs of the student;

(B) language impairment, a speech-language pathologist and at least one (1) qualified professional from a different discipline based upon the needs of the student; or

(C) speech impairment only, a speech-language pathologist may serve as the sole qualified professional on the multidisciplinary team.

- (3) For a student with a suspected specific learning disability, the following:

(A) The student's general education teacher or, if the student does not have a general education teacher, a general education teacher qualified to teach students of the same age.

(B) For early childhood students, an individual who holds an appropriate license to teach early childhood special education.

- (4) For a student who:

(A) is blind or has low vision;

(B) is deaf or hard of hearing; or

(C) has suspected multiple disabilities;

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

(c) As part of the educational evaluation, the multidisciplinary team must, with or without a meeting, do the following:

- (1) Review existing evaluation data on the student, including the following:

(A) Evaluations and information provided by the parents of the student.

(B) Current classroom, local, and state assessments.

(C) Classroom based observations and observations by teachers and related services providers.

- (2) On the basis of that review, and input from the student's parents, identify the following:

(A) The suspected disability or disabilities.

(B) Any additional data, as described in 511 IAC 7-41, that is required for the student's CCC to determine:

(i) eligibility for special education; and

(ii) the special education and related service needs of the student.

- (3) Obtain information for the CCC to use in making determinations under section 6(b)(1) of this rule.

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

~~(1) When a student has participated in a process that assesses the student's response to scientific, research-based interventions described in section 2 of this rule, in which case the time frame is twenty (20) instructional days.~~

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204

▪ (317) 232-2000 ▪ www.in.gov/sboe

~~(1)~~(1) When a child is transitioning from early intervention (Part C) to early childhood special education (Part B), in which case the evaluation must be completed and the CCC convened to ensure that the child receives special education services by his or her third birthday.

~~(2)~~(2) When the parent of a student repeatedly fails or refuses to produce the student for the evaluation.

~~(3)~~(3) When a student enrolls in a school of another public agency after the relevant time frame in subsection (a) has begun, and prior to completion of the evaluation, if the:

(A) subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation; and

(B) parent and subsequent public agency agree to a specific time when the evaluation will be completed.

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

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

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

(1) For a student who has participated in a process that assesses the student's response to scientific, research based interventions:

(A) documentation of previous parent notification about:

(i) the:

(AA) amount and nature of the student performance data that would be collected; and

(BB) general education services that would be provided;

(ii) strategies for increasing the student's rate of learning; and

(iii) the parent's right to request an educational evaluation to determine eligibility for special education and related services; and

(B) the:

(i) instructional strategies used; and

(ii) student centered data collected.

(2) A synthesis of the required educational evaluation components in 511 IAC 7-41-12 in relationship to the following:

(A) Whether the student:

(i) does not achieve adequately for the student's age or to meet state grade level standards in one (1) or more of the areas identified in 511 IAC 7-41-12(a)(1) when provided with learning experiences and instruction appropriate for the student's age or state grade level standards; and

(ii) meets either of the following criteria:

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

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

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

(i) Visual, hearing, or motor disability.

(ii) Intellectual disability.

(iii) Emotional disturbance.

(iv) Cultural factors.

(v) Environmental or economic disadvantage.

(vi) Limited English proficiency.

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

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

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

(j) If the parent does not request a:

- (1) copy of the educational evaluation report; or
- (2) meeting to explain the evaluation;

prior to the initial CCC meeting, the public agency must provide a copy of the educational evaluation report at no cost to the parent at the CCC meeting. If the student is parentally-placed in a nonpublic school, the public agency shall also provide a copy of the educational evaluation report at no cost to the nonpublic school representative. (*Indiana State Board of Education; 511 IAC 7-40-5; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA*)

SECTION 19. 511 IAC 7-40-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-40-7 Independent educational evaluation

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

Affected: IC 20-19-2; IC 20-35

Sec. 7. (a) The public agency shall provide to parents, upon request for an independent educational evaluation:

- (1) information about where an independent educational evaluation may be obtained; and
- (2) the public agency's criteria applicable to independent educational evaluations as described in subsection ~~(h)~~ (j).

“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:

- (1) pays for the full cost of the evaluation; or
- (2) ensures that the evaluation is otherwise provided at no cost to the parent.

(c) Upon a parent's request for an independent educational evaluation at public 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) The public agency may ask the parent why the parent objects to the public agency's evaluation. However, the public agency may not:

- (1) require the parent to provide an explanation; or
- (2) unreasonably delay either:
 - (A) providing the independent evaluation at public expense; or
 - (B) initiating a due process hearing;

as a result of the parent's response or lack of response.

(e) A student's parents are entitled to only one (1) independent educational evaluation at public expense each time the public agency conducts an educational evaluation with which the parent disagrees.

(f) If the:

- (1) public agency initiates a hearing to determine the appropriateness of its educational evaluation; and
- (2) 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.

(g) If the parent obtains an independent evaluation at public expense or shares with the public agency an independent educational evaluation obtained at the parent's expense, the results of the evaluation:

(1) must be considered by the public agency, if it meets the public agency's criteria, in any decision made with respect to the provision of a free appropriate public education to the student; and

(2) may be presented by any party as evidence at a due process hearing regarding the student.

(h) In a due process hearing under 511 IAC 7-45-3 through 511 IAC 7-45-8 on the issue of the public agency's reimbursement of the parent's expense for an independent educational evaluation, an independent hearing officer must not order reimbursement for the evaluation if the hearing officer determines that the evaluation obtained by the parent did not meet the public agency's criteria.

(i) If an independent hearing officer requests an independent educational evaluation as part of a due process hearing, the cost of the evaluation must be at public expense.

(j) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the:

(1) location of the evaluation; and

(2) qualifications of the evaluator;

must be the same as the public agency uses when it initiates an educational evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(k) Except for the criteria described in subsection (j), 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 7-40-7; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 20. 511 IAC 7-40-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-40-8 Reevaluation

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

Affected: IC 20-19-2; IC 20-35

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

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

(1) at least once every three (3) years; however, reevaluation need not occur if the parent and the public agency agree that it is unnecessary;

(2) if the public agency determines, at any time during the three (3) year cycle, that additional information is needed to address the special education or related services needs of the student; and

(3) if the student's parent or teacher requests reevaluation.

(c) The following procedures are not reevaluation:

(1) A test or other evaluation that is administered to all students unless, before administration of the test or evaluation, consent is required from parents of all students.

(2) A screening of students by a teacher or a specialist to determine appropriate instructional strategies for curriculum implementation.

(3) A review of existing data regarding a student.

(4) The collection of progress monitoring data when a student participates in a process that assesses the student's response to scientific, research based interventions described in section 2 of this rule.

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

(e) **Except as provided in subsection (q),** ~~If~~ if the CCC determines or the parent or teacher requests that a reevaluation be conducted to:

(1) determine that the student is eligible for special education and related services under a different or additional eligibility category; or

(2) inform the CCC of the student's needs, such as the student's need for assistive technology or a related service;

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

(f) A parent's request for a reevaluation must be made to licensed personnel, which is defined in 511 IAC 7-32-58 to mean persons employed by the public agency who are:

(1) teachers;

(2) school counselors;

(3) school psychologists;

(4) school social workers;

(5) building principals; and

(6) other administrators.

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

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

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

(A) evaluation procedure;

(B) assessment;

(C) record; or

(D) report;

the public agency used as a basis for proposing or refusing to reevaluate the student.

(2) A description of other factors relevant to the public agency's proposal or refusal to reevaluate the student.

(3) If the public agency:

(A) is proposing to reevaluate the student, a description of the reevaluation process; or

(B) refuses to reevaluate the student, an explanation of the parent's right to contest the agency's decision by requesting:

(i) mediation in 511 IAC 7-45-2; or

(ii) a due process hearing in 511 IAC 7-45-3.

(4) If a public agency is proposing to reevaluate the student, the timeline for conducting the reevaluation and convening the CCC meeting.

(5) A statement that a parent of a student with a disability has protection under the procedural safeguards described in 511 IAC 7-37-1, including information regarding how a copy of the written notice of procedural safeguards can be obtained.

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

(h) The written notice required under subsection (g) must be as follows:

(1) Written in language understandable to the general public.

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure that:

(A) the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(B) the parent understands the content of the notice; and

(C) there is written evidence that the requirements in clauses (A) and (B) have been met.

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

(1) mediation in 511 IAC 7-45-2; or

(2) a due process hearing in 511 IAC 7-45-3.

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

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

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204

▪ (317) 232-2000 ▪ www.in.gov/sboe

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

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

(l) Parental consent for reevaluation does not need to be obtained if the public agency makes reasonable efforts to obtain consent and the parent fails to respond. To document reasonable efforts, the public agency must keep a record of its attempts to obtain parental consent, including the following:

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

(m) In considering the need for reevaluation, the CCC and other qualified professionals, as appropriate, must do the following:

- (1) Review existing evaluation data on the student, including the following:
 - (A) Evaluations and information provided by the parents of the student.
 - (B) Current classroom based, local, or state assessments, and classroom based observations.
 - (C) Observations of teachers and related services providers.
- (2) On the basis of that review, and input from the student's parent, identify what additional data, if any, are needed to determine the following:
 - (A) Whether the student continues to have a disability as described in 511 IAC 7-41 and the special education and related service needs of the student.
 - (B) The present levels of academic achievement and functional performance and related developmental needs of the student.
 - (C) Whether the student continues to need special education and related services.
 - (D) Whether any additions or modifications to the special education and related services are needed to:
 - (i) enable the student to meet the measurable annual goals set out in the student's IEP; and
 - (ii) participate, as appropriate, in the general education curriculum.

(n) The review described in subsection ~~(h)~~ (m) may be conducted without a meeting.

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

- (1) Notify the parent of the following:
 - (A) The determination and the reasons for the determination.
 - (B) The right to request an assessment to determine the following:
 - (i) Whether the student continues to be eligible for special education.
 - (ii) The student's special education and related service needs.
- (2) Not be required to conduct such an assessment unless requested to by the student's parent.

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

(q) The time frame established under subsection (e) does not apply when a student enrolls in a school of another public agency after the time frame has begun, and prior to completion of the reevaluation, if:

- (1) the subsequent public agency is making sufficient progress to ensure a prompt completion of the reevaluation; and**
- (2) the parent and subsequent public agency agree to a specific time when the reevaluation will be completed.**

(Indiana State Board of Education; 511 IAC 7-40-8; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; filed Oct 11, 2013, 3:17 p.m.: 20131106-IR-511130028FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 21. 511 IAC 7-40-9 IS ADDED TO READ AS FOLLOWS:

511 IAC 7-40-9 Notice by electronic mail

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

Affected: IC 20-19-2; IC 20-35

Sec. 9. A parent may elect to receive the written notices required by 511 IAC 7-40 by an electronic mail communication if the public agency makes that option available.

(Indiana State Board of Education; 511 IAC 7-40-9)

SECTION 22. 511 IAC 7-41-9 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-41-9 Multiple disabilities

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

Affected: IC 20-19-2; IC 20-35

Sec. 9. (a) "Multiple disabilities" means coexisting disabilities, one of which must be a significant ~~cognitive~~ **intellectual** disability. The coexisting disabilities are lifelong and interfere with independent functioning, and it is difficult to determine which disability most adversely affects educational performance. The term does not include deaf-blind.

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

(1) An assessment of the following:

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

(i) An individually administered norm-referenced assessment.

(ii) If adequate information cannot be obtained via an individually administered norm-referenced assessment, a criterion-referenced assessment that:

(AA) has been designed or may be adapted or modified based on the student's disabilities; and

(BB) is administered by a professional or team of professionals with knowledge of assessment strategies appropriate for the student.

(B) Current academic achievement as defined at 511 IAC 7-32-2.

(C) Functional skills or adaptive behavior across various environments from multiple sources.

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

(A) Communication skills.

(B) Social interaction skills.

(C) Motor skills.

(D) Responses to sensory experiences.

(E) Relevant family and environmental information.

(3) A systematic observation of the student across various environments.

(4) Available medical information that is educationally relevant.

