



INDIANA STATE BOARD OF EDUCATION

To: Indiana State Board of Education
From: Chad E. Ranney, General Counsel
Date: October 13, 2021
RE: Initial Approval of Language for Proposed Rule – Special Education Program Personnel

MEMORANDUM

Recommendation(s): Approve the proposed language for purposes of amending 511 IAC 7-36-2, and 511 IAC 7-36-3, and adding 511 IAC 7-36-3.5.

On August 11, 2021, the Board approved the Department staffs' recommendation to initiate rulemaking for purposes of amending 511 IAC 7-36. Amending 511 IAC 7-36-2 and 511 IAC 7-36-3, and adding 511 IAC 7-36-3.5 will address emergency permits and requirements set forth in the Individuals with Disabilities Education Act ("IDEA").

Once the proposed language included with this memo is approved, 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:

- Department staff will seek a waiver from the Regulatory Moratorium as required by Financial Management Circular 2015-1 and Executive Order 13-03.
- Department staff will file all required paperwork and notices with the Legislative Services Agency.
- The Proposed Rule will be published in the Indiana Register.
- A public hearing will be conducted – comments will be accepted via email and in-person.
- All public comments and suggested edits will be presented to the Board for the Board's consideration.
- The Board will adopt a final rule.

TITLE 511 INDIANA STATE BOARD OF EDUCATION

Proposed Rule

LSA Document #21-__ __ __

DIGEST

Amends 511 IAC 7-36-2, and 511 IAC 7-36-3 and adds 511 IAC 7-36-3.5, concerning emergency permits and requirements set forth in the Individuals with Disabilities Education Act (“IDEA”).

SECTION 1. 511 IAC 7-36-2 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-36-2 Special education program personnel

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

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

Sec. 2. (a) All personnel employed or contracted by a public agency to provide special education or related services must be appropriately licensed or certified and must have the content knowledge and skills necessary to provide the services for which the individual is employed or contracted in accordance with standards established by the department of education’s office of educator licensing or other applicable licensing and certification bodies.

~~The person designated as a student’s teacher of record shall:~~

~~(1) for kindergarten through grade 12, be appropriately licensed in the area of the student’s disability or, where appropriate state licensure is not available, appropriately trained; and~~

~~(2) for early childhood, hold an appropriate license to teach early childhood special education.~~

(b) Special education teachers who teach in public elementary and secondary schools must meet the requirements of subsection (a).

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

(1) must meet the requirements of subsection (a); and

(2) may not have certification or licensure requirements waived on:

(A) an emergency;

(B) a temporary; or

(C) a provisional;

basis.

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

(1) meet the requirements of subsections (a) and (c); and

(2) be certified to interpret in an educational setting.

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

(1) licensed teachers; or

(2) related services personnel;

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

(f) The public agency shall do the following:

(1) Provide preservice and in-service training to paraprofessionals in the following areas:

(A) The role of the paraprofessional related to the role of the professional person providing supervision and direction.

(B) The specific skills and content knowledge necessary to carry out the assigned responsibilities.

(C) Information on the following:

(i) The specific special needs and characteristics of the students with whom the paraprofessional will be working.

(ii) Special education procedures, including the confidentiality of personally identifiable information.

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

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

(1) A high school diploma as defined in 511 IAC 6-7.1-1(e) or its recognized equivalent.

(2) Paraprofessionals hired after January 8, 2002, must have achieved one (1) of the following:

(A) Completed two (2) years of study at an institution of higher education, as defined in 511 IAC 7-32-52.

(B) Obtained an associate's or higher degree.

(C) Met a rigorous standard of quality and be able to demonstrate, through a formal state academic assessment, knowledge of and the ability to assist in instructing reading, writing, and mathematics (or, as appropriate, reading readiness, writing readiness, and mathematics readiness).

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

(1) is proficient in English and a language other than English and acts solely as a translator to enhance the participation of limited English proficient students; or

(2) only conducts parental activities, such as a home school liaison.

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

(1) works in a Title I targeted assistance program, as opposed to a Title I school-wide program, unless the paraprofessional's salary is funded, in whole or in part, by Title I Part A; or

(2) does not provide instructional support, such as a person who solely provides personal care.

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

(1) create a right of action on behalf of an individual student or class of students for the failure of a public agency employee to meet the requirements described in subsection (a) of this section; or

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

SECTION 2. 511 IAC 7-36-3 IS AMENDED TO READ AS FOLLOWS:

511 IAC 7-36-3 Special education teachers

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

Affected: IC 20-19-2; IC 20-33

Sec. 3 (a) A special education teacher who teaches in a public elementary, middle, junior high, or high school in the state must meet the following requirements:

(1) The teacher has obtained full state licensure as a special education teacher, including licensure obtained through an alternative route, as described in subsection (b), or passed the state special education teacher licensing examinations and holds a license to teach in the state as a special education teacher, **except that when used with respect to any teacher teaching in a public charter school, the teacher must meet the certification or licensing requirements, if any, set forth in the State's public charter school law;**

(2) The teacher has not had special education licensure requirements waived **on an emergency, temporary, or provisional basis; and**

(3) The teacher holds at least a bachelor's degree.

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

(1) teacher:

(A) receives high-quality professional development that is:

- (i) sustained;
- (ii) intensive; and
- (iii) classroom-focused;

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

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

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

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

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

(c) The person designated as a student's teacher of record shall:

(1) for kindergarten through grade 12, be appropriately licensed in the area of the student's disability or, where appropriate state licensure is not available, appropriately trained; and

(2) for early childhood, hold an appropriate license to teach early childhood special education.

SECTION 3. 511 IAC 7-36-3.5 IS ADDED TO READ AS FOLLOWS:

511 IAC 7-36-3.5 Policy and Rule of Construction

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

Affected: IC 20-19-2; IC 20-33

Sec. 3.5 (a) The public agency must take measurable steps to recruit, hire, train, and retain personnel who meet the applicable requirements described in 511 IAC 7-36-2 and 511 IAC 7-36-3 to provide special education and related services under this article to children with disabilities.

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

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

[Notice of Public Hearing](#)