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

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

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

(Indiana State Board of Education; 511 IAC 7-41-9; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 23. 511 IAC 7-42-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-42-3 Case conference committee participants

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

Affected: IC 20-19-2; IC 20-30-8; IC 20-35

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

(1) is:

(A) knowledgeable about the availability of, and has the authority to commit, resources of the public agency;

(B) qualified to provide or supervise the provision of specially designed instruction to meet the unique needs of students with disabilities; and

(C) knowledgeable about the general education curriculum; and

(2) may be any public agency participant of the CCC if the criteria of subdivision (1) are satisfied.

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

(1) The designated public agency representative as described in subsection (a).

(2) One (1) of the following:

(A) The student's current teacher of record.

(B) In the case of a student with a language or speech impairment only, the speech-language pathologist.

(C) For a student whose initial eligibility for special education and related services is under consideration, a teacher licensed in the area of the student's suspected disability.

(3) Not fewer than one (1) of the student's general education teachers, if the student is or may be participating in the general education environment. For purposes of early childhood, a general education teacher may be:

(A) a general education:

(i) teacher who provides services to nondisabled students in the public agency's preschool program; or

(ii) kindergarten teacher who provides services to nondisabled students if the student is of kindergarten age; or

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

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

(5) The:

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

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

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

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

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

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

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

(B) commit resources.

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

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

(B) commit resources.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) parent, in writing, and the public agency consent to the excusal, as consent is defined at 511 IAC 7-32-17; and

(2) member submits, in writing to the parent and the CCC, input into the development of the IEP prior to the meeting, unless the member attends the part of the meeting that involves a modification to or discussion of the member's area of the curriculum or related services.

(Indiana State Board of Education; 511 IAC 7-42-3; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 24. 511 IAC 7-42-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-42-6 Developing an individualized education program; components and parent copy

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

Affected: IC 20-19-2; IC 20-35

Sec. 6. (a) An IEP is a written document for a student who is eligible for special education and related services that is developed by a CCC in accordance with this section. Transition IEPs are written documents developed in accordance with 511 IAC 7-43-4 that are in effect for students:

(1) entering into grade 9; or

(2) becoming fourteen (14) years of age;

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

(b) When developing a student's IEP, a CCC must consider the following general factors:

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

- (1) The strengths of the student.
- (2) The concerns of the parent for enhancing the education of the student.
- (3) The results and instructional implications of the initial or most recent educational evaluation and other assessments of the student.
- (4) The:
 - (A) academic;
 - (B) developmental;
 - (C) communication; and
 - (D) functional;

needs of the student.

(c) The CCC must also consider the following special factors when applicable:

(1) Positive behavioral interventions and supports, and other strategies, to address any of the student's behaviors that impede the student's learning or the learning of others.

~~(2) Any supports, under 511 IAC 7-35-2, necessary to provide public agency personnel with the knowledge and skills necessary to implement the student's IEP.~~

~~(3) (2)~~ The language needs of a student with limited English proficiency as those needs relate to the student's IEP.

~~(4) (3)~~ In the case of a student who is deaf or hard of hearing or a student who is deaf-blind, the student's:

- (A) language and communication needs;
- (B) opportunities for direct communications with peers and professional personnel in the student's language and communication mode;
- (C) academic level; and
- (D) full range of needs;

including opportunities for direct instruction in the student's language and communication mode.

~~(5) (4)~~ Instruction in Braille and the use of Braille for a student who is blind or has low vision or a student who is deaf-blind, unless the CCC determines, after a functional literacy assessment (sometimes referred to as a learning media 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.

~~(6) (5)~~ The student's need for assistive technology devices and services.

~~(7) The IFSP for students who are transitioning from early intervention programs under Part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.~~

(d) When developing an IEP, a CCC must determine the special education and related services that will meet the unique needs of the student, regardless of the student's identified disability.

(e) The general education teacher who is a member of the student's CCC must, to the extent appropriate, participate in the development of a student's IEP, including the determination of the following:

- (1) Appropriate positive behavioral interventions and supports and other strategies for the student.
- (2) Supplementary aids and services, program modifications, and support for school personnel consistent with subsection (f)(4).

(f) An IEP must contain the following:

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

- (A) Measurable annual goals, including academic and functional goals designed to meet:
 - (i) the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum (or for early childhood education students, as appropriate, to participate in appropriate activities); and
 - (ii) each of the student's other educational needs that result from the student's disability.
- (B) For students who participate in alternate assessments aligned to alternative academic achievement standards, a description of benchmarks or short-term objectives.

- (3) A description of the following:
- (A) How the student's progress toward meeting the annual goals described in subdivision (2) will be measured.
 - (B) When periodic reports on the progress the student is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.
- (4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to do the following:
- (A) Advance appropriately toward attaining the annual goals.
 - (B) Be involved in and make progress in the general education curriculum in accordance with subdivision (1) and to participate in extracurricular and other nonacademic activities.
 - (C) Be educated and participate with other students with disabilities and nondisabled students in the activities described in this article.
- (5) An explanation of the extent, if any, to which the student will not participate with nondisabled students in the general education environment and in extracurricular and other nonacademic activities.
- (6) A statement regarding the student's participation in statewide or local assessments of student achievement, including the following:
- (A) Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student consistent with 511 IAC 7-36-10.
 - (B) If the CCC determines, in accordance with 511 IAC 7-36-10(g) and 511 IAC 7-36-10(h), that the student must take an alternate assessment of student achievement, instead of a particular statewide or local assessment, a statement:
 - (i) of why the student cannot participate in the general assessment;
 - (ii) of why the particular alternate assessment selected is appropriate for the student; and
 - (iii) documenting that the public agency informed the parent that the student's performance will not be measured against grade-level academic achievement standards.
- (7) The:
- (A) projected date for initiation of services and modifications described in subdivision (4); and
 - (B) anticipated length and frequency, location, and duration of services and modifications.
- (8) A statement of the student's need for extended school year services consistent with 511 IAC 7-36-4(c) and 511 IAC 7-36-4(d).
- (9) Identification of the placement in the least restrictive environment as described in section 10 of this rule.
- (10) Beginning not later than one (1) year before the student becomes eighteen (18) years of age, a statement that the student and the parent have been informed that parent's rights under this article will transfer to the student at eighteen (18) years of age in accordance with 511 IAC 7-43-4.
- (11) Written notes documenting the meeting of the CCC, including the following:
- (A) The date and purpose of the meeting.
 - (B) The names and titles of the participants.
 - (C) The issues discussed during the meeting.
- (g) For a student convicted as an adult under state law and incarcerated in an adult prison, the:
- (1) requirement in subsection (f)(6) relating to participation of students with disabilities in state and local assessments does not apply; and
 - (2) CCC may modify the student's IEP or educational placement without regard to the requirements of this section and section 10 of this rule if the state has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.
- (h) Nothing in this section must be construed to require:
- (1) that additional information be included in a student's IEP beyond what is explicitly required in this article; or
 - (2) the CCC to include information under one (1) component of the student's IEP that is already contained under another component of the student's IEP.
 - (i) The public agency must give the parent a copy, at no cost, of the student's IEP. The copy may be:
 - (1) provided to the parent at the conclusion of the CCC meeting; or
 - (2) mailed to the parent at a later date.

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

- (j) Any member of the CCC may submit a written opinion regarding the IEP. The written opinion must:
- (1) be submitted to the public agency not later than ten (10) business days after the date of the CCC meeting; and
 - (2) remain with the student's educational records.

(Indiana State Board of Education; 511 IAC 7-42-6; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 25. 511 IAC 7-42-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-42-8 Individualized education programs; implementation; termination due to revocation of consent

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

Affected: IC 20-19-2; IC 20-32-4-11; IC 20-33-2-10; IC 20-35

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

- (1) No later than ten (10) instructional days after parental consent to the student's initial IEP is received.
- (2) On the eleventh instructional day after a public agency provides written notice described in section 7 of this rule regarding a student's proposed IEP that is subsequent to the initial IEP, unless the parent consents in writing to an earlier implementation date. The public agency must continue to implement the current IEP if the parent challenges the proposed IEP prior to its implementation by:

- (A) requesting and participating in a meeting with an official of the public agency who has the authority to facilitate the disagreement between the parent and the public agency;
- (B) initiating mediation under 511 IAC 7-45-2; or
- (C) requesting a due process hearing under 511 IAC 7-45-3.

- (3) On the eleventh instructional day after a meeting or mediation to resolve a parent's challenge to the IEP under subsection (2)(A) or 2(B) [~~subdivision (2)(A) or 2(B)~~], unless the parent requests a due process hearing within ten (10) instructional days. The public agency must provide the parent with written notice at the conclusion of the meeting or mediation that the proposed or revised IEP will be implemented on the eleventh instructional day after the notice unless the parent requests a due process hearing.

- (4) For students transitioning from early intervention services to early childhood special education, on the student's third birthday in accordance with 511 IAC 7-43-2.

- (5) On the initiation date stated in the student's IEP in all other circumstances.

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

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

- (1) Monitor the implementation of the student's IEP.
- (2) Ensure that each of the student's teachers, related service providers, paraprofessionals, and any other service providers, who are responsible for implementing the student's IEP:
 - (A) have access to a copy of the IEP;
 - (B) are informed of their specific responsibilities related to implementing the IEP; and
 - (C) are informed of the specific accommodations, modifications, and supports that must be provided for the student in accordance with the student's IEP.

- (3) Ensure that the CCC is informed of any modifications made to the student's IEP in accordance with section 9(e)(2) and 9(g) of this rule.

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

- (5) Be responsible for all other activities identified in 511 IAC 7-32-97.

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

- (1) an IEP as specified in section 5 6 of this rule; or
- (2) a service plan as described in 511 IAC 7-34-5 if the student is parentally-placed in a nonpublic school within the jurisdiction of the public agency.
- (e) If a newly enrolled student received special education services from another public agency within the state, and enrolls

in a new public agency within the same school year, the new public agency, in consultation with the student's parent, must immediately provide the student with a free appropriate public education, including services comparable to those described in the student's IEP from the previous public agency, until the new public agency either:

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

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

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

(g) To facilitate the transition of students described in subsections (e) and (f), the:

- (1) new public agency in which the student enrolls must take reasonable steps to promptly obtain the student's records, including the IEP, supporting documents, and any other records relating to the provision of special education or related services to the student, from the previous public agency in which the student was enrolled, under 511 IAC 7-38-1(r)(2); and
- (2) previous public agency in which the student was enrolled must take reasonable steps to promptly respond to the request from the new public agency, as required by IC 20-33-2-10.

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

(Indiana State Board of Education; 511 IAC 7-42-8; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; filed Dec 3, 2009, 1:50 p.m.: 20091230-IR-511090057FRA; errata filed Oct 22, 2010, 11:31 a.m.: 20101110-IR-511090057ACA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 26. 511 IAC 7-42-9 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-42-9 Review and revision of the individualized education program

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

Affected: IC 20-19-2; IC 20-35

Sec. 9. (a) A student's CCC must meet periodically, but not less than annually, to do the following:

(1) Review the student's IEP and determine whether the student's annual goals, described in section 6(f)(2) of this rule, are being achieved.

(2) Revise the IEP, as appropriate, to address:

(A) any lack of expected progress, based on progress monitoring data, toward the annual goals and in the general education curriculum, if appropriate;

(B) the results of any reevaluation conducted under 511 IAC 7-40-8, including any additional data about the student described in 511 IAC 7-40-8(1)(2);

(C) the student's anticipated needs; or

(D) other matters.

(b) When conducting a review of the student's IEP, the CCC must consider the general and special factors described in section 6(b) and 6(c) of this rule.

(c) A general education teacher of the student, as a member of the CCC must, consistent with section 6(e) of this rule, participate in the review and revision of the student's IEP.

(d) The review and revision of an IEP that will be in effect when the student:

(1) enters into grade 9; or

(2) becomes fourteen (14) years of age;

whichever occurs first, or earlier if determined appropriate by the CCC, must be conducted in accordance with this section and 511 IAC 7-43-4, describing transition IEPs.

(e) After the annual CCC meeting described in subsections (a) through (d), changes to the IEP may be made:

(1) by the CCC at a CCC meeting; or

(2) without a CCC meeting if the parent and the public agency agree:

(A) not to convene a CCC meeting; and

(B) to collaboratively develop a written document to amend or modify the student's current IEP.

(f) **If changes are made to the student's IEP in accordance with subsection (e)(2), the public agency must provide the parent with prior written notice that meets the requirements of section 7.** Upon request, a parent must be provided, at no cost, a revised copy of the IEP with the modifications described in subsection (e)(2) incorporated.

(g) If changes are made to the student's IEP in accordance with subsection (e)(2), the teacher of record must ensure that the student's CCC is informed of those changes.

(Indiana State Board of Education; 511 IAC 7-42-9; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 27. 511 IAC 7-42-10 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-42-10 Least restrictive environment and delivery of special education and related services

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

Affected: IC 20-19-2; IC 20-35

Sec. 10. (a) Except as provided in section 6(g)(2) of this rule (regarding students with disabilities in adult prisons), each public agency must have in place **and implement** written policies and procedures to ensure the following:

(1) To the maximum extent appropriate, students with disabilities, including students in public or private institutions or other care facilities are educated with nondisabled students.

(2) Special classes, separate schooling, or other removal of students from the general education environment occurs only if the nature and severity of the disability is such that education in general education classes using supplementary aids and services cannot be satisfactorily achieved.

(3) The CCC determines the placement in which a student will receive services. The student's placement is:

(A) based on the student's IEP;

(B) reviewed at least annually; and

(C) in the school that the student would attend if not disabled, unless the IEP requires some other arrangement. If another arrangement is required, the placement should be as close as possible to the student's home school.

(4) A continuum of services, as described in subsection (b)(4) and (b)(5), that is available to meet the individual needs of students with disabilities and makes provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with general education placement.

(5) In selecting the least restrictive environment, consideration is given to any potential harmful effect on the:

(A) student; or

(B) quality of services needed.

(6) 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.

(7) Special education and related services are delivered in the least restrictive environment determined by the CCC, regardless of the identified disability.

(8) The provision of services to students with different disabilities:

(A) at the same time; and

(B) in the same classroom;

is permitted.

(9) Students with disabilities are in classes and buildings with their chronological peers unless:

(A) an alternative is determined appropriate by the CCC; and

(B) the reasons for that determination are documented in the written notice required by section ~~6~~ 7 of this rule.

(10) Students with disabilities are not removed from education in age-appropriate general education classrooms solely

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204

▪ (317) 232-2000 ▪ www.in.gov/sboe

because of needed modifications in the general curriculum.

(b) The public agency must do the following:

(1) Take steps to 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 the following:

- (A) Vocational education.
- (B) Art.
- (C) Music.
- (D) Industrial arts.
- (E) Consumer and homemaking education.
- (F) Field trips.
- (G) Convocations.

(2) Take steps, including providing students with supplementary aids and services determined appropriate and necessary by the student's CCC, to afford students with disabilities equal opportunity for participation in nonacademic and extracurricular services and activities. The public agency must ensure that students with disabilities participate with nondisabled students in the extracurricular services and activities to the maximum extent appropriate to the needs of that student. Nonacademic and extracurricular services and activities may include the following:

- (A) Meals and recess.
- (B) Athletics.
- (C) Recreational activities.
- (D) Special interest groups or clubs sponsored by the public agency.
- (E) Graduation ceremonies.
- (F) Employment of students, including both:
 - (i) employment by the public agency; and
 - (ii) assistance in making outside employment available.

(3) Make physical education, specially designed if necessary, available to all students with disabilities. However, a public agency is under no obligation to make physical education available to students with disabilities if physical education is not available to other students in the same grade. Physical education must 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 must be afforded the opportunity to participate in the general physical education program available to nondisabled students unless one (1) of the following occurs:

- (A) The student is enrolled full time in a separate facility. The public agency responsible for the education of the student must ensure that the student receives appropriate physical education services in compliance with this section.
- (B) The student needs specially designed physical education, as prescribed in the student's IEP. The public agency must provide the specially designed physical education services directly or make arrangements for those services to be provided through other private or public programs.

(4) Ensure the availability of a continuum of placement options for students in kindergarten through the school year in which students become twenty-two (22) years of age that includes the following:

- (A) General education classroom with special education and related services provided during the instructional day.
- (B) Resource room with special education and related services provided outside the general education classroom during the instructional day.
- (C) Separate classroom in a general education school building with special education and related services provided outside the general education classroom during the instructional day.
- (D) Separate public or nonpublic nonresidential school or facility with special education and related services provided.
- (E) Public or nonpublic residential school or facility with special education and related services provided to students living at the school or facility.
- (F) Homebound or hospital setting with special education and related services provided at the student's home, a hospital, or other noneducational site selected by the public agency.

(5) Ensure the availability of a continuum of placement options for early childhood students that includes the following:

- (A) Early childhood general education programs.
- (B) Early childhood special education programs. These programs include, but are not limited to, the following:
 - (i) Special education classrooms.

(ii) Separate schools.

(iii) Residential facilities.

(C) Early childhood special education and related services provided at the service provider's location.

(D) Home-based early childhood special education and related services provided in the residence of the student's family or caregivers.

(c) The placement options listed in subsection (b)(4) and (b)(5) must not be exclusive placement options, and a student's placement may be a combination of the options listed, as determined appropriate by the CCC.

(d) For a student with a disability who is convicted as an adult under state law and incarcerated in an adult facility, the CCC may modify the student's IEP 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 7-42-10; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 28. 511 IAC 7-42-11 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-42-11 Instruction for student at student's home or alternative setting

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

Affected: IC 20-19-2; IC 20-35

Sec. 11. (a) A student may receive special education and related services from a licensed teacher in the student's home or alternative setting, for reasons other than ~~identified in section 12 of this rule~~ **injury or temporary or chronic illness**, if the CCC determines it to be the least restrictive environment appropriate to enable the student to benefit from special education and related services. If the CCC determines the student's placement to be the student's home or an alternate setting, the public agency's written notice described in section 7 of this rule must include the following:

(1) The reason the student is not attending school.

(2) Other options tried or considered.

(3) The reasons the other options were rejected.

(b) The CCC must convene at least every sixty (60) instructional days to review the IEP. The:

(1) type;

(2) length;

(3) frequency;

(4) initiation; and

(5) duration;

of the special education and related services must be determined by the CCC.

(Indiana State Board of Education; 511 IAC 7-42-11; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 29. 511 IAC 7-42-16 IS ADDED TO READ AS FOLLOWS:

511 IAC 7-42-16 Notice by electronic mail

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

Affected: IC 20-19-2; IC 20-35

Sec. 16. A parent may elect to receive the written notices required by 511 IAC 7-42 by an electronic mail communication if the public agency makes that option available.

(Indiana State Board of Education; 511 IAC 7-42-16)

SECTION 30. 511 IAC 7-43-1 IS AMENDED TO READ AS FOLLOWS:

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

511 IAC 7-43-1 Related services

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

Affected: IC 20-19-2; IC 20-35

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

(b) Related services may be provided as:

(1) direct services by qualified professionals; or

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

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

(1) Audiological services.

(2) Counseling services.

(3) Early identification and assessment of disabilities in children.

(4) Interpreting services.

(5) Medical services for the purpose of diagnosis and evaluation.

(6) Occupational therapy.

(7) Orientation and mobility services.

(8) Parent counseling and training.

(9) Physical therapy.

(10) Psychological services.

(11) Recreation, including therapeutic recreation.

(12) Rehabilitation counseling.

(13) School health services.

(14) School nurse services.

(15) School social work services.

(16) Transportation.

(17) Other supportive services.

(d) Related services do not include the following:

(1) A medical device that is surgically implanted, such as a cochlear implant.

(2) The optimization of a surgically implanted device's functioning, such as mapping for a cochlear implant.

(3) Maintenance of a surgically implanted device.

(4) The replacement of a surgically implanted device.

(e) Nothing in subsection (d):

(1) limits the right of a student with a cochlear implant or other surgically implanted devices to receive special education (such as speech and language services) and related services that the student's CCC determines are necessary for the student to receive a free appropriate public education;

(2) limits the responsibility of a public agency to appropriately monitor and maintain medical devices that are needed to maintain the health and safety of the student, including:

(A) breathing;

(B) nutrition; or

(C) operation of other bodily functions;

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

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

(f) Audiological services:

(1) may include:

(A) identification of students with hearing loss;

(B) determination of the nature, range, and degree of hearing loss, including referral for medical or other professional attention for the habilitation of hearing;

- (C) provision of habilitative activities, such as:
 - (i) language habilitation;
 - (ii) auditory training;
 - (iii) hearing evaluation;
 - (iv) speech/lip reading; and
 - (v) speech conservation;
- (D) creation and administration of programs for prevention of hearing loss;
- (E) counseling with and guidance of students, teachers, and parents regarding hearing loss; and
- (F) determination of a student's need for group or individual amplification, selecting and fitting of an appropriate hearing aid, and evaluating the effectiveness of amplification; and
- (2) must be provided by a licensed educational or clinical audiologist.
- (g) Counseling services may:
 - (1) include:
 - (A) sharing career information;
 - (B) administering interest inventories or other career assessment instruments;
 - (C) providing assistance in career planning;
 - (D) guiding the identification of and planning for a student's course of study designed to help the student achieve the post school goals and outcomes; and
 - (E) assisting the student to:
 - (i) understand and cope with a disability;
 - (ii) cope with a personal problem or crisis; and
 - (iii) develop and implement a behavioral intervention plan;
 - (2) be provided:
 - (A) in the instructional setting or another setting; and
 - (B) on a regular schedule or an as-needed basis; and
 - (3) be provided by:
 - (A) school social workers or school counselors;
 - (B) school, clinical, or child psychologists;
 - (C) administrators or teachers;
 - (D) related services personnel;
 - (E) vocational rehabilitation counselors; or
 - (F) other qualified professionals.
- (h) Early identification and assessment of disabilities includes, but is not limited to, a formal plan for identifying a disability as early as possible in a child's life.
- (i) Requirements for interpreting services are as follows:
 - (1) Interpreting services include the following:
 - (A) When used with respect to students who are deaf or hard of hearing, the following:
 - (i) Oral transliteration services.
 - (ii) Cued language transliteration services.
 - (iii) Sign language transliteration and interpreting services.
 - (iv) Transcription services, such as the following:
 - (AA) Communication access real time translation (CART).
 - (BB) C-Print.
 - (CC) TypeWell.
 - (B) Special interpreting services for students who are deaf-blind.
 - (2) Individuals who provide sign language transliteration and interpreting services described in subdivision (1)(A)(iii) must be certified to interpret in an educational setting.
- (j) Medical services for the purpose of diagnosis and evaluation must be:
 - (1) considered a related service provided at no cost to the parent only if:
 - (A) a diagnosis and evaluation of a medically related disability is needed to determine eligibility for special education or related services; or

- (B) ordered by a hearing officer to determine a student's eligibility for special education and related services or appropriate services for an eligible student; and
- (2) provided by a physician with an unlimited license to practice medicine.
- (k) Occupational therapy services:
 - (1) may include:
 - (A) evaluating:
 - (i) developmental levels;
 - (ii) gross and fine motor functioning; and
 - (iii) self-care skills;
 - (B) developing, improving, or restoring functions impaired or lost through:
 - (i) illness;
 - (ii) injury; or
 - (iii) deprivation;
 - (C) improving ability to perform tasks for independent functioning if functions are impaired or lost;
 - (D) preventing, through early intervention, initial or further impairment or loss of function;
 - (E) designing or adapting:
 - (i) materials;
 - (ii) equipment; or
 - (iii) the educational environment;
 - to meet a student's needs;
 - (F) consulting with:
 - (i) parents;
 - (ii) teachers;
 - (iii) paraprofessionals; and
 - (iv) other related services personnel;
- regarding activities that can assist in meeting the goals of therapy; and
- (2) must be provided by a:
 - (A) certified occupational therapist; or
 - (B) certified occupational therapy assistant under the supervision of a certified occupational therapist.
- (l) Orientation and mobility services:
 - (1) are provided to students who are blind or have low vision by qualified professionals to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community; and
 - (2) include teaching students, as appropriate:
 - (A) spatial and environmental concepts and use of information received by the senses (such as sound, temperature, and vibrations) to establish, maintain, or regain orientation and line of travel (such as using sound at a traffic light to cross the street);
 - (B) to use the long cane or a service animal:
 - (i) to supplement visual travel skills; or
 - (ii) as a tool for safely negotiating the environment for students with no available travel vision;
 - (C) understanding and using remaining vision and distance low vision aids; and
 - (D) other concepts, techniques, and tools.
- (m) Parent counseling and training may:
 - (1) include:
 - (A) assisting the parents in understanding the special needs of their child;
 - (B) providing parents with information on child development; and
 - (C) assisting parents in understanding the student's educational program and helping them to acquire the necessary skills that will allow them to support the implementation of their child's IEP;
 - (2) be provided:
 - (A) as part of the CCC process; or
 - (B) in the form of special meetings or conferences; and
 - (3) be provided by any of the persons listed in subsection (g)(3). The nature of the parent counseling and training needs

must guide the selection of the appropriate individual and manner in which the counseling and training are provided.

(n) Physical therapy:

(1) may include:

(A) evaluating:

- (i) developmental levels;
- (ii) gross motor function;
- (iii) reflex levels;
- (iv) range of motion;
- (v) muscular strength; and
- (vi) respiratory function;

(B) designing and implementing activities to:

- (i) prevent;
- (ii) correct;
- (iii) treat; or
- (iv) alleviate;

impairments;

(C) evaluating, designing, and recommending adaption of assistive devices and equipment; and

(D) consulting with:

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

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

(2) must be provided:

(A) by a:

- (i) licensed physical therapist; or
- (ii) certified physical therapist assistant under the direct supervision of a licensed therapist; and

(B) **for no more than the number of days specified in IC 25-37-1-2.5(a) without a** ~~only upon~~ referral or order of a licensed:

- (i) physician;
- (ii) podiatrist;
- (iii) psychologist;
- (iv) chiropractor; ~~or~~
- (v) dentist;
- (vi) nurse practitioner; or**
- (vii) physician assistant;**

~~or as otherwise permitted by state law governing licensing of physical therapists~~ **holding an unlimited license to practice in their respective field.**

(C) Upon the referral of a licensed school psychologist, a physical therapist who is:

- (i) licensed under IC 25-27; and**
- (ii) an employee or contractor of a school corporation;**

may provide mandated school services to a student, if the mandated school services are within the physical therapist's scope of practice.

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

- (1) Administering psychological and educational assessments as a member of the multidisciplinary team.
- (2) Interpreting assessment results.
- (3) Obtaining, integrating, and interpreting information regarding student behavior and conditions related to learning.
- (4) Consulting and working with school personnel and parents in planning and developing a student's IEP to meet the special needs of a student as indicated by the following:

- (A) Psychological assessments.
 - (B) Interviews.
 - (C) Direct observation.
 - (D) Behavioral assessments.
- (5) Planning and managing a program of psychological services, including psychological counseling for students and parents.
- (6) Assisting in developing positive behavioral intervention strategies.
- (7) Referring a student to:**
- (A) a speech-language pathologist or an audiologist licensed under IC 25-35.6 for speech, hearing, and language disorders;**
 - (B) an occupational therapist licensed under IC 25-23.5 for occupational therapy services; or**
 - (C) a physical therapist licensed under IC 25-27 for mandated school services within the physical therapist's scope of practice.**
- (p) Recreation services may include the following:
- (1) Assessment of leisure function.
 - (2) Therapeutic recreation services.
 - (3) Recreation programs in the schools and community agencies.
 - (4) Leisure education.
- (q) Rehabilitation counseling services may include the following:
- (1) Services provided by qualified professionals in individual or group sessions that focus specifically on the following:
 - (A) Career development.
 - (B) Employment preparation.
 - (C) Achieving independence.
 - (D) Integration in the workplace and community of the student with a disability.
 - (2) Vocational rehabilitation services provided to a student with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.
- (r) School health services:
- (1) include health services that are designed to enable a student with a disability to receive a free appropriate public education as described in the student's IEP; and
 - (2) must be provided by either:
 - (A) a licensed school nurse; or
 - (B) other qualified personnel.
- (s) School nurse services:
- (1) are health services designed to enable a student with a disability to receive a free appropriate public education as described in the student's IEP;
 - (2) include the services described in 511 IAC 4-1.5-6, such as developing health care plans that are integrated into the student's IEP; and
 - (3) must be provided by a licensed school nurse.
- (t) School social work services:
- (1) may include:
 - (A) serving as a member of the educational evaluation multidisciplinary team with responsibilities that may include the preparation of a social and developmental history on a student;
 - (B) group and individual counseling with the student and family;
 - (C) working, in partnership with parents and others, on those problems in a student's home, school, and community life that affect the student's adjustment in the educational setting;
 - (D) mobilizing school and community resources to enable the student to learn as effectively as possible in the student's educational program; or
 - (E) assisting in developing positive behavioral intervention strategies; and
 - (2) must be provided by a licensed school social worker.
- (u) Transportation:
- (1) may include:

- (A) travel:
 - (i) to and from the educational setting and between educational settings;
 - (ii) in and around the educational setting;
 - (iii) to and from related services that are provided outside the educational setting; or
 - (iv) for participation in nonacademic and extracurricular activities if transportation is provided to nondisabled students; or
- (B) any service not provided to nondisabled students, including:
 - (i) special bus routes;
 - (ii) special or adapted vehicles;
 - (iii) aides in attendance;
 - (iv) separate or different modes of transportation, such as taxi or individual transportation; or
 - (v) special equipment such as oxygen, lifts, and ramps;
- (2) must be provided by the:
 - (A) public agency, directly or by contract; or
 - (B) student's parent, but only if the parent is willing to provide transportation, in which case the parent is entitled to reimbursement at the rate that employees of the public agency are reimbursed for travel expenses; and
- (3) must be provided:
 - (A) when the student:
 - (i) needs assistance moving from place to place within the educational setting;
 - (ii) is enrolled in a school other than the school the student would attend if not disabled, including another building in the same school corporation, to another school corporation, or to a state-operated school; or
 - (iii) is enrolled as a residential student in a public or private residential facility, in accordance with 511 IAC 7-42-14;
 - (B) when issues about the student's special physical health, mobility, or behavior require special consideration for type of transportation safety, supervision, assistance, or time in transit; or
 - (C) when the student:
 - (i) requires a shortened instructional day;
 - (ii) needs a related service that is provided:
 - (AA) at a site other than the school attended by the student; or
 - (BB) outside of the instructional day; or
 - (iii) for other reasons, cannot be transported with nondisabled students or needs special assistance or consideration.
- (4) may be provided by appropriate vehicle, as defined by IC 20-18-2-1.7, if the student's case conference committee determines a school bus or special purpose bus cannot safely and adequately reach the student's loading and unloading location.**

(Indiana State Board of Education; 511 IAC 7-43-1; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR 511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 31. 511 IAC 7-43-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-43-4 Transition individualized education program

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

Affected: IC 20-19-2; IC 20-30-4; IC 20-30-10-2; IC 20-32-4-14; IC 20-35; IC 22-4.1-2

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

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

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

- (b) This section does not apply to a student:
 - (1) convicted as an adult under state law; and
 - (2) incarcerated in an adult prison;

if the student's eligibility under this article will end because of the student's age, before the student will be eligible to be released from prison based on consideration of the student's sentence and eligibility for early release.

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

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

(e) The members of the CCC who must participate in the development or revision of a transition IEP are specified in 511 IAC 7-42-3(d)(2), which states that the public agency must invite:

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

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

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

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

(1) Appropriate positive behavioral interventions and supports and other strategies for the student.

(2) Supplementary aids and services, program modifications, and support for school personnel consistent with subsection (h)(8).

(h) A transition IEP must contain the following:

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

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

(B) Information from age appropriate transition assessments of:

(i) strengths;

(ii) preferences; and

(iii) interests.

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

(A) training;

(B) education;

(C) employment; and

(D) where appropriate, independent living skills.

(3) Documentation regarding whether the student will pursue a:

(A) a high school diploma as defined in 511 IAC 6-7.1-1(e); ~~or~~

(B) ~~certificate of completion~~ **an alternate diploma under 511 IAC 6-7.1-10; or**

(C) **a locally developed certificate, such as a certificate of completion, as identified in 511 IAC 6-7.1-12.**

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

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

(A) A vocational rehabilitation services program.

(B) The department of workforce development.

(C) The Social Security Administration.

(D) The bureau of developmental disabilities services.

(E) A community mental health center.

(F) A community rehabilitation program.

(G) An area agency on aging.

(6) The following:

(A) A statement of measurable annual goals, including academic and functional goals designed to support and align with the student's postsecondary goals, that meet:

- (i) the student's needs that result from the student's disability to enable the student to be involved in and make progress in the general education curriculum; and
 - (ii) each of the student's other educational needs that result from the student's disability.
- (B) For students who participate in alternate assessments aligned to alternative academic achievement standards, a description of benchmarks or short-term objectives.
- (7) A description of the following:
- (A) How the student's progress toward meeting the postsecondary and annual goals described in subdivision (6) will be measured.
 - (B) When periodic reports on the progress the student is making toward meeting the postsecondary and annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided.
- (8) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the student, or on behalf of the student, and a statement of the program modifications or supports for school personnel that will be provided to enable the student to do the following:
- (A) Advance appropriately toward attaining the postsecondary and annual goals.
 - (B) Be involved in and make progress in the general education curriculum in accordance with subdivision (1) and participate in extracurricular and other nonacademic activities.
 - (C) Be educated and participate with other students with disabilities and nondisabled students in the activities described in this article.
- (9) An explanation of the extent, if any, to which the student will not participate with nondisabled students in:
- (A) the general education environment; and
 - (B) extracurricular and other nonacademic activities.
- (10) A statement regarding the student's participation in statewide or local assessments of student achievement, including the following:
- (A) Any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the student consistent with 511 IAC 7-36-10.
 - (B) If the CCC determines, in accordance with 511 IAC 7-36-10(g) and 511 IAC 7-36-10(h), that the student must take an alternate assessment of student achievement, instead of a particular statewide or local assessment, a statement:
 - (i) that the criteria for the alternate assessment have been met;
 - (ii) of why the alternate assessment selected is appropriate for the student; and
 - (iii) documenting that the public agency informed the parent that the student's performance will be measured against grade-level aligned alternate academic achievement standards.
- (11) The projected date for initiation of services and modifications described in subdivision (8) and the anticipated length and frequency, location, and duration of services and modifications.
- (12) Courses of study to achieve postsecondary goals.
- (13) A statement of the student's need for extended school year services consistent with 511 IAC 7-36-4(c) and 511 IAC 7-36-4(d).
- (14) Identification of the placement in the least restrictive environment as described in 511 IAC 7-42-10.
- (15) Beginning not later than one (1) year before the student becomes eighteen (18) years of age, a statement that the student and the parent have been informed that parent's rights under this article will transfer to the student at eighteen (18) years of age in accordance with section 5 of this rule.
- (16) Written notes documenting the meeting of the CCC, including the following:
- (A) The date and purpose of the meeting.
 - (B) The names and titles of the participants.
 - (C) The issues discussed during the meeting.
- (i) Nothing in this section must be construed to require:
- (1) that additional information be included in a student's transition IEP beyond what is explicitly required in this article; or
 - (2) the CCC to include information under one (1) component of the student's transition IEP that is already contained under another component of the student's transition IEP.
- (j) The public agency must give the parent a copy, at no cost, of the student's transition IEP. The copy may be:
- (1) provided to the parent at the conclusion of the CCC meeting; or

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

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

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

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

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

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

(Indiana State Board of Education; 511 IAC 7-43-4; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 32. 511 IAC 7-43-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-43-7 Summary of performance

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

Affected: IC 20-19-2; IC 20-32-4-4; IC 20-33-2-28.5; IC 20-35

Sec. 7 (a) A public agency must provide a student with a summary of the student's academic achievement and functional performance, which must include recommendations on how to assist the student in meeting the student's postsecondary goals, when a student:

- (1) graduates with a high school diploma as defined in 511 IAC 6-7.1-1(e);
- (2) graduates with an alternate diploma as defined in 511 IAC 6-7.1-10;**
- ~~(2)~~ **(3) leaves high school with a locally developed certificate, such as a certificate of completion, as identified in 511 IAC 6-7.1-12; or**
- ~~(3)~~ **(4) exceeds the age of eligibility for special education and related services under this article.**

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

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

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

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

- (1) Basic demographic information about the student.
- (2) Postsecondary goals that:
 - (A) take into account the student's educational program; and
 - (B) reflect the:
 - (i) interests;
 - (ii) preferences; and
 - (iii) strengths;

of the student.

(3) A summary of the student's academic achievement and functional performance. Information that can be used to prepare the summary includes, but is not limited to, the following:

- (A) An academic transcript.
- (B) Academic assessment results.
- (C) Assessments of functional skills or adaptive behavior that explain a student's ability to:
 - (i) live;

- (ii) work; and
- (iii) access the community.

(D) Work force readiness assessments, career exploration internships, cooperative education experiences, or workforce credentials under IC 20-32-4-4(a)(6)(A).

(4) Recommendations to assist the student in meeting postsecondary goals, including accommodations, modifications, or assistive technology utilized by the student and identified by the student as particularly helpful or necessary to meet academic or functional goals, or both.

(Indiana State Board of Education; 511 IAC 7-43-7; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 33. 511 IAC 7-44-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-44-1 Removals and services in general

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

Affected: IC 20-19-2; IC 20-33-8-7; IC 20-35

Sec. 1. (a) 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 removal in a school year, for violating a code of student conduct, if services are not provided to a nondisabled student who has been similarly removed. **During any subsequent days of removal, the public agency must provide services to the extent required under sections 3, 5, and 6 of this rule.**

(b) Removal of a student for any part of a day constitutes a day of removal.

(c) A short-term removal of a student pursuant to the student's IEP is not a removal under this rule.

(d) A suspension is a removal. However, an in-school suspension is not considered a removal 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 IEP; and

(3) participate with nondisabled students to the extent the student would have in the student's current placement.

(e) If the bus transportation is a part of the student's IEP, a suspension from the bus would be a removal, unless the public agency provides transportation in an alternative manner.

(f) A removal under this rule constitutes a suspension as defined in IC 20-33-8-7. A public agency's suspension procedures must comply with Indiana statutes and this article.

(g) If a student is removed for more than ten (10) consecutive instructional days in a school year, the public agency must abide by the requirements in sections 4 and 5 of this rule.

(h) If a student is removed for more than ten (10) cumulative instructional days in a school year, the public agency must determine if a change of placement has occurred in accordance with section 2 of this rule. If the public agency determines:

(1) that a change of placement has occurred, the public agency must abide by the requirements in sections 4 and 5 of this rule; or

(2) that a change of placement has not occurred, the public agency must abide by the requirements in section 3 of this rule.

(Indiana State Board of Education; 511 IAC 7-44-1; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; errata filed Jul 31, 2008, 2:50 p.m.: 20080813-IR-511080112ACA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 34. 511 IAC 7-44-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-44-2 Disciplinary change of placement

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

Affected: IC 20-19-2; IC 20-35

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

Sec. 2. (a) **Consistent with other requirements in this rule, the public agency may consider any unique circumstances on a case-by-case basis when determining whether a change in placement is appropriate for a student with a disability who violates a code of student conduct. Unique circumstances include, but are not limited to, the following:**

(1) **A student's:**

(A) **disciplinary history; and**

(B) **ability to understand consequences.**

(2) **Supports provided to the student prior to violating a code of student conduct.**

(3) **Other relevant considerations.**

(a) (b) A removal or a series of removals from a student's current educational placement results in a change of placement under this rule in the following situations:

(1) The removal is for more than ten (10) consecutive instructional days; or

(2) The student is subjected to a series of removals that constitute a pattern because:

(A) the series of removals cumulate to more than ten (10) instructional days in a school year;

(B) the student's behavior is substantially similar to the student's behavior in previous incidents that resulted in the series of removal; and

(C) of such additional factors as the:

(i) length of each removal;

(ii) cumulative amount of time the student has been removed; and

(iii) proximity of the removals to one another.

(b) (c) The public agency determines on a case-by-case basis whether a series of removal under subsection (a)(2) (b)(2) constitutes a pattern that results in a change of placement for the student.

~~(c) The public agency may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with other requirements in this rule, is appropriate for a student with a disability who violates a code of student conduct. Unique circumstances may include the following:~~

~~(1) A student's:~~

~~(A) disciplinary history; and~~

~~(B) ability to understand consequences.~~

~~(2) Supports provided to the student prior to violating a code of student conduct.~~

~~(3) Other relevant considerations.~~

~~(d) The public agency does not need parental consent for a disciplinary change of placement under this rule.~~

(d) (d) The parent of a student with a disability who disagrees with a decision regarding a student's change of placement under this rule may request the following:

(1) Mediation in accordance with 511 IAC 7-45-2.

(2) A due process hearing in accordance with 511 IAC 7-45-3 or 511 IAC 7-45-10.

(3) Simultaneously, mediation and a due process hearing.

(e) (e) Upon a parent's request for a due process hearing, the ~~department of education~~ **state educational agency** shall arrange for an expedited hearing pursuant to 511 IAC 7-45-10.

(f) (f) In reviewing a decision regarding change of placement, an independent hearing officer may return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this rule.

(Indiana State Board of Education; 511 IAC 7-44-2; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 35. 511 IAC 7-44-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-44-3 Removals of more than 10 cumulative days that do not result in a change of placement

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

Affected: IC 20-19-2; IC 20-35

Sec. 3. (a) When a student has been removed for more than ten (10) cumulative instructional days in the same school year, but the removals do not constitute a pattern that results in a change of placement under section ~~2(a)(2)~~ **2(b)(2)** of this rule, school personnel, in consultation with at least one (1) of the student's teachers, determine the extent to which services are needed to enable the student to do the following:

- (1) Continue to participate in the general education curriculum, although in another setting.
- (2) Progress toward meeting the goals set out in the student's IEP.

(b) The services required by subsection (a) may be provided in an interim alternative education.

(Indiana State Board of Education; 511 IAC 7-44-3; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 36. 511 IAC 7-44-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-44-4 Removals of more than 10 consecutive days or 10 cumulative days that results in a change of placement

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

Affected: IC 20-19-2; IC 20-35

Sec. 4. (a) When a decision is made to make a removal that constitutes a change of placement, the public agency must notify the student's parent and provide the parent with the notice of procedural safeguards described in 511 IAC 7-37-1. A change of placement occurs when a student has been removed for more than ten (10):

- (1) consecutive instructional days in the same school year; or
- (2) cumulative instructional days in the same school year if the removals constitute a pattern that results in a change of placement under section ~~2(a)(2)~~ **2(b)(2)** of this rule.

(b) The notice required in subsection (a) must be provided by the public agency on the date the public agency decides to make a removal that results in a change of placement. The public agency must make and document reasonable efforts to:

- (1) notify the parents of that decision; and
- (2) provide the parents with the notice of procedural safeguards.

(c) If the public agency is unable to notify the parent on the date a decision is made under subsection (b), notice must be mailed to the parent not later than the following business day.

(d) A manifestation determination must be conducted according to the requirements in section 5 of this rule.

(Indiana State Board of Education; 511 IAC 7-44-4; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 37. 511 IAC 7-44-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-44-6 Interim alternative educational setting; weapons, drugs, and serious bodily injury

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

Affected: IC 20-19-2; IC 20-35

Sec. 6. (a) The principal or the principal's designee may remove a student to an interim alternative educational setting for not more than forty-five (45) instructional days without regard to whether the behavior is determined to be a manifestation of the student's disability, if the student:

- (1) carries a weapon to school or possesses a weapon **at school, on school premises, or to or at a school function under the jurisdiction of the state educational agency or a public agency;**
- (2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, **while at school, on school premises, or at a school function under the jurisdiction of the state educational agency or a public agency;** or
- (3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the ~~department of education~~ **state educational agency** or a public agency.

(b) The public agency must do the following:

- (1) Notify the student's parent.

(2) Provide the parent with the notice of procedural safeguards as specified in section 4 of this rule.

(c) A manifestation determination must be conducted as specified in section 5 of this rule. However, if the student's conduct is determined to be a manifestation of the student's disability, the student remains in the interim alternative education setting.

(d) The student's CCC must determine the interim alternative educational setting and appropriate services needed to enable the student to do the following:

(1) Continue to participate in the general education curriculum, although in another setting.

(2) Progress toward meeting the goals set out in the student's IEP.

(3) Receive, as appropriate, a functional behavioral assessment and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

(e) The parent of a student with a disability may challenge the interim alternative education placement by requesting one (1) of the following:

(1) Mediation in accordance with 511 IAC 7-45-2.

(2) A due process hearing in accordance with 511 IAC 7-45-3 or 511 IAC 7-45-10.

(3) Simultaneously, mediation and a due process hearing.

(f) The ~~department of education~~ **state educational agency** shall arrange for an expedited hearing under 511 IAC 7-45-10. The student's placement during an expedited due process hearing is governed by section 8 of this rule.

(g) In reviewing a decision under this section to place the student in an interim alternative educational setting, the independent hearing officer may return the student with a disability to the placement from which the student was removed if the hearing officer determines that the removal was a violation of this rule.

(h) For purposes of this section, a school function includes anything sponsored, funded, hosted, staffed, or managed by a public agency.

(Indiana State Board of Education; 511 IAC 7-44-6; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 38. 511 IAC 7-45-0.5 IS ADDED TO READ AS FOLLOWS:

511 IAC 7-45-0.5 Dispute Resolution: Complaint, Mediation, Due Process Hearing

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

Affected: IC 20-19-2; IC 20-35

Sec. 0.5. (a) In order to protect the confidentiality of personally identifiable student information, attorneys representing a student, parent, public agency, or any other party in connection with a complaint, mediation, or due process hearing must utilize the state educational agency's secure electronic filing system for submitting documents or pleadings, and to ensure secure service to the state educational agency, complaint investigator, mediator, independent hearing officer and opposing counsel in due process hearings.

(b) Pro se parents and complainants are encouraged, but not required, to utilize the secure electronic filing system. If the electronic filing system is not used, a pro se parent or complainant may submit documentation or pleadings by facsimile transmission (FAX) or first class mail.

(c) No correspondence, documents, or pleadings are to be sent by electronic mail (email) and electronic mail will not be accepted by the state educational agency, complaint investigators, or independent hearing officers in connection with any dispute resolution process.

(Indiana State Board of Education; 511 IAC 7-45-0.5)

SECTION 39. 511 IAC 7-45-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-2 Mediation

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

Affected: IC 20-19-2; IC 20-35

Sec. 2. (a) **The purpose of mediation is to offer both the parent and the public agency the opportunity to resolve disputes and reach a mutually acceptable agreement using an impartial mediator.** ~~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 is voluntary, may be initiated by either the parent or the public agency, and requires the agreement of both the parent and the public agency to begin the process. It may be terminated by either party at any time during the mediation process.~~ 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:
 - (A) educational evaluation; or
 - (B) student's proposed or current special education services or placement.
- (3) ~~Any other dispute involving the provision of a free appropriate public education to the student.~~ **Reimbursement for services obtained by the parent.**
- (4) ~~Reimbursement for services obtained by the parent.~~ **Any other dispute involving the provision of a free appropriate public education to the student.**

(b) Mediation may occur prior to or concurrent with a request for a due process hearing. A request for mediation shall not:

- (1) preclude or delay a due process hearing; or
- (2) deny any other rights afforded in this article.
- (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~~ **state educational agency** or the public agency that is involved in the education or care of the student.

(e) The division of special education shall do the following:

- (1) Maintain a current list of the persons who serve as mediators, including information on the qualifications of those persons.
- (2) On a general rotation basis, 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~~ **state educational agency** solely because he or she is paid by the ~~department of education~~ **state educational agency** to serve as a mediator.

(f) Each session in the mediation process shall be:

- (1) scheduled in a timely manner; and
- (2) held in a location that is convenient to the parties to the dispute.

(g) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding written mediation agreement that sets forth the parties' resolution. The written mediation agreement must:

- (1) be signed by the parent and a representative of the public agency who has the authority to bind the agency; and
- (2) state that all discussions that occurred during the mediation process will:
 - (A) remain confidential; and
 - (B) not be used as evidence in any subsequent due process hearing or civil proceeding.

(h) A written, signed mediation agreement under this section is enforceable in any state court of competent jurisdiction or in a district court of the United States. Discussions that occur during the mediation process:

- (1) must be confidential; and
- (2) may not be used as evidence in any subsequent due process hearings or civil proceedings of any federal or state court.

(i) In addition to the enforcement mechanisms **in** subsection (h), a **parent may utilize** ~~written, signed mediation agreement under this section is enforceable through~~ the complaint process in section 1 of this rule **to allege the public agency is not implementing the mediation agreement.** However, use of the complaint process:

- (1) is not mandatory; and

- (2) does not delay or deny a party the right to seek enforcement of the written agreement in a:
 - (A) state court of competent jurisdiction; or
 - (B) district court of the United States.

(j) A public agency may establish procedures to offer parents and schools that choose not to use the mediation process an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who:

- (1) is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center established under Sections 1471 or 1472 of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq.; and
- (2) would:
 - (A) explain the benefits of the mediation process; and
 - (B) encourage the parents to use the process.

The 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 7-45-2; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 40. 511 IAC 7-45-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-3 Due process hearing requests

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

Affected: IC 20-19-2; IC 20-35

Sec. 3. (a) A parent, a public agency, or the the state educational agency may initiate a due process hearing that is conducted by an independent hearing officer when there is a dispute regarding any of the following:

- (1) A student's identification and eligibility for services under this article.
- (2) The appropriateness of the:
 - (A) educational evaluation; or
 - (B) student's proposed or current level of special education services or placement.
- (3) Any other dispute involving the provision of a free appropriate public education for the student.

(b) 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:
 - (A) the student's name and address; or
 - (B) in the case of a homeless student as defined at 511 IAC 7-32-46, available contact information for the student;
- (3) include the name of the school the student is attending;
- (4) specify the reasons for the hearing request including:
 - (A) a description of the nature of the problem; and
 - (B) any facts related to the problem;
- (5) include a proposed resolution of the problem to the extent known and available to the **party parents** at the time; and
- (6) be sent simultaneously to the ~~superintendent of public instruction~~ **secretary of education** and the opposing party.

(c) The due process hearing request must allege a violation that occurred not more than two (2) years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process hearing request unless the parent was prevented from filing a due process hearing request due to:

- (1) specific misrepresentations by the public agency that it had resolved the problems forming the basis of the due process hearing; or
 - (2) the public agency's withholding of information from the parent that was required under this article to be provided to the parent.
- (d) The ~~state superintendent of public instruction~~ **secretary of education** shall appoint the independent hearing officer.

When a due process hearing request is received, the ~~department of education~~ **state educational agency** shall send the public agency and the parent a:

- (1) written notice of the name of the independent hearing officer who has been appointed; and
- (2) copy of the letter requesting a due process hearing.

(e) The public agency must 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 files a due process hearing request under this section.

(f) Due process timelines begin upon the opposing party's receipt of the due process hearing request.

(Indiana State Board of Education; 511 IAC 7-45-3; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; filed May 25, 2010, 8:19 a.m.: 20100623-IR-511090795FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 41. 511 IAC 7-45-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-4 Sufficiency of the request for a due process hearing

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

Affected: IC 20-19-2; IC 20-35

Sec. 4. (a) A party may not have a hearing on the issues contained in a due process hearing request until the:

- (1) party; or
- (2) attorney representing the party;

files a due process hearing request that meets the requirements of section 3(b) of this rule.

(b) The due process hearing request must be deemed sufficient unless the party receiving the due process hearing request notifies the hearing officer and the other party in writing that the request does not meet the requirements set forth in section 3(b) of this rule. An allegation that the due process hearing request is insufficient must:

- (1) be filed by the receiving party within fifteen (15) calendar days of receipt of the due process hearing request; and
- (2) identify how the request is insufficient.

(c) Within five (5) calendar days of receipt of notification that a party believes a due process hearing request is insufficient, the independent hearing officer must:

- (1) make a determination on the face of the due process hearing request of whether it meets the requirements set forth in section 3(b) of this rule; and
- (2) immediately notify the parties in writing of that determination.

If the hearing officer determines that the notice is not sufficient, the hearing officer's decision must identify how the notice is insufficient **and provide a date by which the** ~~so that the~~ filing party can amend the notice if appropriate.

(d) **A For reasons other than a determination of insufficiency**, a party may amend its due process hearing request only if the:

- (1) other party:
 - (A) consents in writing to the amendment; and
 - (B) is given the opportunity to resolve the due process hearing request issues through a resolution meeting held under section 6 of this rule; or
- (2) party submits a motion identifying reasons for the proposed amendment and the hearing officer grants permission, except that the hearing officer may only grant permission to amend at any time not later than five (5) days before the due process hearing is scheduled to begin.

(e) If a party files an amended due process hearing request, the:

- (1) timelines for the resolution meeting in section 6(a) of this rule; and
- (2) resolution process in section 6(i) of this rule;

begin again with the filing of the amended due process hearing request.

(f) If the due process hearing request is:

- (1) determined insufficient; and
- (2) not amended;

the due process hearing request may be dismissed.

(Indiana State Board of Education; 511 IAC 7-45-4; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 42. 511 IAC 7-45-5 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-5 Responding to the request for a due process hearing

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

Affected: IC 20-19-2; IC 20-35

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

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

(1) An explanation of why the public agency proposed or refused to take the action raised in the due process hearing request.

(2) A description of the following:

(A) Other options considered by the CCC and the reasons why those options were rejected.

(B) Each:

(i) evaluation procedure;

(ii) assessment;

(iii) record; or

(iv) report;

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

(C) Other factors that are relevant to the public agency's proposed or refused action.

(c) If the party receiving the due process hearing request is the public agency, it shall provide the parent and the hearing officer with a copy of every IEP developed and report of every educational evaluation conducted by the public agency during the two years immediately preceding the filing of the hearing request. If the public agency did not conduct an educational evaluation within the two year period, it shall provide a copy of the report from the most recent educational evaluation conducted regardless of the time period.

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

(Indiana State Board of Education; 511 IAC 7-45-5; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 43. 511 IAC 7-45-6 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-6 Resolution process

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

Affected: IC 20-19-2; IC 20-35

Sec. 6. (a) Within fifteen (15) calendar days of receiving notice of the parent's due process hearing request, and prior to the initiation of a due process hearing, the public agency must convene a meeting with the parent and the relevant members of the CCC who have specific knowledge of the facts identified in the due process hearing request, ~~as determined by the parent and the public agency.~~ **The parent and the public agency each determine their respective members of the CCC to attend the meeting.**

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

(b) A public agency does not have to convene a resolution meeting if the due process hearing request was made by the public agency.

(c) The purpose of the resolution meeting is for the parent to discuss the:

- (1) due process hearing request; and
- (2) facts that form the basis of the request;

so that the public agency has the opportunity to resolve the dispute that is the basis of the request. Resolution meetings must be conducted according to this section.

(d) The resolution meeting need not be held if the parents and the public agency agree:

- (1) in writing to waive the meeting; or
- (2) to use the mediation process described in section 2 of this rule.

Mediation does not extend the thirty (30) day resolution process timeline in subsection (f) unless the parties agree in writing to extend the process.

(e) The resolution meeting:

- (1) must include a representative of the public agency that has decision making authority on behalf of that agency; and
- (2) may not include an attorney of the public agency unless the parent is accompanied by an attorney.

(f) If the public agency has not resolved the dispute that is the basis for the due process hearing request to the satisfaction of the parent within thirty (30) days of the receipt of the due process hearing request, the forty-five (45) day due process hearing timeline in section 7 of this rule will commence. The forty-five (45) day timeline also commences the day after each of the following events:

- (1) Both parties agree in writing to waive the resolution meeting.
- (2) After either the mediation or resolution meeting starts, but before the end of the thirty (30) day resolution period, the parties agree in writing that no agreement is possible.
- (3) Both parties agree in writing to continue the mediation at the end of thirty (30) day resolution period, but later the parent or the public agency withdraws from the mediation process.

(g) Except as provided in subsection (f), the failure of the parent requesting a due process hearing to participate in the resolution meeting will delay the timelines for the:

- (1) resolution process; and
- (2) due process hearing;

until the meeting is held.

(h) The public agency must keep a record of its attempts to secure the participation of the parent in the resolution meeting, such as the following:

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

(i) If the public agency is unable to obtain the participation of the parent in the resolution meeting after reasonable efforts have been made and documented in accordance with subsection (h), the public agency may, at the conclusion of the thirty (30) day period in subsection (f), request that a hearing officer dismiss the parent's due process hearing request.

(j) If the public agency fails to hold or participate in the resolution meeting specified in subsection (a) within fifteen (15) days of receiving notice of a parent's due process hearing request, the parent may seek the intervention of a hearing officer to begin the forty-five (45) calendar day due process hearing timeline.

(k) If resolution to the dispute is reached at the resolution meeting, the parties must execute a legally binding agreement that is:

- (1) signed by both:
 - (A) the parent; and
 - (B) a representative of the agency who has the authority to bind the agency; and

- (2) enforceable in:
 - (A) any state court of competent jurisdiction; or
 - (B) a district court of the United States.

(l) If the parties execute an agreement as a result of a resolution meeting held in accordance (l) with subsection (a), a party may void the agreement by notifying the other person in writing within three (3) business days of the agreement's execution.

(m) In addition to the enforcement mechanisms in subsection (k)(2), a written, signed resolution agreement under this section is enforceable through the complaint process in section 1 of this rule. However, use of the complaint process:

- (1) is not mandatory; and
- (2) does not delay or deny a party the right to seek enforcement of the ~~resolution~~ agreement in a:
 - (A) state court of competent jurisdiction; or
 - (B) district court of the United States.

(Indiana State Board of Education; 511 IAC 7-45-6; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 44. 511 IAC 7-45-6.5 IS ADDED TO READ AS FOLLOWS:

511 IAC 7-45-6.5 Prehearing procedures

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

Affected: IC 20-19-2; IC 20-35

Sec. 6.5. (a) An initial prehearing conference shall be conducted as follows:

(1) If the hearing was requested by the parent, the prehearing conference shall be conducted as soon as practical after the time for the resolution meeting but prior to the expiration of the resolution period and before the start of the hearing timeline.

(2) If the hearing was requested by the public agency, the prehearing conference shall be conducted no later than fifteen (15) days after the parent received the hearing request.

(b) The independent hearing officer shall address the following matters at the initial prehearing conference;

(1) Resolution of the issues when the independent hearing officer has received a motion for summary judgment.

(2) Identification and clarification of the issues. For each issue identified, the party requesting the hearing shall provide facts specific to the issue, as well as a proposed resolution. In the event that additional issues are added by the other party, that party shall provide facts specific to the additional issues as well as a proposed resolution.

(3) Exploration of settlement possibilities.

(4) Preparation of stipulations by the parties and deadline for submission of stipulations on evidence to be admitted at hearing.

(5) Determination of the number of days for hearing and the limit on the length of time for each witness to testify.

(6) The order of presentation of evidence and cross-examination.

(7) Rulings regarding the issuance of subpoenas, discovery orders, and protective orders.

(8) Such other matters as will promote the orderly and prompt conduct of the hearing.

(c) The independent hearing officer shall identify the parties and their representatives and obtain mailing addresses, fax numbers, and other contact and service information. If a party is represented by more than one attorney, that party must designate one attorney to serve as the lead attorney. Only the calendar of the lead attorney, and not multiple attorneys, need be consulted for scheduling.

(d) The independent hearing officer shall advise the parties of their rights as set forth in section 7(d) & (e).

(e) A party may seek an order compelling discovery. The independent hearing officer shall not grant the order unless:

(1) The party requesting the discovery order shows the opposing party failed to respond to an informal request;

(2) The information requested is relevant to an identified issue; and

(3) The request is not overly burdensome.

(f) Whenever a prehearing conference is conducted, the independent hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

(Indiana State Board of Education; 511 IAC 7-45-6.5)

SECTION 45. 511 IAC 7-45-7 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-7 Conducting the hearing

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

Affected: IC 20-19-2; IC 20-35

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

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

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

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

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

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

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

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

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

(2) Be represented by an individual who is not an attorney as permitted by IC 4-21.5-3-15(b)

(3) Present evidence and:

- (A) confront;
- (B) cross-examine; and
- (C) compel the attendance of;

witnesses.

(4) Conduct discovery in accordance with IC 4-21.5-3, Indiana Rules of Trial Procedure, and ~~this~~ section 6.5.

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

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

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

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

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

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

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

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

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

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

- (A) due process hearing; or
- (B) judicial review.

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

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

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

(1) Issue subpoenas.

- (2) Determine whether individuals are knowledgeable with respect to special education in order to assist in the proceedings.
- (3) Frame and consolidate issues in the hearing to provide clarity.
- (4) Rule on any other matters with respect to the conduct of a due process hearing, subject to administrative or judicial review of abuse of such discretion or authority, mistake in law as to exercise of such discretion or authority, or that such authority was exercised in an arbitrary or capricious manner.
- (5) Bar any party that fails to comply with subsection (h) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.
- (6) Order a student with a disability to be placed in an interim alternative educational setting for not more than forty-five (45) instructional days under 511 IAC 7-44-7.
- (g) The party requesting the due process hearing may not raise issues at the hearing that were not raised in the due process hearing request unless the other party agrees otherwise. However, nothing in this rule shall be construed to preclude a party from filing a separate due process hearing request on an issue separate from the due process hearing already requested.
- (h) At least five (5) business days prior to the hearing, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. A hearing officer may bar any party that fails to comply with this subsection from introducing the relevant evaluation or recommendation at the hearing without consent of the other party.
 - (i) The party requesting the due process hearing:
 - (1) shall present evidence and testimony first regarding the appropriateness of the proposed or refused action; and
 - (2) has the burden of persuading the hearing officer of its position.
 - (j) The independent hearing officer shall render a written or, at the option of the parents, an electronic decision. The decision shall be dated and must include the following:
 - (1) Findings of fact and conclusions of law.
 - (2) A decision and orders, if necessary.
 - (3) A notice that a party may seek judicial review of the decision and orders by filing a petition for judicial review in a civil court with jurisdiction within thirty (30) calendar days after receipt of the independent hearing officer's final decision.
 - (4) A notice that an action for attorney's fees must be filed in a civil court within thirty (30) calendar days after receipt of the independent hearing officer's final decision if no request for judicial review is filed.
 - (k) The decision of the independent hearing officer shall be based solely upon the oral and written evidence presented at the hearing. In addition, an independent hearing officer's determination of whether a student received a free appropriate public education must be based on substantive grounds. In matters alleging a procedural violation, an independent hearing officer may find that a student did not receive a free appropriate public education only if the procedural inadequacies:
 - (1) impeded the child's right to a free appropriate public education;
 - (2) significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of a free appropriate public education to the parent's child; or
 - (3) caused a deprivation of educational benefit.
 - (l) Nothing in subsection (k) shall be construed to preclude an independent hearing officer from ordering a public agency to comply with procedural requirements under this rule and 511 IAC 7-37.
 - (m) The independent hearing officer shall serve the decision electronically to parties in the electronic filing system. If a party is not accessing the electronic filing system, the independent hearing officer shall mail a copy of the hearing decision via certified mail, return receipt requested, to each party involved in the hearing. The independent hearing officer's decision is a final order unless a petition for judicial review is filed as described in section 9 of this rule.
 - (n) Any party involved shall have thirty (30) calendar days from the date the independent hearing officer's written decision is received to:
 - (1) implement the order or orders in the hearing decision; or
 - (2) file a petition for judicial review as described in section 9 of this rule.
 - (o) A verbatim transcript of the hearing shall be made. The independent hearing officer is responsible for:
 - (1) ensuring the hearing is transcribed; and
 - (2) determining from the parents at the outset of the hearing whether the transcription will be written or electronic.The transcript shall be made available by the division of special education at no cost and upon the request of any party to the hearing at the conclusion of the hearing.
 - (p) Due process hearings under this section shall be:

(1) conducted under IC 4-21.5-3 and this section; and

(2) held at a time and place reasonably convenient to all parties to the hearing.

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

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

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

(s) If the issue of the proceedings involves initial enrollment in a public school, the student, with the consent of the parent, shall be placed in the public school program until the completion of the proceedings. If the parties cannot agree to the student's placement during the proceedings, the independent hearing officer shall determine the student's placement as a preliminary matter to the conduct of the due process hearing.

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

(1) child is found eligible for special education and related services under Part B; and

(2) parent consents to the initial provision of special education and related services;

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

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

(1) proceedings extend beyond the end of the school year; and

(2) placement includes normal grade advancement;

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

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

(1) The original hearing decision.

(2) The transcript of the hearing.

(3) The exhibits admitted by the independent hearing officer.

(4) All:

(A) notices;

(B) pleadings;

(C) exceptions;

(D) motions;

(E) requests; and

(F) other papers;

filed in the hearing.

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

(1) Transmit a copy of the document to the state advisory council on the education of children with disabilities.

(2) Maintain a copy of the document for public review in its offices for at least five (5) years after administrative remedies have been exhausted and any litigation completed.

(Indiana State Board of Education; 511 IAC 7-45-7; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; filed Dec 3, 2009, 1:50 p.m.: 20091230-IR-511090057FRA; filed May 25, 2010, 8:19 a.m.: 20100623-IR-511090795FRA; errata filed Jun 29, 2010, 3:14 p.m.: 20100714-IR-511090795ACA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 46. 511 IAC 7-45-8 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-8 Independent hearing officer qualifications

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

Affected: IC 4-21.5-3; IC 20-19-2; IC 20-35

Sec. 8. (a) A person who may be appointed as an independent hearing officer must:

- (1) have no personal or professional interest that would conflict with the person's objectivity in the hearing;
- (2) not be an officer, employee, or agent of the public agency, the ~~department of education~~ **state educational agency**, or any other agency that may be involved in the education or care of the student;
- (3) possess knowledge of and the ability to understand the provisions of:
 - (A) the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq. (IDEA);
 - (B) federal regulations implementing the IDEA;
 - (C) legal interpretations of the IDEA by federal and state courts; and
 - (D) this article;
- (4) be trained in the due process hearing procedures to ensure the ability to conduct hearings in accordance with IC 4-21.5-3;
- (5) possess the knowledge and the ability to render and write decisions in accordance with appropriate, standard legal practice; and
- (6) be subject to any other qualifications established by the ~~superintendent of public instruction~~ **secretary of education**.

(b) 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.

(Indiana State Board of Education; 511 IAC 7-45-8; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 47. 511 IAC 7-45-10 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-45-10 Expedited due process hearings and petition for judicial review

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

Affected: IC 4-21.5-3; IC 20-19-2; IC 20-35

Sec. 10. (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) a determination that the student's behavior was not a manifestation of the student's disability; or
 - (B) the public agency's decision regarding the student's disciplinary change of placement under ~~511 IAC 7-44-3~~ **511 IAC 7-44-2**.

(2) 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 under IC 4-21.5-3 and sections 3 through 8 of this rule, except that:

- (1) the expedited due process hearing must:
 - (A) occur within twenty (20) instructional days of the date the request was received by the public agency; and
 - (B) result in a determination within ten (10) instructional days after the hearing;
- (2) a resolution meeting under section 6 of this rule must occur within seven (7) calendar days of the date the hearing request was received by the public agency, unless the parties agree:
 - (A) in writing to waive the resolution meeting; or

(B) to use the mediation process described in section 2 of this rule;

(3) the hearing may proceed unless the matter has been resolved to the satisfaction of both parties within fifteen calendar (15) days of the receipt of the hearing request;

(4) the independent hearing officer shall not grant any extensions of time; and

(5) the requirements of sufficiency in section 4 of this rule are not applicable to expedited due process hearings.

(c) An expedited due process hearing must be conducted by an independent hearing officer who meets the requirements under section 8 of this rule.

(d) Any party who disagrees with the independent hearing officer's decision in an expedited due process hearing may file a petition for review of the decision in accordance with section 9 of this rule.

~~(e) At any time after the initiation of an expedited due process hearing the parties may agree to waive the requirements of the expedited process and proceed under sections 3 through 6 of this rule for a due process hearing.~~

(Indiana State Board of Education; 511 IAC 7-45-10; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; filed May 25, 2010, 8:19 a.m.: 20100623-IR-511090795FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 48. 511 IAC 7-46-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-46-1 Federal child count procedures

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

Affected: IC 20-19-2; IC 20-35

Sec. 1. (a) On December 1 of each year, each public agency must count the number of students:

(1) eligible for special education and related services; and

(2) receiving services on that date.

If December 1 is not a school or program day, the closest instructional day must be used for the count.

(b) The ~~department of education~~ **state educational agency** must do the following:

(1) Report ~~not 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 **by the date established by the United States Department of Education.**

(2) Include in its report a certification signed by an authorized official of the ~~department of education~~ **state educational agency** that the count is accurate and unduplicated.

(c) The child count report must 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; or

(B) only special education services if related services are not necessary for the students to benefit from special education.

(2) A count of students with disabilities enrolled by their parents in nonpublic schools who are eligible for special education and related services and receive special education or related services, or both, in accordance with 511 IAC 7-34, provided must meet the standards of this article.

(3) A count of students specified by age on the child count date from three (3) years of age through the school year in which the students become twenty-two (22) years of age within each disability category.

(4) Students placed in nonpublic residential special schools under 511 IAC 7-42-13.

(d) The following students must 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 benefiting from special education.

(e) The ~~department of education~~ **state educational agency** must 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:

- (A) noncumulative;
- (B) unduplicated; and
- (C) accurate.

(4) Aggregate the data obtained from each public agency and prepare the required reports in a form that 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 ~~department of education~~ **state educational agency** must collect and report annually required data to the United States Secretary of Education. The data that is publicly reported by the ~~department of education~~ **state educational agency** must be reported in a manner that does not result in disclosure of data identifiable to individual students.

(Indiana State Board of Education; 511 IAC 7-46-1; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 49. 511 IAC 7-47-1 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-47-1 Application from school corporation of legal settlement or charter school

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

Affected: IC 20-19-2; IC 20-35-6-2

Sec. 1. (a) To the extent that state funds are appropriated, the ~~state superintendent of public instruction~~ **secretary of education** is authorized, under IC 20-35-6-2, to enter into contracts to fund the excess costs of educating students whose disabilities are of such intensity as to preclude achievement in the existing local public school setting. Excess cost funding may pay for services that include, but are not limited to, the following:

- (1) A public or private residential program when services in a residential setting are necessary for the student to benefit from special education.
- (2) Nonresidential 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.

(b) The division of special education must establish an application process described in a procedure manual that includes requirements for applications of excess cost funding. The division is authorized to revise the procedure manual as needed.

(c) A school corporation of legal settlement or a charter school may apply to the division of special education for excess cost funding when a student's CCC has determined, in accordance with 511 IAC 7-42, that a student requires services involving excess costs. However, nothing in this rule restricts a public agency from utilizing its own resources to pay for excess costs.

(d) When an application for funding of excess costs has been approved, in whole or in part, the ~~superintendent of public instruction~~ **secretary of education** will contract, as authorized by IC 20-35-6-2, or arrange an interagency transfer of funds, to pay for excess costs. The school corporation of legal settlement or the charter school must pay a share of the excess costs consisting of its per capita cost of general education, its paraprofessional rate, or transfer tuition. Approval of an application for excess cost funding cannot be retroactive, and expenses incurred prior to the date of approval are not eligible for reimbursement.
(Indiana State Board of Education; 511 IAC 7-47-1; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 50. 511 IAC 7-47-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-47-2 Appeal from denial of application

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

Affected: IC 20-19-2; IC 20-35

Sec. 2. (a) The division of special education's denial of an application for excess cost funding is a denial of funding, not a denial of services. The division of special education's denial is not a disagreement with a student's CCC regarding appropriate services for the student or the provision of a free appropriate public education. A denial means that the application did not:

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

- (1) include required information; or
- (2) demonstrate eligibility for excess cost funding.

(b) When an application for excess cost funding is denied, in whole or in part, by the division of special education, the school corporation of legal settlement or the governing body of the charter school may appeal the denial by requesting a hearing. As follows, the hearing request must:

(1) Be sent to the ~~superintendent of public instruction~~ **secretary of education** by certified mail within thirty (30) calendar days of the date the division of special education denied the application for excess cost funding. For purposes of this rule, the date of denial by the division of special education is the date when the notice of denial was sent to the applicant.

(2) Explain why the application should be approved, including how the application contains the required information necessary to demonstrate eligibility for excess cost funding.

(c) Upon receipt of a hearing request, the ~~superintendent of public instruction~~ **secretary of education** must select three (3) employees from the department of education to serve on the hearing appeals panel, designating one (1) member of the panel to serve as the panel's chairperson. Members of the panel cannot be from the division of special education.

(d) A hearing must be scheduled before the hearing appeals panel within thirty (30) calendar days from the receipt of the request by the ~~superintendent of public instruction~~ **secretary of education**. The hearing appeals panel chairperson must give at least ten (10) calendar days notice of the hearing date, time, and location to the party appealing the denied application.

(e) The appealing party and the department of education must submit six (6) copies of written materials to the hearing appeals panel not later than five (5) days prior to the hearing.

(f) At the hearing, the parties may:

(1) present evidence:

(A) in writing; and

(B) through witnesses; and

(2) be represented by counsel.

The length and order of the presentation will be determined by the hearing appeals panel chairperson.

(g) If the appealing party or authorized representative fails to appear at the designated date, time, and location of the hearing, the:

(1) appeal shall be considered closed; and

(2) process terminated.

(h) Not later than ten (10) calendar days after the hearing, the hearing appeals panel must issue a written decision, including findings of fact and reasons for the decision. The written decision must be sent by certified mail to the party appealing the denial of application.

(i) If the hearing appeals panel does not rescind the division of special education's denial of application, the applicant may appeal to a civil court of competent jurisdiction within thirty (30) calendar days of the applicant receiving the decision of the hearing appeals panel.

(Indiana State Board of Education; 511 IAC 7-47-2; filed Jul 14, 2008, 1:24 p.m.: 20080813-IR-511080112FRA; readopted filed Nov 6, 2014, 3:23 p.m.: 20141203-IR-511140382RFA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 51. 511 IAC 7-49-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-1 Definitions

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-~~128~~-2-16.
- (3) A charter school as defined in IC 20-24-1-4.

SECTION 52. 511 IAC 7-49-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-2 Definitions

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

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 who has been awarded a choice scholarship under IC 20-51-4-4(a)(2).
- (2) "Choice school" means a nonpublic school designated by the department as an eligible school under IC 20-51-1-4.7 and 512 IAC 4.
- (3) "Choice special education plan" or "CSEP" means the written document developed by the choice scholarship education planning team that describes the special education and related services the choice school will provide to the choice scholarship student with a disability.
- (4) "Department" means the department of education established by IC 20-19-3-1.
- (5) "Division of special education" means the division of special education established by IC 20-35-2-1.
- (6) "Local school corporation" means the school corporation where the choice school is located. If the choice school is a virtual school, the local school corporation is the school corporation where the student has legal settlement, as determined under I.C. 20-26-11-2.**

(Indiana State Board of Education; 511 IAC 7-49-2; filed Nov 25, 2014, 3:40 p.m.: 20141224-IR-511130560FRA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 53. 511 IAC 7-49-4 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-4 Choice scholarship special education plan

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4

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

- (1) determine the choice scholarship student's special education and related service needs; and
- (2) develop a CSEP for the choice scholarship student.
- (b) The CSEP shall be in writing and, at a minimum, include the following components:
 - (1) Measurable goals.
 - (2) Information on how the student's progress will be monitored and how parents will be informed of the progress.
 - (3) ~~Accommodations~~ **The special education and related services** that the choice school will provide to the student, including accommodations needed for the student to participate in statewide assessments.
 - (4) The length, frequency, and duration of the special education and related services to be provided.
- (c) The CSEP shall include statements to inform the parents of the following:
 - (1) The parent must provide written consent in order for the choice school to implement the CSEP.
 - (2) The parent may revoke consent at any time by providing a signed written statement revoking such consent.
 - (3) Revocation of consent encompasses the entire CSEP.
 - (4) Upon receipt of the written revocation, the choice school will stop implementing the CSEP.
- (d) A parent may request a meeting at any time to review the CSEP. The choice school shall convene a meeting to review the CSEP within a reasonable time after receiving the request.

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

(Indiana State Board of Education; 511 IAC 7-49-4; filed Nov 25, 2014, 3:40 p.m.: 20141224-IR-511130560FRA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 54. 511 IAC 7-49-10 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-49-10 Proportionate share

▪ 143 W. Market Street, Suite 500 ▪ Indianapolis, Indiana 46204
▪ (317) 232-2000 ▪ www.in.gov/sboe

Authority: IC 20-51-4-4.6

Affected: IC 20-51-4-4.5

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

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

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

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

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

(Indiana State Board of Education; 511 IAC 7-49-10; filed Nov 25, 2014, 3:40 p.m.: 20141224-IR-511130560FRA; filed Mar 18, 2019, 2:33 p.m.: 20190417-IR-511180153FRA; readopted filed Dec 1, 2020, 1:48 p.m.: 20201230-IR-511200548RFA)

SECTION 55. 511 IAC 7-50 IS ADDED TO READ AS FOLLOWS:

Rule 50. Indiana Education Scholarship Account Education Service Plan

511 IAC 7-50-1 Applicability

Authority: IC 20-51.4-6

Affected: IC 20-51.4

Sec. 1 This rule applies to the following:

(1) Education scholarship students as defined in Section 2 of this rule.

(2) A school corporation as defined in IC 20-18-2-16.

(3) A charter school as defined in IC 20-24-1-4

(Indiana State Board of Education; 511 IAC 7-50-1)

511 IAC 7-50-2 Definitions

Authority: IC 20-51.4

Affected: IC 20-51.4

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

(1) "ESA Account" refers to an Indiana education scholarship account established by an eligible student's parent or an emancipated eligible student (as described in IC 20-26-11-4) under IC 20-51.4-4-1.

(2) "Education scholarship account education service plan" or "ESA service plan" means the written document offered by the public agency, rejected by the parent, and serves as the basis for the special education and related services for which scholarship money in the account may be used.

(3) "Education scholarship student" means a student for whom an Indiana education scholarship account has been established under IC 20-51.4 for an eligible student.

(4) "Eligible student" has the meaning set forth in IC 20-51.4-2-4.

(5) "Legal settlement" has the meaning set forth in 511 IAC 7-32-56.

(6) "Public school" has the meaning set forth in IC 20-51.4-2-9.7.

(Indiana State Board of Education; 511 IAC 7-50-2)

511 IAC 7-50-3 Education scholarship account education service plan or service plan; parent election

Authority: IC 20-51.4

Affected: IC 20-51.4

Sec. 3. (a) The parent of an eligible student or an emancipated eligible student has the option to either accept or decline the offer of special education and related services offered under a service plan by the public agency where the student's nonpublic school is located. If the parent accepts the offer of special education and related services under the service plan, the service plan must be implemented by the public agency and the case conference committee (CCC) must convene at least annually in accordance with rule 34.

(b) If the parent of an eligible student or an emancipated eligible student declines the offer of special education and related services under the service plan or if the eligible student is not receiving services from a school that necessitates the creation of a service plan under subsection (a), the parent or emancipated eligible student must request the student's school corporation of legal settlement (SCOLS) to convene the CCC to develop an individualized education program (IEP). The SCOLS shall convene the CCC upon the parent's request.

(c) The IEP developed under subsection (b) becomes the ESA service plan for a student with an education scholarship account who has declined services under a service plan. The ESA service plan must contain a statement specifying the following:

(1) Notwithstanding any other provision of the ESA service plan, the parent or emancipated eligible student is responsible for arranging for the provision of any of the special education and related services specified in the ESA service plan chosen for the student.

(2) Notwithstanding any other provision of the ESA service plan, neither the SCOLS that convened the CCC to develop the ESA service plan or any other public agency is required to provide any of the services identified in the plan unless the parent or emancipated eligible student contracts with the SCOLS or public agency to provide specific services.

(3) The parent or emancipated eligible student is responsible to arrange for payment for any contracted services.

(4) The ESA service plan is valid for a period of time not to exceed three years, or the date the student's reevaluation is due, whichever occurs first.

(Indiana State Board of Education; 511 IAC 7-50-3)

511 IAC 7-50-4 Reevaluation; case conference meetings; participants

Authority: IC 20-51.4-4-5

Affected: IC 20-51.4

Sec. 4. (a) The education scholarship student must be reevaluated at least once every three years in accordance with 511 IAC 7-40-8 to determine continued eligibility. **When the parent of an eligible student or an emancipated eligible student applies for a renewal of the ESAS, the treasurer of state shall provide notice of this requirement to the parent or student, and the student's school corporation of legal settlement, to ensure the student is aware that they must be reevaluated at least every three years.**

(b) The parent of an eligible student or an emancipated eligible student shall provide to the SCOLS data on the student's progress toward the student's goals, any assessment data, and any other information from participating entity providers as part of the reevaluation process

(c) To the extent not inconsistent with this section, the reevaluation procedures of 511 IAC 7-40-8 must be followed. Consent of the parent of an eligible student or an emancipated eligible student is required before the student can be reevaluated. If consent is not provided, then the SCOLS cannot develop a new IEP for the education scholarship student.

(d) The SCOLS shall convene the CCC to consider the results of the reevaluation. Data and information provided by the parent of an eligible student or an emancipated eligible student and any service provider shall also be considered by the CCC in determining continued eligibility and developing subsequent IEPs for eligible students.

(e) The parent of an eligible student or an emancipated eligible student is encouraged to invite participating entities to participate in the CCC meeting to discuss the student's present levels of educational performance as the CCC develops measurable goals, identifies special education and related services, and testing accommodations required for

the student.

(Indiana State Board of Education; 511 IAC 7-50-4)

511 IAC 7-50-5 Enrollment in public school; termination of education scholarship account

Authority: IC 20-51.4-4-5

Affected: IC 20-51.4

Sec. 5. (a) An education scholarship student's enrollment in a public school terminates the student's education scholarship account. Upon enrollment in a public school, the public school, in consultation with the student's parent, must immediately provide the student with services comparable to those described in the student's ESA service plan initially offered under section 3 until the public school develops, adopts, and implements an IEP that meets the requirements of 511 IAC 7-42. The CCC must be convened within ten (10) instructional days of enrollment of a student who had been receiving services through an educational scholarship account education service plan.

(b) Upon enrollment in a public school, the parent of an eligible student or an emancipated eligible student, as well as the public school shall immediately notify the treasurer of state, and the public school shall immediately notify the department, of the student's enrollment in a public agency.

(c) The treasurer of state shall notify the parent of the termination of the education scholarship account upon the enrollment of the student in a public school.

(Indiana State Board of Education; 511 IAC 7-50-5)

SECTION 56. THE FOLLOWING ARE REPEALED: 511 IAC 7-32-67; 511 IAC 7-42-12.